

Personnel Complaints

1010.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of officers of the Shakopee Police Department (Minn. R. 6700.2200). This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a officer in the normal course of duty, by a supervisor or any other officer, nor shall this policy apply to a criminal investigation.

1010.2 POLICY

The Shakopee Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any memorandum of understanding.

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

1010.2.1 DEFINITIONS

For the purpose of this policy the terms set forth below are defined as follows:

City Policy – City of Shakopee Personnel Policy Manual

Complainant – A person who submits a complaint to the Chief of Police alleging misconduct by an agency member.

Complaint – A written statement, received in any form as described in 1010.3.2 (Sources of Complaints) made to or by the Chief of Police alleging misconduct.

Formal Statement – The questioning of an agency member in the course of obtaining a recorded, stenographic, or signed statement to be used as evidence in a disciplinary proceeding against the agency member.

Infractions – Includes violation(s) of department policy, city policy, procedure, rules, or regulations defining transgressions that are not major violations.

Internal Affairs Investigative Authority – The command or supervisory personnel or the agency assigned the authority by the Chief of Police to conduct an investigation into a non-criminal complaint.

Major Violations – Include violation(s) of:

- (a) The use of unnecessary or excessive force;
- (b) Criminal misconduct;
- (c) Abuse of authority;

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- (d) Conduct which violated a person's civil rights;
- (e) Corruption;
- (f) Abusive or insulting language or conduct which is derogatory of a person's race, color, creed, religion, age, national origin or sexual preference, marital status, familial status, public assistance status, disability, handicap, or political affiliation;
- (g) Sexual harassment as that term is defined under Minnesota Law;
- (h) Intimidation or retribution toward a complainant or witness involved in any complaint proceeding.

Member – Any person who is employed or appointed by the Shakopee Police Department including licensed officers, non-sworn employees, and volunteers.

Misconduct – Includes, but is not limited to, the following:

- (a) Infractions as defined by this policy;
- (b) Major Violations as defined by this policy;
- (c) The conviction of any criminal offense.

Policies and Procedures – The administrative rules adopted by the agency regulation the conduct of agency members and the City of Shakopee Personnel Policy Manual adopted by the City Council.

1010.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

1010.3.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

Concern (Informal) - A matter in which the Captain is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused officer.

Complaint (Formal) - A matter in which a Captain determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused officer or referred to a Captain of Chief, depending on the seriousness and complexity of the investigation.

Incomplete - A matter in which the complaining party either refuses to cooperate or becomes unavailable after a diligent and documented follow-up investigation. At the discretion of the assigned supervisor or a Captain, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

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1010.3.2 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.
- (f) The Minnesota Board of Peace Officer Standards and Training (POST) may refer complaints alleging a violation of a statute or rule that the board is empowered to enforce (Minn. Stat. § 214.10, Subd. 10).
- (g) Any person making a complaint may be accompanied by an attorney or other representative, including at the time the complaint is made.
- (h) Any person wishing to file a complaint against the Chief of Police should be referred to the City Administrator for investigation by an outside agency.

1010.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1010.4.1 COMPLAINT FORMS

Personnel complaint forms will be available at the police facility and be accessible through the department website.

1010.4.2 ACCEPTANCE

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

1010.4.3 COMPLAINT COPIES

After a complaint is filed, the accepting member should sign the document, keep a copy for the department and provide a copy to the complainant upon request.

1010.5 DOCUMENTATION

Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

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All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Department should audit the log and send an audit report to the Chief of Police or the authorized designee.

1010.6 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows (Minn. R. 6700.2200).

1010.6.1 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Chief of Police or the authorized designee may direct that another supervisor or outside agency to investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
 - (a) The original complaint form will be directed to the Captain of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
 - (b) In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Division Commander or the Chief of Police, who will initiate appropriate action.
- (b) Responding to all complaints in a courteous and professional manner.
- (c) Resolving those personnel complaints that can be resolved immediately.
 - (a) Follow-up contact with the complainant should be attempted as soon as practical after the Department receives the complaint.
 - (b) If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Captain.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Captain and Chief of Police are notified via the chain of command as soon as practicable.
- (e) Promptly contacting the Captain for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
- (f) Forwarding unresolved personnel complaints to the Captain, who will determine whether to contact the complainant or assign the complaint for investigation.

