

## Personnel Complaints

### 1005.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Spring Lake Park 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 member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

### 1005.2 POLICY

The Spring Lake Park 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.

### 1005.3 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, without limitation regarding policy, procedures or the response to specific incidents by the Department.

#### 1005.3.1 COMPLAINT CLASSIFICATIONS

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

**Informal** - A matter in which a Shift Sergeant addresses on an informal basis and does not warrant a formal investigation.

**Formal** - A matter in which the Chief of Police or a supervisor determines that further action is warranted. Such complaints shall be referred to the Chief of Police who will appoint an investigator after consideration of the seriousness and complexity of the investigation.

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

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#### 1005.3.2 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. If a supervisor is not available the officer will promptly complete a ICR and forward it to the supervisor.
- (c) Supervisors shall initiate a complaint upon their observation of misconduct that could result in disciplinary action and shall also review and process or refer, per this policy, any complaints made which, 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.

#### 1005.4 DOCUMENTATION

Department members to whom a complaint is reported shall ensure that all formal and informal complaints are documented on a complaint form or department incident report. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

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 Chief of Police or the authorized designee should audit the log.

#### 1005.5 ADMINISTRATIVE INVESTIGATIONS

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

##### 1005.5.1 RESPONSIBILITY FOR INVESTIGATION

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the Chief of Police or the authorized designee depending on the seriousness or complexity of the investigation.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation. If the investigation uncovers potential misconduct by another member, the investigator shall initiate a complaint against that member and forward the complaint to the Chief of Police.

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The responsibilities of the Chief of Police or the authorized designee 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 Chief of Police who will take appropriate action and/or determine who will have responsibility for the investigation.
- (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 within 72 hours of the Department receiving the complaint.
  - (b) If the matter is resolved and no further action is required, the Chief of Police or the authorized designee will note the resolution on a complaint form.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the investigation is started as soon as practicable and verbal notification is made to the Chief of Police.
- (e) Promptly contacting the City Administrator and the Chief of Police for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
- (f) Informing the complainant of the investigator's name and the complaint number within three days after assignment.
- (g) Investigating a complaint as follows:
  - (a) Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
  - (b) 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.

Reports and/or memorandums prepared at the request of a supervisor, as part of an information-gathering portion of an investigation, will have the preparer's name but **no signature** . **Reports and/or memorandums prepared as part of this policy will be signed, as required by the policies and procedures of this department, and forwarded to the Chief of Police for investigation.**

#### 1005.5.2 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.

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

#### 1005.5.3 ADMINISTRATIVE INVESTIGATION PROCEDURES

All investigations shall be conducted in accordance with with the Peace Officer Discipline Procedures Act (Minn. Stat. § 626.89):

- (a) Interviews of an accused member shall be conducted during reasonable hours and preferably when the member is on-duty (Minn. Stat. § 626.89, Subd. 7). If the member is off-duty, he/she shall be compensated.
- (b) Unless waived by the member, interviews of an accused member shall be at the Spring Lake Park Police Department or at a place agreed upon by the accused member (Minn. Stat. § 626.89, Subd. 4).
- (c) No more than two interviewers should ask questions of an accused member.
- (d) Prior to any interview, a member should be informed of the nature of the investigation.
  - (a) The member shall be given a copy of any written complaint signed by the complainant (Minn. Stat. § 626.89, Subd. 5).
- (e) All interviews should be for a reasonable period and the member's personal needs should be accommodated (Minn. Stat. § 626.89, Subd. 7).
- (f) No member should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
- (g) Any member 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 member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a Garrity advisement. Administrative investigators should consider the impact that compelling a statement from the member 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 a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (h) The interviewer shall record all interviews of members and witnesses. The member may also record the interview. A complete copy or transcript of the interview must be made available to the member upon written request without charge or undue delay. If the member has been previously interviewed, a copy of that recorded interview shall be made available to the member prior to any subsequent interview (Minn. Stat. § 626.89, Subd. 8).

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- (i) All members subjected to interviews that could result in discipline to the member interviewed have the right to have an uninvolved union representative or an attorney present during the interview (Minn. Stat. § 626.89, Subd. 9). When a member requests a union representative or an attorney at any time before or during an interview, no interview may be initiated or continued until a reasonable opportunity is provided for the member to obtain that person's presence. However, in order to maintain the integrity of each individual's statement, involved members shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (j) All members shall provide complete and truthful responses to questions posed during interviews.
- (k) No member 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 member 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) A member may not be required to produce personal financial records absent a search warrant or subpoena (Minn. Stat. § 626.89, Subd. 11).
- (n) A member's photograph will not be released unless allowed by law (Minn. Stat. § 626.89, Subd. 12).

#### 1005.5.4 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and generally 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.

**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.

#### 1005.5.5 DISPOSITIONS

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

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**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.

#### 1005.5.6 COMPLETION OF INVESTIGATIONS

Every investigator assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence.

#### 1005.5.7 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 (MGDP) (Minn. Stat. § 13.43, Subd. 2; Minn. R. 6700.2200).

#### 1005.6 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.

#### 1005.7 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.

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- (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.

#### **1005.8 CRIMINAL INVESTIGATION**

Where a member 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 a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

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

The Spring Lake Park Police Department may release information concerning the arrest or detention of any member, 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 member should be informed of this decision.

#### **1005.9 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES**

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

##### **1005.9.1 DISCIPLINE**

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

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

##### **1005.9.2 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 investigator for further investigation.

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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. In the event disciplinary action is proposed, the Chief of Police shall provide the member with a written notice and opportunity to appeal per applicable law and the collective bargaining agreement.

#### **1005.9.3 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 upon completion of the internal investigation or once 45 days has passed, whichever occurs first.

#### **1005.9.4 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 MGDP (Minn. Stat. § 13.43, Subd. 2; Minn. R. 6700.2200).

#### **1005.10 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.

#### **1005.11 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).



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#### **1005.12 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.

#### **1005.13 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.

##### **1005.13.1 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 anyone 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 and pursuant to MN Stat Section 13.43.

##### **1005.13.2 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).

#### **1005.14 POST BOARD REPORTING REQUIREMENTS**

- (a) Under Minn. Rule 6700.1610, a licensed peace officer must self-report to the POST Board any violations of the Standards of Conduct for peace officers listed in Minn. Rule 6700.1600.
- (b) Any person with knowledge of peace officer misconduct constituting grounds for action under Minn. Stat. Chapter 214, or Minn. Rules 6700.1600, may report the violation to the Board.
- (c) Minnesota Stat. 626.8457, Subd 3 requires the Chief of Police to submit individual peace officer public and private data related to allegations of misconduct to the POST Board in "real time" via the POST Board Misconduct Reporting System.
- (d) A Chief of Police must update data within 30 days of final disposition of a complaint or investigation.

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- (e) Law enforcement agencies and political subdivisions are prohibited from entering into a confidentiality agreement that would prevent disclosure of the data identified in Minn. Stat. 626.8457, Subd. 3 paragraph (b) to the Board. Any such confidentiality agreement is void as to the requirements of this section.

#### **1005.15 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).