

Chaska Police Department

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PURPOSE

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.

POLICY

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.

Any person who believes that a member of the department had acted improperly is encouraged to bring the complaint to the Chief of Police or a designee.

The Department will make every effort to ensure that no adverse consequences occur to any person or witness who brought a complaint or provided information in any investigation of a complaint.

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.

33.1 Definitions

Chief - means the Chief of Police, a designee or the City Administrator, when a complaint is made against the Police Chief.

Policies and Procedures - means the administrative acts promulgated by the Chief, regulating conduct of members.

Complainant - means the person or group who files a complaint with the Chief of Police, alleging misconduct by a member or the department supervisor who accepts believable facts relating to alleged misconduct by a member, from an anonymous person.

Complaint - means a statement, which is made to a Chief of Police or a designee in writing, in person or by phone which alleges misconduct.

Exonerated - means a preponderance of the evidence established either that:

- The act, or acts, complained of did not occur;
- The member named in the complaint was not involved in the alleged misconduct;

That the act which provided the basis for the complaint occurred; however, the investigation revealed that such act was justified, lawful and proper.

Misconduct - means a violation of any departmental policy and procedure governing the conduct of agency members;

- The use of unnecessary or excessive force;
- Any conviction of any criminal offense
- Abuse of authority;
- Conduct which violates a person's civil rights;
- Abusive or insulting language or conduct which is derogatory of a person's race, religion, sex, national origin or sexual preference;
- Intimidation of or recrimination toward a complainant or witness involved in any complaint proceeding.

Member - means all police officers and civilian department employees, whether full-time, part-time or temporary.

Sustained - means a fair preponderance of the evidence obtained in the investigation established that the accused member's actions constituted misconduct.

Not Sustained - means the investigation failed to disclose sufficient evidence to prove or disprove the allegation made in the complaint.

Policy Failure - the allegation is true, however, the action of the employee was consistent with a reasonable interpretation of current Department policy.

33.2 Initiating a Complaint

33.2.1 Who can Initiate a Complaint?

Anyone who is not a member and has personal knowledge of the facts giving rise to the complainant, 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.

Any department member shall self-report to the Chief of Police and to the Peace Officer Standards and Training Board any action, inaction or condition of that department member, which that agency member believes would constitute grounds for disciplinary action under any of the Peace Officer Standards and Training Board's regulatory provisions.

33.2.2 Assignment of Control Number

Upon receiving any complaint, the Chief of Police or designee shall have the complainant complete an Initial Citizen's Complaint Form and shall assign a control complaint index number. The complaint will not be considered filed until the complainant signs an Initial Citizen's Complaint Form. This number will be assigned from an ongoing case log book.

33.2.3 Anonymous Complainants

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 of Police or a designee, at the sole discretion of the Chief of Police, shall allow the person to remain anonymous and shall then

become the complainant. If the Chief of Police or designee has reason to believe that the complaint is unfounded, the Chief of Police or designee shall have the authority to require the person to identify himself/herself. If the person refuses to do so, the Chief of Police or designee may refuse to initiate a complaint and shall advise the anonymous person of that fact.

33.2.4 Copies of Complaint

After complaint is filed, the Chief of Police or designee 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 a criminal violation, and the notification will not impede a criminal investigation.

33.2.5 Representation

A complainant may be accompanied by an attorney or other appropriate representative at the time a complaint is filed, or at any other state of the process.

33.2.6 Outside Agency

Any complaint made against the Chief of Police shall be initially made to the City Administrator. Upon receiving a complaint, the receiving authority shall immediately have the complainant complete an Initial Citizen's Complaint Form and assign an administrative case number. The complaint will not be considered until the complainant signs the form. The City Administrator should refer the investigations of alleged misconduct against the Chief of Police to an outside law enforcement or criminal justice agency.

33.3 Investigation of the Complaint

33.3.1 Initial Determination

Upon receipt, 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 witnesses. 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 thirty days of the determination, the Chief may reverse this decision.

33.3.2 Assignment of Investigator

If the Chief determines that a formal investigation shall be conducted, he/she shall assign the appropriate supervisor to 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. The investigation will be assigned to an external agency when the Chief is the subject of the complaint.

The investigator shall, as soon as possible after being assigned the investigation, inform the complainant of his/her name, business phone number and the status of the complaint.

33.3.3 Other members involved

The investigator shall thoroughly investigate all allegations contained in the complaint and any other potential misconduct, discovered during the course of the investigation. If the investigation uncovers potential misconduct by another member, the investigator shall report that information to the Chief of Police.

33.3.4 Cooperation

All members, including the accused member, shall cooperate with the investigation. Failure to cooperate may be basis for disciplinary action. (See Garrity Warning - General Order 33.7). When the respondent is a licensed peace officer, the investigation shall comply with the requirements of MN Statutes, Section 626.89 and acts amendatory thereto.

33.3.5 Medical Examinations, Photographs and Lineups

Upon the order of the Chief or the Chief's designee, officers shall submit to any medical, ballistics, chemical or other tests, photographs or lineups.

33.3.6 Financial Disclosure

Officers shall submit financial disclosure statements in accordance with departmental procedures in connection with a complaint in which this information is material to the investigation.

33.4 Investigation Report

The investigator shall make a report, which shall contain all relevant information, organized into the three following sections:

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.

