

OWATONNA POLICE DEPARTMENT

GENERAL ORDER: 215

EFFECTIVE DATE: December 9, 2010

SUBJECT: EMPLOYEE CONDUCT

I. POLICY

It is the policy of the Owatonna Police Department that any person who believes that an employee of the Owatonna Police Department has acted improperly may bring a complaint to the chief law enforcement officer's attention pursuant to the following procedure.

II. DEFINITIONS

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

- A.** Chief Law Enforcement Officer *means the chief of police or a designee. Within this model policy, the chief law enforcement officer will be referred to as CLEO.*
- B.** *Complainant* means a person who submits a complaint to the CLEO alleging misconduct by an agency member.
- C.** *Complaint means a statement, which is made to or by a CLEO in writing, which alleges misconduct.*
- D.** *Member* means all voluntary and compensated personnel of the agency.
- E.** *Discipline* means:
 - 1. oral reprimand,
 - 2. written reprimand,
 - 3. suspension,
 - 4. demotion, or
 - 5. discharge.
- F.** *Exonerated* means a fair preponderance of the evidence established either that:
 - 1. the act, or acts complained of, did not occur;

GENERAL ORDER 215

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.
- G.** *Not Sustained* means the investigation failed to disclose sufficient evidence to prove or disprove the allegations made in the complaint.
- H.** *Sustained* means a fair preponderance of the evidence obtained in the investigation established that the accused person's actions constituted misconduct.
- I.** *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.
- J.** *Respondent* means any agency member, whether full-time, part-time, temporary or voluntary, against whom a complaint has been filed.
- K.** *Misconduct* means:
1. a violation of any agency policy and procedure governing conduct of agency members;
 2. the use of unnecessary or excessive force;
 3. the conviction of any criminal offense;
 4. abuse of authority;
 5. conduct which violates a person's civil rights;
 6. abusive or insulting language or conduct which is derogatory of a person's race, religion, sex, national origin or sexual preference;
 7. sexual harassment as that term is defined under Minnesota law;
 8. intimidation or retribution toward a complainant or witness involved in any complaint proceeding.
- 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 that person who receives the complaint when the subject of the complaint is a CLEO.

GENERAL ORDER 215

III. PURPOSE AND INTENT

The purpose of this order is to establish departmental procedures for the initiation and investigation of complaints concerning Department policy or allegations of misconduct against members of the Owatonna Police Department. This procedure is solely and exclusively for internal administrative purposes. All statements obtained will be maintained in compliance with state law.

It shall be the policy of this Department to accept and investigate all allegations, which cannot be resolved informally upon receipt. Allegations of misconduct may be reported from any source, internal or external, noncriminal or criminal in nature. This policy is in accordance with the guidelines set forth by the Minnesota Peace Officers Standards and Training Board. (MN Rules 6700.1500, Standards of Conduct for Licensees, and MN Statute 626.89 Peace Officer Discipline Procedures Act.)

IV. OBJECTIVES

- A. To maintain the community's support and confidence in its Police Department by providing a process that assures responsiveness to citizen's inquiries and complaints.
- B. To create a process for dealing with inquiries and complaints, whether originating internally or externally, that permits police managers to monitor departmental compliance with established departmental rules, procedures, and norms.
- C. To clarify employees' rights and the due process protection that will be afforded departmental employees in the investigation of inquiries and complaints.

V. PROCEDURE

A. INITIATING COMPLAINT

1. Anyone who has personal knowledge of facts or who has 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. Any agency member shall self-report to the CLEO 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.
3. 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

GENERAL ORDER 215

(CCF) and assign an administrative case number. The complaint will not be considered filed until the complainant signs the CCF.

4. 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, at the CLEO's 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 that 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.
5. After a CCF is filed, the CLEO shall sign the document keeping a copy for the agency and giving or mailing 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.
6. Any complaint that presents elements of a criminal violation will be immediately forwarded to the CLEO or their designee for investigation.
7. If the complaint alleges that the misconduct amounts to a criminal violation there may be a criminal investigation as well as an administrative investigation. In the event of both a criminal investigation and an administrative investigation, both investigations shall be separate investigations.
8. The initiation of a criminal investigation will be at the discretion of the CLEO or their designee. A criminal investigation against an officer may be referred to another agency. In most instances, the criminal investigation will be conducted prior to the administrative investigation.
9. If the complaint alleges that the misconduct amounts to a criminal violation, the accused personnel are to be afforded all of the legal rights and due process that would be afforded a suspect in a criminal investigation.
10. A complainant may be accompanied by an attorney or other appropriate representative at the time a complaint is filed or at any other stage of the process.
11. Any complaint made against the CLEO shall be initially be made to the city administrator, 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.

GENERAL ORDER 215

12. The city administrator, manager, mayor, or city council 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 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.*
2. If the CLEO determines that a formal 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.
3. *The CLEO may suspend a respondent with pay at any time during the investigation of a complaint.*
4. 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.
5. 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.
6. 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 Statutes, Section 626.89 and acts amendatory thereto.
7. No officer is to assume an investigative role in an internal investigation unless assigned by the CLEO or their designee.
8. Conversations concerning the personnel investigation should not be discussed with anyone except staff assigned to the investigation of persons who have information

GENERAL ORDER 215

concerning the case. Employees interviewed are directed not to discuss the case with anyone except the investigating officer.

9. 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, order, 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.
10. The investigation shall be completed within thirty (30) days of the 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.

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: "exonerated," "not sustained," or "sustained."
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 "exonerated" or "not sustained," 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.
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.

GENERAL ORDER 215

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 procedures shall be governed by the provisions of the MN Government Data Practices Act.
2. All data collected, created, or received by the agency in connection with this policy and procedure shall be maintained in accordance with City policy.
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.
5. All personnel investigation records will be filed and maintained by the Captain.

