

SECTION SMP

SMP-D MISCONDUCT ALLEGATIONS

SMP: MISCONDUCT ALLEGATIONS

Section SMP-D.10

PURPOSE

- A. A relationship of trust and confidence between department members and the community they serve is essential for effective law enforcement. Law enforcement officers must be free to exercise their best judgment and to initiate enforcement action in a lawful and impartial manner without fear and reprisal. While at the same time they must meticulously respect individual rights. This order is based on the policies that discipline is the function of command and a well-disciplined force is a force which voluntarily and willingly conforms to all rules and orders.
- B. This complaint procedure is intended to provide corrective action when a department member conducts himself/herself improperly, and to protect him/her from unwarranted criticism when he/she discharges his/her duties properly.
- C. Any person who believes that a law enforcement act is improper is encouraged to bring the complaint to the department's attention.
- D. The department will make every effort to insure that no adverse consequences occur to any person or witness who brought a complaint or provided information in any investigation of a complaint.
- E. Complaints shall be handled in a prompt, just, open and expeditious manner in accordance with these procedures. Summaries of the complaint process, and copies of these procedures shall be made available to the public upon request, under the guidelines of the Data Privacy Act.

Section SMP-D.11

DEFINITION OF TERMS

For the purpose of this procedure manual) the terms defined have the meanings given them.

- A. Chief means the Chief of Police (or the City Administrator when a complaint is made against the police chief).
- B. Complainant means the person or group who files a complaint with the department alleging misconduct by a member(s) or the department supervisor who accepts believable facts relating to alleged misconduct by a member from an anonymous person.

- C. Complaint means a statement which is made to a department supervisor in writing, in person, or by phone which alleges misconduct.
- D. Exonerated means a fair preponderance of the evidence established either that:
1. The act, or acts, complained of did not occur;
 2. The member(s) named in the complaint were not involved in the alleged misconduct;
 3. The act(s) which provided the basis for the complaint occurred, however, the investigation reveals that such act(s) were justified, lawful, and proper; or
 4. That such act(s) do not adversely reflect upon the department or the member's ability to perform his/her duties within the department.
- E. Infraction means violation of any department policy and procedure, violation of a rule, command, duty or law that are not major violations.
- F. Major violation means:
1. Any criminal offense;
 2. The use of unnecessary or excessive force;
 3. Abuse of authority;
 4. Conduct which violates a person's civil rights;
 5. Abusive or insulting language or conduct which is derogatory of a person's race, religion, sex, national origin or sexual preference;
 6. Intimidation of or recrimination toward a complainant or witness involved in any complaint proceeding.
- G. Member means all peace officers and civilian department employees, whether full-time, part-time or temporary.
- H. Misconduct means any infraction or major violation committed by a member which adversely reflects upon the department or the member's ability to perform his/her duties within the department.
- I. Not sustained means the investigation failed to disclose sufficient evidence to prove or disprove the allegation(s) made in the complaint.

- J. Policies and Procedures means the administrative acts promulgated by the Chief and/or City Council regulating conduct of members.
- K. Sustained means a fair preponderance of the evidence obtained in the investigation established that the accused member's actions constituted misconduct.

Section SMP-D.12

PROCEDURE FOR INITIATING COMPLAINT

- A. Anyone who is not a member and has personal knowledge of the facts giving rise to the complaint or has reliable hearsay information may file a complaint. Any department member who has personal knowledge of misconduct shall file a complaint according to these procedures.
- B. Officers shall courteously and promptly accept any complaint made by a citizen against any officer or any department policy or procedure.

Officers may attempt to resolve the complaint, but shall never attempt to dissuade any citizen from lodging a " complaint against any officer or any department policy or procedure.

Officers shall immediately notify the Chief of Police of the complaint, whether resolved or not, as required by department procedure. Upon receiving any complaint, the Chief of Police shall immediately initiate an Initial Complaint Report (ICR) and assign a case file number. The complaint will not be considered filed until the complainant signs the Official Citizens Complaint form.

- C. If the person filing the complaint sets forth specific believable facts relating to the alleged misconduct and the person wishes to remain anonymous, the Chief receiving the information shall then become the complainant. If the Chief has reason to believe that the complaint is unfounded, the Chief shall have the authority to require the person to identify himself/herself.

If the person refuses to do so, the Chief may refuse to initiate a complaint and shall advise the anonymous person of that fact.

- D. After a complaint is filed, the Chief shall sign the document and give or mail a copy to the complainant. The Chief will forward a copy of the document to the accused member, only after it is determined that the complaint does not allege criminal violation and the notification will not impede a criminal investigation.

- E. A complainant may be accompanied by an attorney or another appropriate representative at the time a complaint is filed or at any other stage of the process.

