

Perham Police Department

Policy & Procedures Manual

TITLE: ALLEGATIONS OF MISCONDUCT
Minnesota Statutes 626.8457
Minnesota Rules 6700.2200 through 6700.2600

NUMBER: 20.2

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DISTRIBUTION: All Personnel

I. PURPOSE

The purpose of this policy is to inform all employees and the public of procedures for reporting, receiving, investigating and disposition of complaints regarding the conduct of licensed peace officers of the Perham Police Department. The provisions of this policy are applicable only to the investigation and the disposition of allegations of administrative misconduct. This policy does not apply to a criminal investigation.

II. POLICY

It is the policy of the Perham Police Department to accept and to fairly and impartially investigate all complaints of misconduct to determine the validity of allegations; and to impose any corrective actions that may be justified in a timely and consistent manner.

III. DEFINITIONS

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

- A. *Administrative Investigation:*** An internal investigation conducted in response to a complaint with the goal of determining whether an employee engaged in misconduct.
- B. *Chief Law Enforcement Officer*** means the chief of police, sheriff, state law enforcement director or a designee. Within this policy, the chief law enforcement officer will be referred to as CLEO.
- C. *Law Enforcement Officer*** means an individual who holds a peace officer license in the State of Minnesota. Within this policy, a law enforcement officer will be referred to as LEO.
- D. *Complainant*** means a person who submits a complaint to the Agency or CLEO alleging misconduct by an agency member.
- E. *Complaint*** means a written statement made to or by a CLEO alleging misconduct.
- F. *Member*** means all voluntary and compensated personnel of the agency.
- G. *Discipline*** means:
 - 1. oral reprimand,
 - 2. written reprimand,

3. suspension,
4. demotion, or
5. discharge.

- H. **Unfounded** means there is no factual basis for the allegation. The act or acts alleged did not occur.
- I. **Exonerated** means a fair preponderance of the evidence established either that:
1. the act or acts complained of did not occur;
 2. the agency member named in the complaint was not involved in the alleged misconduct; or
 3. the act(s) that provided the basis for the complaint occurred; however, the investigation reveals that such act(s) were justified, lawful or proper.
- J. **Not Sustained** means the investigation failed to disclose sufficient evidence to prove or disprove the allegations made in the complaint.
- K. **Sustained** means a fair preponderance of the evidence obtained in the investigation established that the accused person's actions constituted misconduct.
- L. **Policy Failure** means that the complaint revealed a policy failure. The allegation is factual and the LEO(s) followed proper agency procedure, however, that procedure has proven to be deficient.
- M. **Formal Statement** means 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.
- N. **Respondent** means any agency member, whether full-time, part-time, temporary or voluntary, against whom a complaint has been filed.
- O. **Misconduct** means:
1. a violation of an agency policy or procedure governing conduct of agency members;
 2. conduct by a peace officer that would be a violation of POST Standards of Conduct per Minn. Rules 6700.1600
- L. **Policies and Procedures** mean the administrative rules adopted by the agency regulating the conduct of agency members.
- M. **Shall / Will** means, as used herein, that the action is mandatory.
- N. **May** means that the action is permissible.
- O. **Receiving authority** means the person who receives the complaint when the subject of the complaint is a CLEO.

IV. PROCEDURE

A. INITIATING COMPLAINT

1. Anyone who has personal knowledge of facts or reliable hearsay information may file a complaint. Any agency member who has personal knowledge of misconduct shall file a complaint according to the procedures stated herein.
2. Complaint forms must be made available through agency personnel, at designated public facilities, and via the internet.
3. Complaints may be received either in person, over the telephone, in writing, or via the internet. A complainant may remain anonymous. The complainant should be advised that remaining anonymous may affect the investigation of the complaint.
4. Any agency member shall self-report to the CLEO and to the Peace Officer Standards and Training Board any action, inaction, or condition of that agency member which the agency member reasonably believes would constitute grounds for disciplinary action under any of the Peace Officer Standards and Training Board's regulatory provisions.
5. Upon receiving a complaint against a member within the agency, the CLEO receiving the complaint shall immediately have the complainant complete a Citizens Complaint Form (CCF) and assign an administrative case number. The complaint will not be considered filed until the complainant signs the CCF.
6. If the person making a complaint sets forth specific believable facts supporting an allegation of misconduct but wishes to remain anonymous, the CLEO receiving the complaint may, with sole discretion, permit the complainant to remain anonymous. In this instance the CLEO shall sign the complaint as the complainant. If the CLEO has reason to believe the complaint is unfounded, the CLEO shall have the authority to require an anonymous complainant to identify himself/herself. If that complainant refuses to do so, the CLEO may refuse to accept a complaint and shall advise the anonymous person of that fact.
7. After a CCF is filed, the CLEO shall sign the document keeping a copy for the agency and providing a copy to the complainant. The CLEO will forward a copy of the document to the respondent only after it is determined that the complaint does not allege a criminal violation and the notification will not impede a criminal investigation.
8. A complainant may be accompanied by an attorney or other representative at the time a complaint is filed or at any other stage of the process.
9. Any complaint made against a chief of police shall initially be made to the City Manager or Mayor. Upon receiving a complaint the receiving authority shall immediately have the complainant complete a Citizens Complaint Form (CCF) and assign an administrative case number. The complaint will not be considered until the complainant signs the CCF.
10. The City Manager or Mayor should refer investigations of alleged misconduct against a CLEO to an outside law enforcement agency or criminal justice agency.

