

Personnel Complaints

1010.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Appleton Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1010.2 POLICY

The Appleton Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any collective bargaining or employment agreements.

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

1010.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

1010.3.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

Criminal Investigation - The process of investigation into alleged acts of misconduct that, if sustained, may be the basis for filing criminal charges.

Informal Complaint - A unit level review of a procedural or minor misconduct complaint. An informal complaint may involve simple mediation of the complaint and/or a meeting with the officer for the purpose of determining the facts and the appropriate form of resolution. -

Formal Complaint - A matter in which a supervisor determines that a formal investigation of an employee who has become the subject of a misconduct complaint, whether minor or serious, is warranted.

Minor Misconduct Complaint - A complaint based on allegations of minor misconduct by employees of the department. Examples of minor misconduct include rudeness or verbal abuse

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by an officer, traffic infractions by an officer, minor rules and regulations violations, etc. Another determinant of minor misconduct is that the alleged action, if sustained, could result in disciplinary action ranging from verbal counseling to a letter of reprimand.

Preliminary Investigation - A fact-finding investigation designed to assist a supervisor in determining whether a complaint should be handled through the process of informal inquiry or internal investigation.

Procedural Complaint - A complaint based on actions that, if performed properly, are acceptable according to legal guidelines and department policy; e.g., complaints over towing vehicles, 2-5 parking, traffic enforcement, etc.

Serious Misconduct Complaint - A complaint based on allegations of serious misconduct by employees of the department that, if sustained, could result in disciplinary action to include suspension, dismissal, and/or criminal charges.

Incomplete - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the Assistant Chief, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

1010.3.2 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- (a) Involved individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Third-party complaints may be accepted and investigated to the extent that sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.

1010.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1010.4.1 COMPLAINT FORMS

Personnel complaint forms (APD Form #155) will be maintained in a clearly visible location in the public area of the police facility and be accessible through the department website. Forms may also be available at other City facilities.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

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1010.4.2 ACCEPTANCE

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall accept the complaint and conduct a preliminary investigation into the matter to determine whether the complaint alleges serious or minor misconduct or is procedural in nature. Depending on the urgency of the allegation, the receiving supervisor may also forward the complaint to the involved officer's immediate supervisor for completion of the preliminary investigation.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

This department will investigate all false claims made against its law enforcement officers. Knowingly making a false complaint against an officer may subject the complainant to a Class A forfeiture (Wis. Stat. § 946.66; Wis. Stat. § 66.0511).

1010.5 DOCUMENTATION

Supervisors shall ensure that all procedural, formal and informal complaints are documented appropriately. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

1010.6 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows.

1010.6.1 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the initial investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Chief of Police or the authorized designee may direct that another supervisor or Assistant Chief investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a preliminary investigation is completed.
- (b) Responding to all complaints in a courteous and professional manner.

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- (c) Resolving those personnel complaints that can be resolved immediately.
 - 1. Follow-up contact with the complainant should be made within 24 hours of the Department receiving the complaint.
 - 2. If the matter is resolved and no further action is required, the supervisor will consider making a personnel entry in Spillman if the incident warrants documentation.
- (d) Promptly contacting the Patrol Lieutenant's Captain for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination. The Captain shall contact the Chief of Police and Department of Human Resources, as necessary.
- (e) Investigating an Informal Complaint, as follows:
 - 1. The decision to resolve a personnel complaint through informal means shall be made following a preliminary investigation into the alleged misconduct or procedural concern and a determination that the matter does not involve serious misconduct.
 - 2. The informal complaint process may involve mediation of the complaint with the citizen or reporting party, but will always involve an interview with the identified employee.
 - 3. Prior to interviewing an employee regarding his or her involvement in a complaint alleging minor misconduct or a procedural concern, the inquiring supervisor shall advise the employee of the nature of the allegation and that the intent is to resolve the matter through the informal complaint process. The employee shall be permitted to have representation if he or she desires.
 - 4. Make a determination regarding the final disposition of the complaint, notify the employee and complainant of the final disposition of the complaint, take any appropriate corrective action, and make any necessary entries into the Spillman.
- (f) Investigating a Formal Complaint, as follows:
 - 1. The decision to address a personnel complaint through formal investigation shall be made following a preliminary investigation into the alleged misconduct.
 - 2. Upon determining through preliminary investigation that a personnel complaint involves an allegation of serious misconduct or some minor misconduct allegations, the supervisor shall notify the Assistant Chief. This notification shall occur as soon as practical.
 - 3. Once received, the Assistant Chief or designee shall conduct a thorough investigation, documenting it on an Internal Affairs Investigations form (APD form #196) and provide status reports to the Chief every ten business days until completion.
 - 4. The command staff should be aware of the emotional impact of an investigation on the employees involved. Employees will respond differently to an investigation and referrals to mental health resources should be considered.

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- (g) Informing the complainant of the investigator's name and the complaint number within three days after assignment.
- (h) Investigating a complaint as follows:
 - 1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
 - 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (i) Ensuring that the procedural rights of the accused member are followed.
- (j) Ensuring interviews of the complainant are generally conducted during reasonable hours.

1010.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

The following applies to members covered by the Law Enforcement Officers' Bill of Rights.