Owatonna Police Department Citizen Complaint Form

Complainant's Name: _____

Address: _____

Phone Numbers: Cell _____ Home: _____

Officer(s) Involved: _____

Date of Incident: _____

Location of Incident: _____

Any witnesses, if any, to the incident

Act or acts which you believe constitute misconduct:

(If necessary, please attach additional pages)

Pursuant to Minnesota State Statute 626.89, Subdivision 5, you must sign this document.

Complainant's Signature and Date

GARRITY WARNING / TENNESSEN WARNING / WEINGARTEN WARNING

RE: INTERVIEW ADVISORY

The Owatonna Police Department is conducting an investigation regarding a complaint of possible misconduct against you as a police officer and as an employee of the City of Owatonna.

I, _____, hereby order you to appear at an investigatory interview before me on: _____. This interview will be held at: _____.

You are further ordered to refrain from discussing anything about this investigation with others, including questions asked of you or the information you provide, except otherwise privileged communications. Also, you should not seek information from others whom you believe have participated in this investigation. Doing so may be construed as an attempt to influence the outcome of the investigation or as retaliation and may subject you to disciplinary action. The same protections apply to you.

The purpose of this interview is to collect data regarding complaints made against you as an employee of the City of Owatonna. The data you provide will be used by me and others whose work assignments reasonably require access to the data in order to determine the facts and if any action should be taken. The data may also be used in subsequent hearing or proceedings related to this matter.

You are not legally required to provide any information during this interview. The City of Owatonna is requiring you to answer all questions which may be asked of you in the course of the interview. Any admissions you made during the course of the interview may be used as evidence of misconduct, a basis for discipline, or in a disciplinary proceeding against you. If you refuse to provide such information, you may be subject to discipline, including, but not limited to: suspension without pay or termination. Information obtained cannot be used against you in any criminal prosecution.

Any information that you provide will be made accessible to the following persons or entities:

- A. The subject(s) of the data, which may include someone other than yourself.
- B. Individuals with the Owatonna Police Department whose work assignments reasonable require access to the information you provide. Those individuals include, but are not necessarily limited to, your immediate supervisor(s), the investigating officer, and the city administrator.
- C. Any persons, entities or agencies authorized by state or federal law to have access to the information. These include, but are not necessarily limited to the following:
 - 1. **Law Enforcement Agencies.** The information you provide may be referred to a law enforcement agency (i.e., Federal Equal Employment Opportunity Commission, MN Department of Human Rights, U.S. Department of Labor, etc.) for purposes of initiating or furthering a criminal investigation. You are advised, however, that any statements you make under threat of

discipline, or evidence obtained as a result of such statements, cannot be used against you in any criminal proceeding.

2. **Contracting Parties.** Where a contract between the Owatonna Police Department requires that such party have access, the information you provide will be shared with the contracting party. The contracting party may not disclose the information except as authorized by state or federal law. Contracting parties include, but are not necessarily limited to, labor consultants hired by the City of Owatonna, and representatives of your exclusive bargaining unit.
3. **City Attorneys.** The information you provide may be shared with the City Attorney's office, if the information is related to a matter upon which the City of Owatonna requested legal advice.
4. **Open Meetings.** If it becomes reasonably necessary to discuss such information at any meeting required by law to be open to the public, the information you provide may become available to the public at such meeting.
5. **Documentation Supporting Disciplinary Action.** If such information results in the imposition of discipline (including oral or written reprimand, suspension with or without pay or termination), the information you provide will become available to the public as documentation supporting final disciplinary action. Information will be held pending appeal as outlined in policy and any collective bargaining agreement.
6. **Change in Classification.** The information you provide may be made available to other persons or entities if state or federal law subsequently authorizes such access or if the state commissioner of administration approves a new or different use for information pursuant to Minnesota State Statute 13.05, Subdivision 4 (c).
7. **Court Order.** This information you provide will be made available to any persons or entities authorized by court order to have access to the information.

D. Persons or entities who have the express written consent of the data subject, who may be someone other than you.

E. An arbitrator or hearing officer.

F. Appropriate licensing entities and/or agencies.

G. The MN Department of Employment and Economic Development Unemployment Insurance Program.

Because we are advising you that you could be terminated for refusing to answer questions or otherwise failing to cooperate with the investigation, the information provide, and any evidence resulting from the information you provide, cannot and will not be used against you in any subsequent criminal proceeding.

We have informed you that you may have a union representative present during this interview. If you choose to have a representative present, he or she cannot interfere with or obstruct the investigation. Should the representative advise you, without justification, not to answer questions or otherwise interfere with or obstruct the investigation, the investigation may end with a decision made without any further response from you; or he or she may be required to leave the interview.

Addendum B

Indicate name of union representative present during interview (if any):

I acknowledge receiving and being read a copy of this advisory.

Name of Employee (Printed)

Signature of Employee

Date

I acknowledge reading and providing a copy of this advisory to _____,
the interviewee.

Signature: _____

Dated: _____



OWATONNA POLICE DEPARTMENT

Keith E. Hiller
Chief of Police

204 East Pearl St., Owatonna, MN 55060
Phone: (507) 774-7000

FINDINGS OF FACT

STATE OF MINNESOTA
COUNTY OF STEELE
BEFORE THE OFFICE OF THE CITY OF OWATONNA POLICE CHIEF

In the matter of the Alleged Misconduct Regarding:

Officer(s): _____

On _____, the Owatonna Chief of Police reviewed the above entitled matter.

FINDINGS OF FACT

CONCLUSION

ACTION TAKEN

Dated

Keith E. Hiller, Chief of Police

The Officer's signature affirms receipt of this finding of fact.

Dated

Distribution: