

ST. CLOUD POLICE DEPARTMENT
Law Enforcement
Policies and Procedures

Subject: Complaints Against Department Members	Policy Number: 155
Issue Date: 03-20-06	Revision Date: 08-01-08, 08-21-08, 09-15-08, 12-09-21, 7-18-22
Approval Authority - Title and Signature: Wm. Blair Anderson, Chief of Police	
Reviewed By: Jeffrey Oxton, Assistant Chief	Review Date: 12-09-21, 7-18-22

AUTHORITY

The authority for the provisions of this order is established in the City of St. Cloud Ordinance Code Section 100.48, Subdivision 1.

POLICY

It is the policy of the St. Cloud Police Department to accept and review all complaints of alleged misconduct on the part of department personnel. Any findings regarding a formal citizen complaint will also ultimately be reviewed by the Citizen Review Board.

PURPOSE

Effective law enforcement exists in a community, which has established a proper relationship between the police and the public. This relationship must be based on mutual confidence and trust. Whenever the integrity of a law enforcement agency is in question, effective law enforcement breaks down.

- 1) The police officer must be able to act independently with the authority vested in him/her. He/she must be free to initiate action without fear of reprisal but must meticulously observe the rights of all people.
- 2) The responsibility of providing a system of disciplinary procedures which not only subjects personnel to corrective action when he/she conducts himself/herself improperly, but will also protect him/her from unwarranted criticism when he/she discharges his/her duties properly rests with the Chief of Police.
- 3) It is imperative that adequate provisions be made for prompt investigation and disposition of all complaints regarding the conduct of employees of the St. Cloud Police Department.
- 4) It shall be the policy of the St. Cloud Police Department to accept and investigate all complaints of alleged misconduct on the part of police personnel.
- 5) There are five (5) basic objectives of personnel investigations. They are:
 - a) Responsiveness to the public we serve.
 - b) Protection of the integrity of the police agency.
 - c) Protection of individuals against false accusations.
 - d) Redress for the undesirable conduct.
 - e) Improved service to the community.

DEFINITION OF TERMS

Misconduct:

- 1) A violation of any agency policy and procedure governing conduct of agency members;
- 2) Conduct by a peace officer that would be a violation of POST Standards of Conduct per MN Rules 6700.1600.

Complaint:

A statement alleging behavior or practices that constitutes misconduct. This alleged misconduct could be criminal or non-criminal in nature. The alleged misconduct can be on or off duty.

Disposition Classifications:

- 1) Unfounded – When the investigation indicates that the complained of action did not occur.
- 2) Exonerated – When the investigation indicates that the complained about action occurred but was justified, lawful and proper.
- 3) Not Sustained – When the investigation discloses insufficient evidence to prove or disprove clearly the allegations made.
- 4) Sustained – When the investigation discloses that the action complained about did in fact occur in the manner or degree stated.
- 5) Sustained with Qualifications – When the investigation discloses that the action complained about did in fact occur, but not in the manner or to the degree stated.
- 6) Policy Failure – the complaint revealed a policy failure. The allegation is factual, and the accused personnel followed proper agency procedure; however, that procedure has proven to be deficient.

Enhanced Violation:

Allegations against department members that include or involve the following criteria;

- a) The alleged misconduct is potentially a criminal offense either under Federal, State, or local statutes or ordinances.
- b) Any person received substantial injuries as a result of the alleged misconduct.
- c) The allegation involved the use of illegal controlled substances by the employee.
- d) The allegation involved a potential violation of City policy regarding sexual harassment.
- e) Multiple agencies or employees are directly involved in the alleged misconduct.

Complaint Investigator:

Any member(s) of the police department designated by the Chief or their designee to investigate personnel complaints. This would initially be the supervisor; however, in most cases will be transferred to or conducted by the Sergeant assigned to Professional Standards.

Complaint Case Number:

A number to track complaints both formal and informal. The ten-digit number is composed of the two-digit year, four-digit date, and four-digit time that the complaint was received i.e., 2103040930 for a complaint taken on March 4, 2021 at 0930 hours.

Citizen Review Board:

A board of nine voting members made up of six citizens and three police personnel appointed by the Mayor under the authority of Section 260 of the City of St. Cloud City Ordinances. The board provides participatory oversight of the police in the processing and adjudication of formal citizen complaints.