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- (g) Investigating a complaint as follows:
 - 1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
 - 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (h) Ensuring that the procedural rights of the accused member are followed.
- (i) Ensuring interviews of the complainant are generally conducted during reasonable hours.

1010.6.2 EXTERNAL INVESTIGATIONS

The Chief of Police may request that an outside agency conduct an investigation anytime the Chief of Police determines an external investigation is appropriate.

This department should not conduct an investigation when the Chief of Police is the subject of the complaint. An external investigation should be requested through the City Administrator.

1010.6.3 ADMINISTRATIVE INVESTIGATION PROCEDURES

The following shall apply to officers covered by the Peace Officer Discipline Procedures Act (Minn. Stat. § 626.89):

- (a) Interviews of an accused officer shall be conducted during reasonable hours and preferably when the officer is on-duty (Minn. Stat. § 626.89, Subd. 7). If the officer is off-duty, he/she shall be compensated.
- (b) Unless waived by the officer, interviews of an accused officer shall be at the Shakopee Police Department or at a place agreed upon by the accused officer (Minn. Stat. § 626.89, Subd. 4).
- (c) No more than two interviewers should ask questions of an accused officer.
- (d) Prior to any interview, a officer should be informed of the nature of the investigation.
 - (a) The officer shall be given a copy of any written complaint signed by the complainant (Minn. Stat. § 626.89, Subd. 5).
 - (b) Do not discuss order.
- (e) All interviews should be for a reasonable period and the officer's personal needs should be accommodated (Minn. Stat. § 626.89, Subd. 7).
- (f) No officer should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
- (g) Any officer refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
 - 1. A officer should be given an order to answer questions in an administrative investigation that might incriminate the officer in a criminal matter only after the officer has been given a *Garrity* advisement. Administrative investigators should consider the impact that compelling a statement from the officer

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may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).

2. No information or evidence administratively coerced from an officer may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (h) The interviewer shall record all interviews of officers and witnesses. The officer may also record the interview. A complete copy or transcript of the interview must be made available to the officer upon written request without charge or undue delay. If the officer has been previously interviewed, a copy of that recorded interview shall be provided to the officer prior to any subsequent interview (Minn. Stat. § 626.89, Subd. 8).
 - (i) All officers subjected to interviews that could result in discipline have the right to have an uninvolved representative or attorney present before or during the interview (Minn. Stat. § 626.89, Subd. 9). When an officer requests a representative or attorney, no interview may be taken until a reasonable opportunity is provided for the officer to obtain that person's presence. However, in order to maintain the integrity of each individual's statement, involved officers shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
 - (j) All officers shall provide complete and truthful responses to questions posed during interviews.
 - (k) No officer may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation.
 - (l) Before a formal statement is taken, the officer shall be advised in writing or on the record that admissions made may be used as evidence of misconduct or a basis for discipline (Minn. Stat. § 626.89, Subd. 10).
 - (m) An officer may not be required to produce financial records (Minn. Stat. § 626.89, Subd. 11).
 - (n) An officer's photograph will not be released unless allowed by law (Minn. Stat. § 626.89, Subd. 12).

1010.6.4 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

Introduction - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

Summary - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

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Evidence - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

Conclusion - A recommendation regarding further action or disposition should be provided.

Exhibits - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

1010.6.5 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded.

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

The Chief of Police may authorize that any investigation be re-opened any time substantial new evidence is discovered concerning the complaint.

1010.6.6 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within 90 days from the date of discovery by an individual authorized to initiate an investigation.

1010.6.7 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation shall provide the complainant with periodic updates on the status of the investigation, as appropriate, and consistent with the provisions of the Minnesota Government Data Practices Act (Minn. Stat. § 13.43, Subd. 2; Minn. R. 6700.2200).

1010.7 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

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1010.8 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

1010.9 CRIMINAL INVESTIGATION

Where an officer is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief of Police shall be notified as soon as practicable when an officer is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

A officer accused of criminal conduct shall be provided with all rights afforded to a civilian. The officer should not be administratively ordered to provide any information in the criminal investigation.

The Shakopee Police Department may release information concerning the arrest or detention of any officer, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

The Chief of Police may postpone making a decision on an administrative investigation until any related criminal charges are resolved. The complainant and involved officer should be informed of this decision.

