

Policy 131 Allegations of Misconduct

Effective Date: January 2022

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Section 1 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 Wayzata 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.

Section 2 Policy

It is the policy of the Wayzata 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.

Definitions

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

Administrative Investigation: An internal investigation conducted in response to a complaint with the goal of determining whether an employee engaged in misconduct.

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.

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.

Complainant means a person who submits a complaint to the CLEO or agency alleging misconduct by a member of the Wayzata Police Department.

Complaint means a statement alleging behavior that constitutes misconduct.

Member means all voluntary and compensated personnel of the Wayzata Police Department.

Discipline means any of the following or combination thereof:

- Oral Reprimand
- Written Reprimand
- Suspension
- Demotion
- Discharge

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

1. the agency member named in the complaint was not involved in the alleged misconduct; or
2. the act(s) that provided the basis for the complaint occurred; however, the investigation revealed that such act(s) were justified, lawful or proper.

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

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

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.

Respondent means an individual who is the subject of a complaint investigation.

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

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

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

Policies and Procedures mean the administrative rules adopted by the Wayzata Police Department regulating the conduct of its members.

Receiving Authority means that person who receives the complaint when the subject of the complaint is a CLEO.

Section 3 Procedure Initiating

131.3.1 Complaint

- A. Complaint forms must be made available through agency personnel at designated public facilities, and online.
- B. 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.
- C. 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
- D. Employees must provide assistance to individuals who express the desire to lodge complaints against any employee of this agency.

- E. The complainant must be advised of the procedures for submitting the complaint and provided with a copy of their submitted complaint.
- F. The complainant should be asked to verify by signature if the complaint is a complete and accurate account. If the complainant elects not to sign, this fact must be documented and the complaint processed according to procedure.
- G. The CLEO will forward a copy of the written complaint to the 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.
- H. A CLEO or Receiving Authority may delegate the duties and responsibilities required of a CLEO by this policy to an appropriate designee(s).
- I. Any complaint made against a chief of police must initially be made to the city administrator, manager or mayor. Any complaint made against a sheriff must initially be made to the county attorney, the county administrator or the board of county commissioners.
- J. The city administrator, manager, mayor, county attorney, county administrator or board of county commissioners must refer investigations of alleged misconduct against a CLEO to an outside law enforcement agency or criminal justice agency that has no discernible conflict of interest.

131.3.2

Investigation of a Complaint

- A. Upon receipt of a written complaint, the CLEO shall make an initial determination whether the facts alleged requires a formal investigation. If the CLEO decides that an investigation is not required, the disposition of the investigation is not required. The disposition of the complaint shall be either “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.

- B. If the CLEO determines that 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.
- C. The CLEO may suspend a respondent with pay at any time during the investigation of a complaint.
- D. The investigator shall, as soon as possible after being assigned the investigation, inform the complainant of his or her name, business phone number, and the status of the complaint.
- E. 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.
- F. All agency members shall cooperate with the investigation. When the respondent is a licensed peace officer, the investigation shall comply requirements of MN Statutes, Section 626.89 and acts amendatory thereto.
- G. The investigator shall prepare a report which will contain all relevant information organized into the following three (3) sections:
 - 1) *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.
 - 2) *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.
 - 3) *Conclusions*: the investigator's findings, conclusions as to whether any misconduct occurred, and the underlying reasons for the findings and conclusions.

- H. The investigation shall be completed within thirty (30) days of filing of the complaint, unless for good cause the CLEO grants an extension. The complainant and respondent shall be informed of any extension of time granted.

131.3.3 Additional Investigation, Review and Disposition

- A. Upon completion of the investigation, the investigator shall submit the report, case file and all investigative notes to the CLEO or Receiving authority. The CLEO or Receiving Authority may require additional investigation or make one of the following decisions: "Unfounded", "Exonerated", "Not sustained", "Sustained" or "Policy Failure."
- B. The CLEO may postpone making a decision until any related criminal charges are resolved. The complainant and respondent shall be informed of this decision.
- C. If the decision is "unfounded", "exonerated", "not sustained" or "policy failure", the CLEO shall immediately notify the complainant and the respondent of the decision.
- D. If the complaint is "sustained" the CLEO will:
 - a) Issue findings of fact including 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 info regarding the disposition
- E. 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.

F. The investigation may be re-opened by the CLEO at any time if substantial new evidence is discovered concerning the complaint.

G. When a “sustained” disposition is final, the respondent may appeal the disposition pursuant to the rules and law governing the accused member’s employment.

131.3.4 Maintenance and Disclosure of Data

- A. Disclosure to the public, complainant and respondent of data collected, created or received by the agency in connection with this policy and procedures 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 Wayzata Police Department’s record retention schedule.
- B. The placement of the disposition report or other data in an employee’s personnel file shall be governed by the Wayzata Police Department’s personnel policy.
- C. Access to data collected, created or received in connection with this policy and procedure may be authorized by the CLEO or the Wayzata Police Department’s Data Practices “Responsible Authority” and as provided by Chapter 13, the Minnesota Government Data Practices Act or valid court order.

131.3.5 POST Board Reporting Requirements

- A. Disclosure to the public, complainant and respondent of data collected, created or received by the agency in connection with this policy and procedure must be governed by the provisions of the MN Government Data Practices Act. Retention of data collected or maintained in connection with this policy must be retained in accordance with the agency’s “Record Retention Schedule.”
- B. All data collected, created or received by the agency in connection with this policy and procedure must be maintained in accordance with the agency’s “Record Retention Schedule.”

- C. The placement of the disposition report or other data in an employee's personnel file must be governed by the agency's personnel policy.

- D. 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.
 - The investigation may be re-opened by the CLEO at any time if substantial new evidence is discovered concerning the complaint.
 - When a "sustained" disposition is final, the respondent may appeal the disposition pursuant to the rules and law governing the accused member's employment.