

## Personnel Complaints

### 1009.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Oakfield 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.

### 1009.2 POLICY

The Oakfield 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.

### 1009.3 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.

#### 1009.3.1 COMPLAINT CLASSIFICATIONS

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

**Informal** - A matter in which the Chief of Police is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.

**Formal** - A matter in which the Chief of Police determines that further action is warranted. Such complaints may be investigated by the Chief of Police or

greater than the accused member or referred to the Public Safety Committee, depending on the seriousness and complexity of the investigation.

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**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 Chief of Police or the [Public Safety Committee], such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

### 1009.3.2 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- a. 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 the Chief of Police.
- c. Chief of Police shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- d. Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- e. Tort claims and lawsuits may generate a personnel complaint.

## **1009.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS**

### 1009.4.1 COMPLAINT FORMS

Personnel complaint forms 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 Village facilities.

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

### 1009.4.2 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 the Chief of Police. If Chief of Police is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the Chief of Police to contact the complainant. The Chief of Police, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

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).

## **1009.5 DOCUMENTATION**

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Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint.

### 1009.5.1 ANNUAL REVIEW

Annually, the supervisor responsible for the internal affairs function shall conduct a review of all complaints to determine any patterns or tendencies that may need to be addressed. The results of the annual review shall be documented and forwarded to the Chief of Police or the authorized designee.

## **1009.6 ADMINISTRATIVE INVESTIGATIONS**

The supervisor responsible for the internal affairs function shall have direct access to the Chief of Police or the authorized designee.

Allegations of misconduct will be administratively investigated as follows.

### 1009.6.1 CHIEF OF POLICE RESPONSIBILITIES

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the Chief of Police unless the Chief of Police is the complainant, or the Chief of Police 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 Public Safety Committee personnel investigate any complaint.

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

The responsibilities of Chief of Police to include, but are not limited to:

1. Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
  1. The original complaint form will be directed to the Chief of Police of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
  2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Chief of Police or the Chief of Police, who will initiate appropriate action.
2. Responding to all complaints in a courteous and professional manner.
3. 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 Chief of Police will note the resolution on a complaint form and forward the form to the Chief of Police.

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4. Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Chief of Police and Chief of Police are notified via the chain of command as soon as practicable.
5. Promptly contacting the [Public Safety Committee] and the Chief of Police for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
6. Forwarding unresolved personnel complaints to the Chief of Police, who will determine whether to contact the complainant or assign the complaint for investigation.
7. Informing the complainant of the investigator's name and the complaint number within three days after assignment.
8. 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.
9. Ensuring that the procedural rights of the accused member are followed.
10. Ensuring interviews of the complainant are generally conducted during reasonable hours.

### 1009.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or a member of the Public Safety Committee, 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, the member shall be compensated.
- b. Unless waived by the member, interviews of an accused member shall be at the Oakfield 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, and in a timely manner, a member shall be informed the member is the subject of an internal investigation and provided a written statement of the allegations 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. 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. 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.

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- h. The interviewer should record all interviews of members and witnesses. 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.
- i. 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.
- j. All members shall provide complete and truthful responses to questions posed during interviews.
- k. 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).
- l. A member shall not be disciplined, retaliated against or threatened with retaliation for exercising the member's rights as described in this policy (Wis. Stat. § 164.03).

### 1009.6.3 ADMINISTRATIVE INVESTIGATION FORMAT

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

**Introduction** - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

**Synopsis** - Provide a brief summary of the facts giving rise to the investigation.

**Summary** - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

**Evidence** - 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.

**Conclusion** - A recommendation regarding further action or disposition should be provided.

**Exhibits** - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

### 1009.6.4 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.

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

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.

### 1009.6.5 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 one year from the date of discovery by an individual authorized to initiate an investigation.

### 1009.6.6 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

## **1009.7 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.

## **1009.8 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.

## **1009.9 CRIMINAL INVESTIGATION**

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. 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 Oakfield 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.

### **1009.10 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.

#### **1009.10.1 CHIEF OF POLICE RESPONSIBILITIES**

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

The Chief of Police 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 Chief of Police 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 Chief of Police 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.

#### **1009.10.2 [CHIEF OF POLICE] RESPONSIBILITIES**

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

Once the [agencyHead] is satisfied that no further investigation or action is required by staff, the [agencyHead] shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the [agencyHead] shall provide the member with a written notice and the following:

1. Access to all of the materials considered by the [agencyHead] in recommending the proposed discipline.
2. An opportunity to respond orally or in writing to the [agencyHead] within five days of receiving the notice.
  1. Upon a showing of good cause by the member, the [agencyHead] may grant a reasonable extension of time for the member to respond.
  2. If the member elects to respond orally, the presentation shall be recorded by the [DepartmentOffice].  
Upon request, the member shall be provided with a copy of the recording.

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

The [agencyHead] shall file a report with the Public Safety Committee immediately upon issuing a suspension or discharge of a member (Wis. Stat. § 62.13(5); Wis. Stat. § 62.50(13)).

### 1009.10.3 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) of the complaint.

### **1009.11 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 the supporting materials 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.

### **1009.12 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.

### **1009.13 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)).

### **1009.14 PROBATIONARY EMPLOYEES AND OTHER MEMBERS**

At-will and probationary employees and members other than non-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

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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.

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.

### **1009.15 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.