1010.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the chain of command. Each level of command should review and include their comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

1010.10.1 DISCIPLINE

Disciplinary action may include, but is not limited to (Minn. R. 6700.2200):

- (a) Oral reprimand.

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- (b) Written reprimand.
- (c) Suspension.
- (d) Demotion.
- (e) Discharge.

1010.10.2 DIVISION COMMANDER RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Division Commander of the involved officer shall review the entire investigative file, the officer's personnel file and any other relevant materials.

The Division Commander may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Chief of Police, the Division Commander may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Chief of Police, the Division Commander shall include all relevant materials supporting the recommendation. Actual copies of a officer's existing personnel file need not be provided and may be incorporated by reference.

1010.10.3 CHIEF OF POLICE RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Division Commander for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, that should be imposed.

1010.10.4 MINNESOTA POST INVESTIGATIONS

The Minnesota POST Board may require an administrative investigation based upon a complaint alleging a violation of a statute or rule that the board is empowered to enforce.

Any such misconduct allegation or complaint assigned to this department shall be completed and a written summary submitted to the POST executive director within 30 days of the order for inquiry (Minn. Stat. § 214.10, Subd. 10).

The Department shall cooperate with POST's investigation and provide requested information unless (Minn. Stat. § 626.8457):

- (a) There is an active criminal investigation or active criminal proceeding regarding the same incident or misconduct that is being investigated by POST.
- (b) An active internal investigation exists regarding the same incident or misconduct that is being investigated by POST during 45 days from the time the request was made by POST. The Chief of Police or the authorized designee shall comply with the request

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upon completion of the internal investigation or once 45 days has passed, whichever occurs first.

1010.10.5 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

The Chief of Police or the authorized designee shall ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint. Notice must be consistent with the provisions of the MGDG (Minn. Stat. § 13.43, Subd. 2; Minn. R. 6700.2200).

1010.10.6 CIVILIAN OVERSIGHT COUNCIL

When applicable, the Chief of Police or the authorized designee shall cooperate with the designated civilian oversight council, as appropriate (Minn. Stat. § 626.89, Subd. 17).

1010.11 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

1010.12 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by any collective bargaining agreement and/or personnel rules (Minn. R. 6700.2200).

Employees covered by the Veterans Preference Act are entitled to written notice of the right to request a hearing within 30 days of receipt of the notice of intent to terminate, suspend or demote. Failure to request the hearing in the time specified waives the right to the hearing and all other legal remedies. Any hearing shall be held in compliance with law (Minn. Stat. § 197.46).

1010.14 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

At-will and probationary employees and members other than non-probationary employees may be disciplined and/or released from employment without adherence to any of the procedures set out in this policy, and without notice or cause at any time. These individuals are not entitled to any rights under this policy except for employees covered by the Veterans Preference Act (Minn. Stat. § 197.46). However, any of these individuals released for misconduct should be afforded an opportunity solely to clear their names through a liberty interest hearing, which shall be limited to a single appearance before the Chief of Police or the authorized designee (Minn. R. 6700.2200).

Any probationary period may be extended at the discretion of the Chief of Police in cases where the individual has been absent for more than a week or when additional time to review the individual is considered to be appropriate.

1010.14 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.

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1010.14.1 CONFIDENTIALITY OF PERSONNEL FILES

All active investigations of alleged misconduct and personnel complaints shall be considered confidential and maintained separately from peace officer personnel files. The contents of such files shall not be revealed to other than the involved member or authorized personnel, except pursuant to lawful process, such as Minn. R. 6700.2500. Data in closed files shall be treated as private or public data depending on whether discipline was imposed upon the member.

1010.14.2 LETTERS OF DISCIPLINE AND REPRIMANDS

Letters of discipline and reprimands may only be placed in a member's personnel file after they are received by the member (see generally Minn. Stat. § 626.89, Subd. 13).

1010.15 REQUIRED REPORTING TO POST

The Chief of Police or the authorized designee shall notify POST of certain officer personnel events, including but not limited to:

- (a) A termination or resignation of an officer who is the subject of an internal or criminal investigation due to alleged misconduct regardless of whether the investigation has been initiated or completed, or whether the officer was criminally charged (Minn. Stat. § 626.8457, Subd. 4).
- (b) The violation of a required POST model policy identified in Minn. R. 6700.1615 (Minn. R. 6700.1615, Subd. 2).