B. THE INVESTIGATION OF A COMPLAINT

1. Upon receipt of the Citizen Complaint Form (CCF), the CLEO shall make an initial determination as to whether the facts alleged require an administrative investigation. If the CLEO decides that an

investigation is not required, the disposition of the complaint shall be cleared as “unfounded”, “not sustained” or “exonerated”. The complainant and the respondent will be notified of this decision and the basis for determination. If the complainant supplies additional information within thirty (30) days of that initial determination, the CLEO may reverse this decision and order a formal investigation.

5. If the CLEO determines an administrative investigation is required an appropriate person will be assigned to investigate the complaint. When the CLEO believes an external investigation is appropriate and when the CLEO is the subject of the complaint, the investigation will be assigned to an external agency.
6. The CLEO may suspend a respondent with pay at any time during the investigation of a complaint.
7. As soon as possible after being assigned the investigation the investigator shall inform the complainant of his or her name, business phone number and the status of the complaint.
8. The investigator shall thoroughly investigate all allegations contained in the complaint and any other potential misconduct discovered in the course of the investigation. If the investigation reveals potential misconduct by another agency member the investigator shall report that fact to the CLEO or, in the case of a complaint against a CLEO, the City Manager or Mayor.
9. All agency members shall cooperate with the investigation. When the respondent is a licensed peace officer the investigation shall comply with the requirements of MN STAT 626.89 and acts amendatory thereto.
10. The investigator shall prepare a report which will contain all relevant information organized into the following three (3) sections.
 - a) *Allegations*: 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.
 - b) *Investigation*: a chronological summary of the investigation including all pertinent facts obtained through interviews with the complainant, accused agency member and all available witnesses. Written statements, descriptions and analysis of any physical evidence, and all other relevant information shall be included.
 - c) *Conclusions*: the investigator’s findings, conclusions as to whether any misconduct occurred and the underlying reasons for the finds and conclusions.
11. The investigation shall be completed within thirty (30) days of the filing of the complaint unless the CLEO determines there is good cause to grant an extension to the investigation time. The complainant and respondent shall be informed of any extension.
12. A complaint received through the Minnesota Board of Peace Officer Standards and Training will be handled pursuant to this policy; the Board will be advised of the status of the complaint within 30 days.

C. ADDITIONAL INVESTIGATION, REVIEW AND DISPOSITION

1. Upon completion of the investigation the investigator shall submit the report, case file and all investigative notes to the CLEO. The CLEO may require additional investigation or make one of the following decisions:

- Unfounded
- Exonerated
- Not Sustained
- Sustained
- Policy Failure

2. The CLEO may postpone making a decision until any related criminal charges are resolved. The complainant and respondent shall be informed of this decision.
3. If the decision is “unfounded”, “exonerated”, “not sustained”, or “policy failure” the CLEO shall immediately notify the complainant and the respondent of the decision.
4. If the complaint is “sustained” the CLEO will:
 - a) Issue findings of fact including a summary of the acts constituting misconduct and the specific statutes, policies, regulations and procedures violated; and
 - b) Take appropriate remedial and/or disciplinary action.
 - c) Advise the complainant of any public information regarding the disposition.
5. Prior to the implementation of remedial and/or disciplinary action the respondent will be provided with a copy of the findings of fact. The CLEO and/or appropriate person shall review the findings of fact with the respondent and explain the reasons for the remedial and/or disciplinary action.
6. The investigation may be re-opened by the CLEO at any time if substantial new evidence is discovered concerning the complaint.
7. When a “sustained” disposition is final the respondent may appeal the disposition pursuant to the rules and law governing the accused member’s employment.

D. MAINTENANCE AND DISCLOSURE OF DATA

1. Disclosure to the public, complainant and respondent of data collected, created or received by the agency in connection with this policy and procedure shall be governed by the provisions of the MN Government Data Practices Act. Retention of data collected or maintained in connection with this policy shall be retained in accordance with the agency’s “Record Retention Schedule.”
2. All data collected, created or received by the agency in connection with this policy and procedure shall be maintained in accordance with the agency’s “Record Retention Schedule.”
3. The placement of the disposition report or other data in an employee’s personnel file shall be governed by the agency’s personnel policy.
4. Access to data collected, created, or received in connection with this policy and procedure may only be authorized by the CLEO or the agency’s Data Practices “Responsible Authority,” and as provided by Chapter 13, the “Minnesota Government Data Practices Act,” or valid court order.

E. POST BOARD REPORTING REQUIREMENTS

1. 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

2. 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.
3. Minnesota Stat. 626.8457 Subd. 3 requires CLEOs 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.
4. A chief law enforcement officer must update data within 30 days of the final disposition of a complaint or investigation.
5. 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.