

Internal Investigations

1004.1 PURPOSE AND SCOPE

This order establishes a department procedure for the initiation and investigation of complaints involving any employee of the Duluth Police Department. The purpose of this policy is to provide citizens with a fair and effective avenue to voice their grievances against the actions of the Police Department.

It is the policy of this department to investigate all allegations of crime and misconduct concerning department employees. Complaints and allegations will be accepted from any source including internal, external and anonymous sources.

All information obtained must be treated confidentially. The release of information will be in accordance with the Minnesota Data Practices Act and other applicable statutes.

ACCEPTANCE OF COMPLAINTS

All complaints will be courteously accepted by any employee and promptly given to their Lieutenant. The Lieutenant will immediately forward complaints to the Administrative Lieutenant for investigation. Although written complaints are preferred, a complaint may also be filed verbally either in person, by email or by telephoning the department and will be accepted by any employee. The receiving employee shall obtain contact information to include name and phone number. If offered by the complainant the employee will take any details offered regarding the complaint for the Lieutenant to begin the investigation process. These details may include but not be limited to date, time, location, allegation and parties involved if the complainant is willing to provide this information. The Lieutenant will re-contact the complainant for further details if needed. Once the complaining individual has contacted the department it is the department's responsibility to contact the reporting party. When possible the Lieutenant or supervisor should respond immediately to take the complaint from the complainant. The Lieutenant, upon having sufficient details of the complaint, shall complete and submit an entry in the complaint database and notify the Administrative Lieutenant about the complaint's existence.

All employees are required to explain the complaint procedure to citizens upon request.

1004.1.1 OBJECTIVES

- (a) Protection of the public: the public has every right to expect efficient, impartial public service. Any misconduct by the department or its employees must be detected, investigated and appropriate measures taken to correct it.
- (b) Protection of the police department: the police department is evaluated and judged by the conduct of its employees. It is imperative that the entire organization not be subjected to public censure because of an individual employee.

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- (c) Protection of the officer: officers have an expectation of due process during discipline and will be provided the rights afforded them in the union contract, state, federal and applicable case law.
- (d) Responsibility to accept complaints: every member of the department has the responsibility, authority and duty to accept citizen complaints concerning the department or individual employees of the department. Failure of an employee to accept a complaint may result in discipline.
- (e) If it is discovered that the investigation was the result of an intentional false report of police misconduct the reporting person may be criminally charged (MSS 609.505)

Employees receiving a complaint are prohibited from discussing the matter with anyone other than the individual to whom the complaint is referred and the person assigned to investigate the complaint.

1004.1.2 DEFINITIONS

- (a) Non-disclosure order: a written order prohibiting discussion of the incident under investigation with other department employees, with the exception of Union representatives, clergy, attorneys, physicians and counselors.
- (b) Final discipline: final discipline occurs in accordance with MN SS 13.43, Subd. 2(b): a final disposition occurs when the government entity makes its final decision about the disciplinary action, regardless of the possibility of any later proceedings or court proceedings. Final disposition includes a resignation by an individual when the resignation occurs after the final decision of the government entity, or arbitrator. In the case of arbitration proceedings arising under collective bargaining agreements, a final disposition occurs at the conclusion of the arbitration proceedings, or upon the failure of the employee to elect arbitration within the time provided by the collective bargaining agreement. A disciplinary action does not become public data if an arbitrator sustains a grievance and reverses all aspects of any disciplinary action.
- (c) Complaint: an allegation of misconduct on the part of an employee of the police department that violates department policy and/or procedure.
- (d) Misconduct: an action or omission by an employee that is not in conformance to laws, city/department policies, or union contracts.
- (e) Disciplinary action: verbal reduced to writing, written reprimand, suspension, demotion or termination.
- (f) Formal statement: a recorded interview of an employee taken as part of an administrative investigation which could result in discipline regarding the employee.
- (g) Administrative hearing: (Loudermill Hearing) a meeting involving the employee, union representation if desired, and the Lieutenant, Deputy Chief, or Chief who has been predetermined to review the summary of the administrative investigation, allow the employee to provide a voluntary statement, and determine a finding and final discipline (Section 1004.6).