Forms of Discipline:

- 1) Oral reprimand
- 2) Written reprimand
- 3) Suspension
- 4) Demotion, or
- 5) Discharge

PROCEDURE FOR ACCEPTING COMPLAINTS

- 1) A complaint alleging misconduct by personnel of the St. Cloud Police Department may be made by any person, at any time, to any member of the police department. If the person receiving such complaint is not a supervisor, that person will as soon as practical personally refer the complaint to his/her immediate supervisor or in their absence or inability to act, the most available supervisor. The complaint shall be accepted and documented on the forms and in the format provided for that purpose. A signature of the complainant should be obtained for a formal complaint and a complaint case number should be assigned. Any agency member who has personal knowledge of misconduct shall file a complaint according to the procedures stated herein.
- 2) When a member of the police department receives information of a complaint or a person requests that they be allowed to file a complaint, and the complaint is of alleged misconduct by a supervisor, the member shall personally refer the information and, when possible, the complainant to the next supervisor in the chain of command or to the Professional Standards Sergeant.
- 3) Any complaint made against the Chief of Police shall initially be made to the City Administrator or Mayor.
- 4) Any agency member shall self-report to the Chief of Police 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) The supervisor receiving a complaint from a citizen who appears to be intoxicated or under the influence of a controlled substance will initiate an investigation using the same procedure in his/her attempt to document the facts of the case. The intoxicated person will be told to return when they have achieved sobriety or that arrangements will be made for that person to be contacted by an investigator from the St. Cloud Police Department. The supervisor or command person receiving such complaint will take steps to gather any physical evidence associated with the complaint, namely, photographs of injuries, statements from witnesses, etc. Statements of the alleged misconduct will be taken from the intoxicated person once they have achieved sobriety.
- 6) Supervisors receiving complaints of alleged misconduct from persons with altered mental status or known to suffer from mental health issues will document such complaint and will further investigate when evidence and circumstances warrant. If in the judgment of the supervising officer

receiving such complaint additional investigation is warranted, the “Administrative Review” process will be utilized. In either case, the use of the co-responder unit, or other mental health or medical professionals should be used to assist the complainant.

- 7) A complainant may be accompanied by an attorney or other representative, as is consistent with the Community Policing Agreement, at the time a complaint is filed or at any other stage of the process.
- 8) The Chief of Police at his/her discretion may refer the investigation of any act of alleged misconduct to a law enforcement agency other than the St. Cloud Police Department for investigation.
- 9) When a citizen complains that a policy or procedure of the St. Cloud Police Department is inappropriate, discriminatory, or illegal or simply misunderstands the application of such procedure, the person receiving such complaint will refer it to his/her supervisor. It is understood that officers and other employees of the police department are often approached by citizens who do not understand the department’s policies or procedures with regard to a specific action taken by the department. It is appropriate for members working in these positions within the department to explain the procedures to those citizens to achieve a measure of understanding, which often solves the problem. It is not necessary for members to document those citizen contacts which upon explanation resolve the citizen’s concern. Members will not express personal views with regard to department policy or procedure when discussing same with the citizen.

CITIZEN COMPLAINT OPTIONS

- 1) The citizen’s complaint procedure contained in this order provides several options for the citizen and the department. Under normal circumstances, the supervisor will be receiving citizens’ complaints. Supervisors receiving citizens’ complaints must explain the options available to the citizen prior to filing the complaint. The options open to the citizen and the department are three (3) in number titled as follows:
 - a) Formal Citizen Complaint
When a citizen indicates that they wish to proceed with a formal complaint and sign the complaint form indicating such intent. If citizen refuses to sign and/or is not able to be reached in person, an assessment will be made as to the severity of the allegation. The complainant will be required to provide a formal statement to the investigator. All formal complaints will go through the “Administrative Review” process and findings will ultimately be reviewed by the Civilian Review Board.
 - b) Informal Citizen Complaint
It is recognized that it is in the best interest of the citizen and the Department to afford individuals the right to question or make a complaint that is not of a formal nature. This will not require a signature, or a formal statement. Informal complaints may be moved to a formal status depending on the severity of the allegation and with the signing of a formal complaint by the Chief or their designee. Informal complaints will be documented in an “Administrative Review” and will not be reviewed by the Civilian Review Board unless directed to by the Chief of Police or their designee.
 - c) Citizen’s Complaint of Departmental Policy/Procedural Directives
A complaint by a citizen alleging inappropriate discriminatory or illegal policy or procedure of the department.

