

9 • ALLEGATIONS OF MISCONDUCT

9-100 ALLEGATIONS OF MISCONDUCT

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 University of Minnesota Duluth 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 criminal investigations.

9-200 POLICY

It is the policy University of Minnesota Duluth 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.

9-300 DEFINITIONS

For purpose of this policy, the terms set forth below 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: The Chief of police, sheriff, state law enforcement director, or designee.

Law Enforcement Officer: An individual who holds a peace officer license in the State of Minnesota.

Complainant: A person who submits a complaint to the Agency or Chief alleging misconduct by an agency member.

Complaint: A statement alleging behavior that constitutes misconduct.

Member: All voluntary and compensated personnel of the agency.

Discipline: Any of the following or combination thereof:

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

Unfounded: There is no factual basis for the allegation; the act or acts alleged did not occur.

Exonerated: A fair preponderance of the evidence established that either:

- the agency member named in the complaint was not involved in the alleged misconduct; or
- 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: The investigation failed to disclose sufficient evidence to prove or disprove the allegations made in the complaint.

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

Policy Failure: The complaint revealed a policy failure; the allegation is factual and the employee followed proper agency procedure; however, that procedure has proven to be deficient.

Respondent: An individual who is the subject of a complaint investigation.

Misconduct: A violation of an agency policy or procedure governing conduct of agency members; conduct by a peace officer that would be a violation of POST Standards of Conduct per Minnesota Rules 6700.1600

Policies and Procedures: The administrative rules adopted by the agency which regulate the conduct of agency members.

Receiving Authority: The entity who receives and is required to investigate the complaint when the subject of the complaint is the Chief.

9-400 PROCEDURE FOR FILING A COMPLAINT

- Complaint forms must be made available through agency personnel, at designated public facilities, and online.
- 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.
- 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.
- Employees must provide assistance to individuals who express the desire to lodge complaints against any employee of this agency.
- The complainant must be advised of the procedures for submitting the complaint and provided with a copy of their submitted complaint.
- 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.
- The Chief will forward a copy of the written complaint 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.
- A Chief or Receiving Authority may delegate the duties and responsibilities required of a Chief by this policy to an appropriate designee(s).
- Any complaint made against a Chief of Police must initially be made to the Vice Chancellor for Finance & Operations (VCFO).

- The VCFO must refer investigations of alleged misconduct against the Chief to an outside law enforcement agency or criminal justice agency that has no discernible conflict of interest.

9-500 INVESTIGATION OF A COMPLAINT

- Upon receipt of the complaint, the Chief must make an initial determination as to whether or not the facts alleged require an administrative investigation. If the Chief decides that an investigation is not required, the disposition of the complaint must 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 Chief may reverse this decision and order an administrative investigation.
- If the Chief determines an administrative investigation is required, an appropriate designee will be assigned to investigate the complaint. When the Chief believes an external investigation is appropriate or when the Chief is the subject of the complaint, the investigation will be assigned to an external agency that has no discernible conflict of interest.
- The investigator must inform the complainant of his or her name, business phone number and the status of the complaint as soon as possible after being assigned the investigation.
- The investigator must 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 must report that fact to the Chief or, in the case of a complaint against a Chief, the VCFO.
- All agency members must cooperate with the investigation. When the respondent is a licensed peace officer, the investigation must comply with the requirements of Minnesota State Statute 626.89 and acts amendatory thereto.
- The investigator must prepare a report that contains all relevant information organized into the following three (3) sections:
 - *Allegations:* An itemized summary of the acts of misconduct alleged in the complaint. Reference must be made to those rules, procedures, orders, statutes, or constitutional provisions that would be violated if the allegations are taken as true.
 - *Investigation:* A chronological summary of the investigation including all pertinent facts obtained through interviews with the complainant, accused agency member(s), and all available witnesses. Written statements, descriptions and analysis of any physical evidence, and all other relevant information must be included.
 - *Conclusions:* The investigator’s findings and conclusions as to whether any misconduct occurred and the underlying reasons for the findings and conclusions.
- The investigation must be completed within thirty (30) days of the filing of the complaint unless the Chief or Receiving Authority determines there is good cause to grant an extension. The complainant and respondent must be informed of any extension.

9-600 ADDITIONAL INVESTIGATION, REVIEW, AND DISPOSITION

Upon completion of the investigation, the investigator must submit the report, case file, and all investigative notes to the Chief or Receiving Authority. The Chief or Receiving Authority may require additional investigation or make one of the following decisions:

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

The Chief or Receiving Authority may postpone making a decision until any related criminal charges are resolved. The complainant and respondent must be informed of this decision.

If the decision is “unfounded,” “exonerated,” “not sustained,” or “policy failure,” the Chief or Receiving Authority must immediately notify the complainant and the respondent of the decision.

If the complaint is “sustained” the Chief or Receiving Authority will:

- issue findings of fact including a summary of the acts constituting misconduct and the specific statutes, policies, regulations and procedures violated; and
- take appropriate remedial and/or disciplinary action; and
- advise the complainant of any public information regarding the disposition.

Prior to the implementation of remedial and/or disciplinary action the respondent will be provided with a copy of the findings of fact. The Chief, Receiving Authority, and/or designee must review the findings of fact with the respondent and explain the reasons for the remedial and/or disciplinary action.

The investigation may be re-opened by the Chief or Receiving Authority 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.

9-700 MAINTENANCE AND DISCLOSURE OF DATA

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 Minnesota 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.”

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.”

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

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.

9-800 ADDITIONAL INVESTIGATION, REVIEW, AND DISPOSITION

Under Minnesota 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 Minnesota Rule 6700.1600.

Any person with knowledge of peace officer misconduct constituting grounds for action under Minnesota Statute chapter 214, or Minnesota Rules 6700.1600, may report the violation to the Board.

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.

The Chief must update data within 30 days of final disposition of a complaint or investigation.

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