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- (h) Finding: a determination that the allegation is unfounded, the employee is exonerated, the allegation is not sustained, the actions occurred, but is the result of a policy failure, or the allegation is sustained (Section 1004.7).
- (i) Disposition: the course of action taken at the conclusion of the administrative hearing after determining the finding. Dispositions, in order of severity, include advising, counseling, training, coaching, verbal reduced to writing, written reprimand, suspension, demotion, termination.
- (j) Administrative leave: paid leave which does not indicate an employee is guilty of misconduct.

1004.2 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

AVAILABILITY OF COMPLAINT FORMS

Personnel complaint forms can be found at the Public Safety Building and all police substations as well as by going online to the Duluth Police website.

The Administrative Lieutenant shall be responsible for monitoring public satisfaction or inquiries regarding the personnel complaint process and shall forward to the Deputy Chief of Patrol or Investigations any suggestions for improvement or changes.

SOURCE OF COMPLAINTS

Complaints will be accepted by the following:

- (a) A department employee becoming aware of alleged misconduct shall immediately notify a supervisor.
- (b) A supervisor receiving a complaint from any source alleging misconduct of an employee.
- (c) Anonymous complaints and third-party complaints should be accepted and investigated.
- (d) A complaint received by the Minnesota POST Board alleging a violation of a statute of rule that the board is empowered to enforce (Minn. R. 6700.1600)
- (e) If an investigation discloses misconduct or improper job performance which was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations. **Article 35.1 from Police Union Contract:** employees shall have the right to a Union representative present during all disciplinary proceedings or hearings conducted by the Chief or his or her authorized representative which may result in any disciplinary action.

COMPLAINT DOCUMENTATION

Complaints alleging violations of Department policy which do not constitute a crime, a breach of civil rights, or serious or repeated infractions may be handled by the employee's Lieutenant after the Administrative Lieutenant has investigated the allegation, and it has been determined that the complaint does not warrant discipline. All complaints regardless of outcome will be documented in the department's internal affairs database to include summary, investigative steps taken

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and disposition. The Administrative Lieutenant or designee must gather sufficient information to determine the facts and determine a finding. All complaints are documented in writing and maintained in the department's complaint database. Sustained complaints are then incorporated into the employee's next regular evaluations. Complaints which cannot be sustained (unfounded, exonerated, not sustained, policy failure) are also retained in the department's complaint database. Sustained complaints resulting in discipline will also be maintained in the employee's personnel file in the City's Human Resources office. The Officer Development Unit will initiate efforts to revise policies if the finding is a policy failure.

1004.3 ADMINISTRATIVE LIEUTENANT RESPONSIBILITIES

Once the decision has been made to initiate an internal investigation, a determination must be made whether the investigation is criminal or strictly an administrative investigation. It is generally advisable to conduct and complete a criminal investigation prior to beginning an administrative investigation. An infraction which cannot be handled under Section 1004.2 yet does not constitute a potential crime, requires an administrative investigation. **All criminal investigations are followed by an administrative investigation.**

The conduct and disposition of the investigation depends on its classification. Information gained in an administrative investigation cannot be used in criminal proceedings. Information gathered in a criminal investigation can be used in an administrative investigation. Therefore, the criminal investigation is conducted first, followed by the required administrative investigation.

The Administrative Lieutenant advises the Deputy Chief of the involved division. The Deputy Chief is responsible for notifying the Chief in a timely fashion. If an immediate action such as placing the employee on administrative leave is necessary, the decision is made by a member of the Command Staff.

The Administrative Lieutenant, or Administrative Sergeant, issues a control number. Control numbers are maintained by the complaint database. The Administrative Lieutenant assigns an Investigator. The Investigator may be the Administrative Sergeant or employee's Lieutenant, the Administrative Lieutenant, or an Investigator from outside the department. Control numbers consist of the year the complaint was received followed by a number.

The Administrative Lieutenant notifies the complainant in writing that the complaint has been received and is being investigated. If the investigation is protracted the Lieutenant will contact the complainant on an appropriate basis.

All documents related to the investigation are stored by the Administrative Lieutenant. They are released only in accordance with Data Practices. (This does not preclude the assigned investigator of having necessary copies of documents, which must be securely filed at all times.)

1004.4 GUIDELINES FOR CRIMINAL INVESTIGATIONS

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It is the responsibility of the investigator to notify the affected employee in writing that they are the subject of an internal criminal investigation. Out of consideration for the employee, notification, in person, will be attempted prior to the employee receiving written notification. Written notification must consist of a statement of the allegations and the employee's rights. Notification may be delayed if it will compromise the investigation.