CLASSIFICATION AND NOTIFICATION OF COMPLAINTS

All Command Staff have within their job description the authority to make decisions and initiate investigative and disciplinary action for violations of the rules and regulations of the department. When complaints involve enhanced violations of the rules and regulations of this department and/or potential criminal liability, the Chief of Police or their designee will be involved in the decision-making process.

- 1) The supervisor shall recognize the enhanced severity of the complaint of misconduct based upon any of the following criteria:
 - a) The alleged misconduct is potentially a criminal offense either under Federal, State, or local statutes or ordinances.
 - b) Any person received substantial injuries as a result of the alleged misconduct.
 - c) The allegation involved the use of illegal controlled substances by the employee.
 - d) The allegation involved a potential violation of City policy regarding sexual harassment.
 - e) Multiple agencies or employees are directly involved in the alleged misconduct.

- 2) Notification to Command Staff
 - a) If the complaint alleged is not enhanced the supervisor should ensure that notification up through the chain of command is made to the rank of Commander of the Division. That notification should be made to the Commander by the first working day after the complaint is received.
 - b) If the complaint alleges an enhanced violation, the supervisor will immediately inform the chain of command to the rank of Commander of the Division. Based on the totality of the circumstances, the Commander will notify the Chief or their designee no later than the day following the receipt of the complaint.

- 3) Notification to Accused Personnel
 - a) **Potential Criminal Violations/Complaints:**
In the case of a potential criminal violation, the Chief or their designee will make the notification of the personnel involved at his/her discretion. At times it may be necessary to withhold notification of the accused personnel to ensure the integrity of the investigation.
 - b) **Non-Criminal Complaints:**
The investigator assigned, most often the Sergeant in Professional Standards, will notify the accused personnel as soon as possible after receiving the complaint. In the case of some potentially enhanced violations and under the direction of the Chief of Police or their designee, some notifications may be delayed to ensure the integrity of the investigation.

PROCEDURE FOR INVESTIGATION OF COMPLAINTS

- 1) Duties and Responsibilities of the Supervisor/Investigator

The member assigned responsibility for the investigation of an alleged act of misconduct will report to the command officer making the assignment. In most cases, the Sergeant assigned to Professional Standards will be responsible for investigations of misconduct and will report to the Commander of the Support Division. In all cases, the investigating supervisor/investigator will take timely action to ensure the integrity of the investigation to include but not limited to the gathering and preservation of fragile or time sensitive evidence, the securing of preliminary statements, and the completion of the complaint form and the Administrative Review.

2) Investigator Authority

The investigator has the authority to interview any member of the police department or public to complete the investigation. A majority of the members interviewed by the investigator will be witnesses or persons with knowledge of the allegation. However, if the investigation is focused on a member or members and discipline may be administered as a result of the investigation, the following shall apply:

a) Garrity Warning and Miranda Warning:

The Garrity warning shall be given to members prior to any formal interview when the investigation is focused on them and discipline may result. It must be understood, however, the Garrity warning cannot be given in conjunction with the Miranda warning. In the event the allegation is criminal or may be criminal, the decision to proceed as a criminal investigation or an internal investigation will be made by the Chief of Police or their designee. The person accused of such violation will not be interviewed until the Chief or their designee is given the opportunity to decide which direction the investigation will take.

If the Chief or their designee decides that the matter under investigation will be treated as a criminal offense, the Miranda warning shall be administered to the person suspected of having committed the offense. Members of the department who are classified as witnesses or persons with knowledge being interviewed relative to the actions of another member accused of a criminal offense will be administered the Garrity warning and be required under such warning to provide accurate and truthful answers to the questions given. In every case where the Miranda or the Garrity warning is administered, the supervisor/investigator shall tape record the interview. The person being interviewed will be told that the interview is being tape-recorded and shall be provided a copy of their statement when the investigation is concluded.

3) Covert Investigations

Covert investigations relative to enhanced violations or criminal activity may require the application of covert tape-recorded conversations or other sophisticated investigatory equipment. The application of such methods requires the personal approval of the Chief of Police or their designee.