Section SMP-D.13

PROCEDURE FOR INVESTIGATION OF THE COMPLAINT

- A. Upon receipt of the ICR, the Chief shall make an initial determination whether the facts alleged warrant a formal investigation. In making this determination, the Chief may meet informally with the complainant, accused member or any potential witness. If the Chief decides that an investigation is not warranted, the disposition of the complaint shall be either not sustained or exonerated. The complainant will be notified of this decision and the basis for determination. Also, the accused member will be notified. If the complainant supplies additional information within 30 days of the determination, the Chief may reverse this decision.
- B. If the Chief determines that a formal investigation should be conducted, he/she will investigate the complaint. The investigation may be assigned to an external agency where there is the potential for criminal charges resulting from the investigation or in any other situation where the Chief believes that an external investigation is appropriate.
- C. The Chief shall, as soon as possible, inform the complainant of his/her name, business phone number, and status of the complaint.
- D. The Chief shall thoroughly investigate all allegations contained in the complaint and any other potential misconduct discovered in the course of the investigation uncovers potential misconduct by another member, the Chief shall initiate a complaint against the member.
- E. All members, including the accused member, shall cooperate with the investigation. All officers covered by union contract, will be afforded union representation. Failure to cooperate may be the basis for disciplinary action. If it appears to the investigating officer that the complaint may lead to the filing of criminal charges, the investigating officer shall advise the accused member of his/her rights under Miranda v. Arizona and that his/her failure shall not be a separate basis for disciplinary action unless he/she offered transactional immunity from criminal prosecution.
- F. The Chief shall do a report which shall contain all information, organized into the three following sections:
 - 1. Allegations - This section shall consist of an itemized summary of the acts of misconduct alleged in the complaint. Reference shall be made to those

- rules, procedures, orders, statutes, or constitutional provisions that would be violated if the allegations are taken as true.
2. Investigation, including all pertinent facts obtained through interviews with the complainant, accused member(s), and all available witnesses. Written statements, description and analysis of any physical evidence, and all other relevant information shall be included.
 3. Conclusion(s) - This section shall include the investigator's findings, conclusions as to whether any misconduct occurred, and the underlying reasons for the findings and conclusions.
- G. The investigation shall be concluded within thirty (30) days of the filing of the complaint, unless for good cause an extension is granted. The complainant shall be informed of any extensions of time and the accused member shall also be informed if he/she was informed pursuant to section 3D. The City may from time to time approve complaint forms to be used in receiving and reporting of complaints.

Section SMP-D.14 INVESTIGATION REVIEW AND DISPOSITION

- A. Upon completion of the investigation, the investigator shall submit his/her report, the case file and all investigative notes to the Chief. If the Chief determines the investigation was not adequate, he/she will reorder the investigation. If the Chief determines the investigation was adequate, the Chief shall make one of the following dispositions:
1. Unfounded - When the investigation indicated that the complained of action did not occur.
 2. Exonerated - When the investigation indicates that the complained about action occurred but was justified, lawful and proper.
 3. Not Sustained - When the investigation disclosed insufficient evidence to prove or disprove clearly the allegations made.
 4. Sustained - When the investigation disclosed that the action complained about did in fact occur in the manner or degree stated.
 5. Sustained with qualifications - When the investigation discloses that the action complained about did in fact occur, but not in the manner or to the degree stated.
 6. Misconduct not based on a complaint - When the investigation of a complaint discloses misconduct that is not a part of the original complaint.

7. The Chief may withhold issuing a disposition until any related criminal charges are resolved. The complainant shall be informed of this decision and the accused shall also be informed if he/she was informed pursuant to Section 400.

- B. If the complainant is either exonerated or not sustained, the Chief shall immediately notify the complainant and the accused member of the disposition.
- C. If the accused member is sustained, the Chief shall take appropriate disciplinary action. Such action shall be based on the investigative report and the accused member's record of service and shall be in conformance with any applicable rule or regulation relating to discipline of members.

The disciplinary action may include counseling, remedial education, an oral reprimand, a written reprimand, suspension with or without pay, demotion, or discharge.

- D. After selecting the appropriate disciplinary action, the Chief will issue a findings of fact which shall at a minimum, contain the following information:
 - 1. A summary of the act or acts constituting misconduct and the specific procedures violated;
 - 2. description of the disciplinary or remedial action taken to prevent recurrence of the misconduct; and
 - 3. Any additional information as the Chief may find applicable to accurately document the disposition.
- E. All data collected, created or received by the department in connection with this policy and procedure shall be maintained in accordance with the department's retention schedule.
- F. The placement of the disposition report or other data in an employee's personnel file shall be governed by personnel policy.