Guidelines:

- (a) If there is probable cause to make a custodial arrest serious consideration must be given to placing the employee on administrative leave, regardless of whether or not an arrest is made. Allegations of a serious nature where probable cause to arrest does not exist may still require that the employee be placed on administrative leave. The decision to place an employee on administrative leave rests with a member of the Command Staff.
- (b) In order to protect the accused, all internal criminal investigations should be conducted promptly and as confidentially as reasonably possible. The Administrative Lieutenant is routinely advised of progress and developments in the investigation.
- (c) The investigation must be conducted within the same constitutional parameters as any other criminal investigation. The employee is presumed innocent until evidence proves otherwise.
 - 1. Prior to questioning, if the employee is being detained they must be advised of their Miranda rights. If the employee is not being detained, they must be advised that they are free to leave and that no disciplinary action will result from their refusal to answer questions. If the employee under investigation is ordered to complete a report on the incident, it is not a voluntary statement and cannot be used in a criminal proceeding. The employee has the right to be represented by counsel, and may have a right to Union representation.
 - 2. Any search and seizure of evidence must be in accordance with current case law. Search warrants should be seriously considered to ensure the admissibility of the evidence seized. Consideration should be given to sealing the search warrant when it is filed. Exception: perishable evidence that is to be used later in an administrative investigation can be seized from the employee on city property. Evidence obtained in this manner cannot be used for criminal prosecution.
 - 3. Unless the employee initiates the request, no polygraph can be administered, requested or suggested.
 - 4. Physical and photo lineups may be conducted within current court guidelines. Caution should be taken to avoid using other police officers, uniformed or plain clothes, in a lineup with a department employee.
- (d) If a delay would harm the investigation, the employee's Lieutenant should begin the investigation.
- (e) Recorded statements should be taken whenever possible, if the employee is not being detained. The employee is not prohibited from taping the interview.
- (f) In all instances of alleged criminal activity where charges may result, the investigator must inform and frequently consult with the appropriate prosecuting authority. The need to inform and consult with the prosecution takes

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precedence of confidentiality. Upon completion of the investigation the case is reviewed by the appropriate prosecutor. The charging decision, or decision not to charge, is made by the prosecutor.

Administrative investigations are conducted anytime a criminal investigation has been initiated.

1004.5 GUIDELINES FOR ADMINISTRATIVE INVESTIGATIONS

Administrative investigations are conducted for alleged non-criminal misconduct which cannot be handled under Section 1004.2 of this chapter, and subsequent to criminal prosecutions, or the decision not to prosecute. The Administrative Lieutenant or their designee will conduct the administrative investigation, the administrative hearing will be conducted by the Chief, Deputy Chief or Lieutenant. The person conducting the administrative hearing is not involved in the day to day discussions and decisions necessary to conduct the investigation. The purpose of this is to maintain the integrity of the process. This prevents them from learning information that is not pertinent to the investigation, or improperly obtained. The person conducting the administrative hearing is given a summary at the conclusion of the investigation to make the determination of findings and disposition (Section 1004.6).

It is the responsibility of the assigned investigator to notify the affected employee in writing that he/she is the subject of an internal administrative investigation. Out of consideration for the employee, notification in person will be attempted prior to the employee receiving written notification. Notification must include a notice of the investigation, identity of the assigned investigator, notice of the employee's right to representation, a reference to the employee's labor contract, the rule, law, policy, etc. that is alleged to have been violated and a non-disclosure order. The notification must be made before the employee's formal statement can be taken. notification may be delayed if it will compromise the investigation.

Guidelines:

Investigations will be conducted in compliance with the Police Officers Disciplinary Procedures Action (MN Statute 626.89)

- (a) In order to protect the accused, all administrative investigations must be conducted as confidentially as possible.
- (b) The department must receive a written, signed complaint prior to taking an employee's formal statement. Any department member can sign the complaint. An investigation need not be delayed awaiting a signed complaint. The only delay necessary is in the taking of the subject employee's formal statement.
- (c) Constitutional guarantees associated with criminal investigations do not generally apply to administrative investigations. The employee is presumed innocent until a

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preponderance of evidence proves otherwise. All employees must be treated with respect and dignity.