Investigation - This section shall consist of a chronological summary of the investigation, including all pertinent facts obtained through interviews with the complainant, accused members, and all available witnesses. Written statements, description and analysis of any physical evidence, and all other relevant information shall be included.

Conclusion - This section shall include investigator's findings, conclusions as to whether any misconduct occurred, and the underlying reasons for the findings and conclusions. These conclusions shall not be binding on the Chief.

The investigation shall be conducted within thirty (30) days of the filing of the complaint, unless for good cause, an extension is granted by the Chief.

33.5 Investigation Review and Disposition

33.5.1 Determination of Disposition

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: Exonerated, Not Sustained, or Sustained.

33.5.2 Withholding Disposition

The Chief may postpone a decision until any related criminal charges are resolved. The complainant shall be informed of this decision, and the accused shall also be informed.

33.5.3 Notification

If the complaint is either exonerated or not sustained, the Chief shall immediately notify the complainant and the accused member of the disposition.

33.5.4 Disciplinary Action

If the complaint 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 collective bargaining agreement, contract or other rule or regulation relating to the discipline of members. The disciplinary action may include counseling, remedial education, an oral reprimand, a written reprimand, counseling statement, suspension with or without pay, demotion or discharge.

33.5.5 Findings of Fact

After selecting the appropriate disciplinary action, the Chief will issue a Findings of Fact (see 33.7) which shall minimally contain the following information:

- A summary of the act or acts constituting misconduct and the specific statutes, polices, regulations and procedures violated;
- A description of the disciplinary or remedial action taken to prevent recurrence of the misconduct; and
- Any additional information, as the Chief may find applicable, to accurately document the disposition.

Prior to the implementation of remedial and/or disciplinary actions, the accused member shall be provided with a copy of the Findings of Fact. The Chief and/or appropriate supervisor shall review it with the accused member and explain the reasons for the action.

The complainant shall also be given a copy of the Findings of Fact.

33.5.6 Appeal

Either the complainant or the accused member may, with twenty (20) days after notification of the disposition, request the Chief, for good cause, to reopen the investigation. The disposition shall be final, upon expiration of the twenty (20) day period if there is no cause for reconsideration. If a request for reconsideration is made, the disposition shall become final upon a decision on such request, or the completion of any additional actions directed by the Chief. Notwithstanding the foregoing, the investigation may be reopened by the Chief, at any time, if substantial new evidence is discovered, which is relevant to the complaint.

When a sustained disposition is final, the accused member may appeal the disposition, according to the member's collective bargaining agreement or, if applicable, through the Veterans' Preference Act.

33.5.7 Suspension

The Chief may suspend an accused member, with pay, at any time during the investigation of a complaint.

This policy procedure shall not preclude other disciplinary procedures for misconduct not initiated by citizen complaint.

33.6 Maintenance and Disclosure of Data

Disclosure to the complainant and the accused member of data collected, created, received or maintained in accordance with this agency's "Record Retention Schedule".

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.

The placement of the disposition report or other data in an employee's personnel file shall be governed by applicable collective bargaining agreements and/or personnel policy.

Access to data collected, created or received in connection with this policy and procedure may only be authorized by the Chief or the agency's Data Practices "Responsible Authority", and as provided by Chapter 13, the "MN Government Data Practiced Act", or valid court order.

33.7 Garrity Warning

You are (giving the attached statement or report) (being questioned) pursuant to an order from a superior officer for use in a (Police) Internal Affairs Investigation. The investigation is specifically directed and narrowly related to the performance of your official duties and/or fitness for office. If you refuse to answer or give a false or intentionally incomplete statement, you will be subject to immediate suspension and other disciplinary action. If you do answer, neither your statements nor any information or evidence which is gained by reason of your statements may be used against you in any criminal proceeding. However, your statements may be used against you in subsequent departmental charges and disciplinary proceedings, including arbitration or Veterans' Preference proceedings. Compliance with this order does not operate as a waiver of any rights or privileges guaranteed you by the laws and Constitution of Minnesota and the Constitution of the United States, including the right to remain silent and the right of assistance of counsel.

33.8 Sample Findings of Fact

STATE OF MINNESOTA
COUNTY OF CARVER
BEFORE THE OFFICE OF THE CHASKA POLICE CHIEF

In the Matter of the Alleged
Misconduct Regarding

Officer:

On _____, the Chaska Police Chief reviewed the
above entitled matter.

Findings of Fact

1. _____, a police officer for the City of Chaska,
was on duty on _____.

2. While on duty, _____ was involved in

3. The incident was investigated according to Chaska Police Procedure.

Conclusion

Disciplinary Action

Dated

Chief of Police

33.9 Order to Cooperate With Internal Affairs Investigation

The CHASKA POLICE DEPARTMENT is currently conducting an investigation into allegations concerning alleged misconduct and/or fitness for office allegedly involving member(s) of the Department. You are hereby ordered to answer all questions which may be asked of you in the course of this investigation. Your failure to answer any of these questions in a prompt, truthful and complete manner will be the basis for disciplinary action against you, including possible dismissal. Any such statements, which you make in response to this order, and any evidence obtained as a result of such statements, cannot and will not be used against you in any criminal prosecution naming you as a defendant.

By: _____

Lieutenant

I have read and understand the above order:

Signed: _____ Date: _____