4) Simultaneous Investigations

The investigation of criminal and internal violations of the rules and regulations of the department may take place simultaneously; however, it is usually preferred that the criminal investigation will take place first and the internal investigation will follow. No supervisor/investigator will be assigned the dual task of criminal and internal investigation. The supervisor/investigator responsible for the investigation of internal rules and regulations may provide copies of the statements taken from witnesses, victims, and persons with knowledge to the criminal investigator. The person assigned the internal investigation will not personally provide those documents to the criminal investigator but must transmit those items to the Chief of Police or their designee at which time they will be made available to the criminal investigator. The internal investigator may not provide any information, verbal, written or in any other form, obtained during the interview of the accused member if the Garrity warning was administered.

If a criminal investigation and internal investigation were to take place simultaneously, the internal investigator will not have any personal or professional contact with the person responsible for the criminal investigation arising from the same citizen's complaint. Most circumstances of this nature will result in the assignment of the criminal investigation to an outside agency. In any case, whether the criminal investigation is conducted by a member of the St. Cloud Police Department or a

member of another law enforcement agency, the internal investigator will have no discourse with the criminal investigator. For these reasons the internal investigation will, in most cases, not take place until the criminal investigation is complete.

5) Representation

If a member is the subject of an allegation of misconduct and discipline may be issued, they shall have the right to an attorney, union representation, or both present during the investigative interview if they so request. At no time will an interview be unnecessarily delayed. Union representatives will not participate in the interview; however, may at the discretion of the supervisor/investigator be given the opportunity to confer. Members of the department who are witnesses, victims or persons with knowledge, not subjects of the investigation, shall have the right to an attorney, union representation, or both during the interview if they so desire. If the issue is criminal in nature and the Miranda warning is applied, the member shall have all the rights guaranteed under the Constitution.

DOCUMENTATION, REVIEW, AND DISCIPLINARY PROCESS

- 1) **Complaint Form:** The standard one-page departmental Citizen Complaint form with location for Citizen's signature and IA case number. A ten-digit IA case number will be generated to identify the report and will consist of the last two digits of the current year, the number of the current month, the current day of the month, and the hour of the day in which the complaint was received (military time). A separate form, using the same IA number, will be used if multiple officers are involved in the same incident and are all subjects of the complaint.
- 2) **Administrative Review:** The written documentation, in formalized summary form, of a complainant's allegation and a preliminary inquiry/assessment of all existing documentation, including, but not limited to officer reports, evidence collected, statements collected, video and/or audio recordings. In both Formal and Informal citizen complaints this documentation is completed and presented to the Chief and/or their designee for review and determination whether a formal investigation is needed. If no formal investigation is needed, the Chief or their designee will assign a disposition and close out the complaint. All Administrative Reviews involving a formal citizen complaint will be reviewed by the Citizen Review Board.
- 3) **Formal Internal Investigation:** The written report and case file documenting a formal internal investigation including the complainant's statement, summary of the acts of misconduct and corresponding policy that was violated, investigative reports, statement of accused, witness statements, recordings, and any other written reports including, but not limited to, medical files, police reports, etc. Upon completion, the written report and case file will be submitted to both the Chief or their designee, and the Citizen Review Board (when applicable per City Policy Section 260) at which time a review meeting will be held. Upon the Chief's receipt of the findings of the Civilian Review Board, the Chief may either request additional investigation, or make one of the following findings of disposition:
 - a. Unfounded
 - b. Exonerated
 - c. Not Sustained
 - d. Sustained with Qualifications
 - e. Sustained
 - f. Policy Failure

If the complaint is sustained, the Chief of Police or their designee will take appropriate remedial

and/or disciplinary action. Prior to the implementation of remedial and/or disciplinary action, the respondent will be provided with a copy of the findings of fact which will be reviewed in person for explanation of both the findings and the corresponding remedial and/or disciplinary action. The options of disciplinary action include:

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

NOTIFICATION REGARDING COMPLAINT DISPOSITIONS

- 1) All complainants shall be notified in writing of the results of the investigation of formal citizen complaints. It is not necessary to notify complainants of the results of informal complaints. The notification of complainants when necessary shall be made by the Chief of Police or his/her designee.
- 2) All accused personnel will be notified in writing of the results of the investigation of any complaints, formal or informal.
- 3) A record of each internal investigation resulting from a formal complaint will be kept by the Chief of Police in accordance with the agencies "Records and Retention Schedule."

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.

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 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.