- (a) Interviews of an accused member shall be conducted during reasonable hours and preferably when the member is on-duty. If the member is off-duty, he/she shall be compensated.
- (b) Unless waived by the member, interviews of an accused member shall be at the Appleton Police Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused member.
- (d) Prior to any interview, a member should be informed of the nature of the investigation (Wis. Stat. § 164.02(1)(a)).
- (e) All interviews should be for a reasonable period and the member's personal needs should be accommodated.
- (f) No member should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
- (g) If the investigation is not criminal, Miranda Rights are not required. The employee has no Sixth Amendment right to counsel, as the interview does not serve criminal prosecution.
- (h) A digital copy of the interview will be included in the file even if it is also transcribed. Transcription is not mandatory.
- (i) In a situation where a formal investigation has been suspended in lieu of a criminal investigation, the employee shall be afforded rights consistent with a standard criminal investigation.
 - 1. The investigating supervisor shall advise the employee of his or her Miranda rights.
 - 2. The investigating supervisor shall advise the employee that if he or she asserts his or her rights not to answer questions, no adverse administrative action will be taken based upon the refusal.

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3. If the employee decides to answer questions after being advised of his or her Miranda rights, the responses may be used in both criminal and administrative proceedings.
- (j) Any member refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
1. A member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a *Garrity* advisement (APD form 154). Administrative investigators should consider the impact that compelling a statement from the member may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).
 2. No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (k) The interviewer should record all interviews of members. Witness interviews may also be recorded. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview should be provided to the member prior to any subsequent interview.
- (l) All members subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview (Wis. Stat. § 164.02(1)(b)). However, in order to maintain the integrity of each individual's statement, involved members shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (m) All members shall provide complete and truthful responses to questions posed during interviews.
- (n) No member should be compelled to submit to a polygraph examination, nor should any refusal to submit to such examination be mentioned in any investigation (Wis. Stat. § 111.37).
- (o) A member shall not be disciplined, retaliated against or threatened with retaliation for exercising his rights as described in this policy (Wis. Stat. § 164.03).
- (p) Upon the order of the Chief of Police or designee, employees shall submit to any medical, ballistics, chemical or other tests, photographs, or lineups. All procedures carried out under this subsection shall be specifically directed and narrowly related to a particular internal investigation being conducted by the Department.
- (q) Upon the order of the Chief of Police or designee, employees will submit financial disclosure statements in accordance with state and federal laws only in connection with a complaint in which this information is material to the investigation.

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1010.6.3 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

Report Headings - Include the complaint number, the nature of each alleged violation, the identity of the members, the identity of the assigned investigators, the initial date, location, and source of the complaint.

Summary - Provide a brief summary of the investigation along with the evidence relevant to each allegation.

Investigation - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section. A recommendation regarding further action or disposition should be provided at the end of the investigation.

1010.6.4 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded.

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

Policy failure - The investigation reveals the allegations are true; however, the employee was acting in accordance with established department policy.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

1010.6.5 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within 30 days from the date of discovery by an individual authorized to initiate an investigation.

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1010.6.6 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

In the event a formal investigation will take more than 30 days to complete, the assigned supervisor shall provide the complainant with a status report and will continue to do so at 30 day intervals, thereafter.

1010.7 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

When ordered by the Chief of Police, employees shall be required to submit to any additional medical and laboratory examinations specifically directed and narrowly related to a formal investigation of the employee's performance or fitness for duty. There will be no cost to the employee. If the investigator determines the investigation is likely to result in criminal charges being brought against the employee under investigation, the investigator shall confer with the City Attorney's Office before proceeding under this section.

1010.8 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

1010.9 CRIMINAL INVESTIGATION

Where a member is accused of potential criminal conduct, a separate supervisor or investigator from ISU shall be assigned to investigate the criminal allegations apart from any administrative investigation. The Investigative Services Unit Coordinator shall ensure that liaison is maintained with the district attorney's office in investigations involving alleged criminal conduct on the part of an employee. Any separate administrative investigation may parallel a criminal investigation.

The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

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A member accused of criminal conduct shall be provided with all rights afforded to a civilian. The member should not be administratively ordered to provide any information in the criminal investigation.

The Appleton Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

1010.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the chain of command. Each level of command should review and include their comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action. Forms of discipline include, but are not limited to, training, counseling and punitive action.

1010.10.1 ASSISTANT CHIEF RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Assistant Chief shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Assistant Chief may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Chief of Police, the Assistant Chief may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Chief of Police, the Assistant Chief shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

1010.10.2 CHIEF OF POLICE RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Assistant Chief for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Chief of Police shall provide the member with a written notice of the investigative findings and the opportunity to respond.

The Chief of Police shall file a report with the Police and Fire Commission immediately upon issuing a suspension or discharge of a member (Wis. Stat. § 62.13(5); Wis. Stat. § 62.50(13)).

1010.11 PRE-DISCIPLINE EMPLOYEE RESPONSE

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review

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the investigative findings and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
- (d) In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

Once the member has completed his/her response, or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.

1010.12 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

1010.13 POST-DISCIPLINE APPEAL RIGHTS

A non-probationary employee may have the right to appeal the imposition of a disciplinary suspension, transfer, demotion or termination as provided in a collective bargaining agreement, local ordinance or police commission rule (Wis. Stat. § 62.13(5)(i); Wis. Stat. § 62.50(13); Wis. Stat. § 59.26(8)(b)(6)).

1010.14 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

At-will and probationary employees may be disciplined and/or released from employment without adherence to any of the procedures set out in this policy, and without notice or cause at any time. These individuals are not entitled to any rights under this policy. However, any of these individuals released for misconduct should be afforded an opportunity solely to clear their names through a liberty interest hearing, which shall be limited to a single appearance before the Chief of Police or the authorized designee.

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Any probationary period may be extended at the discretion of the Chief of Police in cases where the individual has been absent for more than a week or when additional time to review the individual is considered to be appropriate.

1010.15 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Files Policy.

1010.16 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

The Chief of Police or the authorized designee should ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded, policy failure) of the complaint.