1. Notification of a formal interview shall be in writing from someone in the involved employee's chain of command, this "Order to Appear" notifies the employee of the date, time and location of the interview. Notification will advise the employee of their right to union or legal representation. The union president will also be notified prior to the employee interview. Prior to interviewing the employee, the employee must read and be read the Garrity/Tennessee Advisory in its entirety. The Garrity portion of the advisory notifies the employee that they are required to provide all job related information requested and that the information from the interview cannot be used in a criminal proceeding. (The statement is not voluntary which prevents it from being used in a criminal proceeding.) Failure to answer the questions is considered gross insubordination and may result in disciplinary action up to, and including, termination. The Tennessee portion of the advisory informs the employee of the persons that may have access to the information provided during this compelled interview. The investigator is required to audio tape any formal statement taken.
 2. An employee's formal statement should be taken at a department facility whenever possible. When not taken at a department facility, the location must be agreed upon by both the investigator and the employee.
 3. When possible, an employee's formal statement should be taken during scheduled work hours. The session at which the statement is taken should be of reasonable durations and provide the officer with reasonable periods of rest and personal necessity.
 4. Rules of evidence generally do not apply to administrative investigations. The employee must provide all germane evidence requested as allowed by law. Refusal to do so constitutes gross insubordination and may result in disciplinary action up to, and including, termination. While the investigator may have a need to seize evidence from the employee on city property, such action is rarely necessary and should be employed with caution and reason.
 5. The employee can be ordered to participate in a lineup. Photo lineups may also be used. Other department employees should not be used in physical or photo lineups, unless absolutely necessary.
- (d) A polygraph examination cannot be suggested, requested, or administered unless the employee initiates the request.
 - (e) No disciplinary order or written reprimand may be included in the employee's personnel file unless the employee has been given a copy and the appeals process has been exhausted or expired.
 - (f) If the misconduct is serious enough, the employee may be placed on administrative leave by a member of the Command Staff.
 - (g) The Administrative Lieutenant must be continually informed on the progress of the investigation by the investigator.

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- (h) Upon completion of the investigation, a summary is provided to the person pre-determined to conduct the administrative hearing (Section 1004.6). The file is stored by the Administrative Secretary and access to it is controlled by Data Practices.

1004.6 DISCIPLINE PROCESS

Criminal and administrative investigations (Sections 1004.3, 1004.4, 1004.5) require a finding and disposition by the person designated to conduct the administrative hearing (Loudermill Hearing). The person conducting the administrative hearing reviews the summary of the investigation, prior discipline, and the employee development reports concerning the employee. Subsequent to determining a discipline the employee is offered an opportunity to make a voluntary statement. Prior to making a voluntary statement the employee and the union representative are provided with all information relevant to the investigation. Discipline is determined after the employee has been offered the opportunity to make a statement, or if the information provided by the employee warrants the person conducting the hearing to direct more investigation into the information provided by the employee. The finding and disposition are documented in the employee's file. The information and its release are controlled by data practices.

1004.7 DISPOSITION OF ADMINISTRATIVE INVESTIGATIONS

- (a) Unfounded - the allegation is false or not factual.
- (b) Exonerated - the allegation is true, but was consistent with policy.
- (c) Not Sustained - there is insufficient evidence to prove or disprove the allegation.
- (d) Policy Failure - the action is not a violation of policy, but the policy is not adequate.
- (e) Sustained - the allegation is supported by sufficient evidence.

Dispositions

Generally, disciplinary action should be progressive in nature; however, depending on the conduct, circumstances and need for corrective action, one or more of the following course of action should be taken. Disciplinary action taken should be accompanied by appropriate training.

Dispositions in ascending order:

- (a) Advising - unit leaders have the responsibility and authority to immediately correct improper behavior by verbally informing the employee and explaining the proper behavior.
- (b) Coaching/Counseling - unit leaders have the responsibility and authority to counsel an employee when a more serious or ongoing performance problem is encountered. Counseling information should be documented and retained by the unit leader.

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- (c) Training - unit leaders have the responsibility and authority to recommend and/or arrange training to correct more serious or ongoing employee performance problems. Arrangements for training should be made by the unit leader through the Officer Development Unit.
- (d) Verbal Reduced to Writing - unit leaders have the responsibility and authority to issue a verbal reprimand, reduced to writing, for a more serious breach of conduct, or after counseling and training have failed to correct a performance or behavioral problem.
- (e) Written Reprimand - Lieutenants have the responsibility and authority to recommend a written reprimand for a serious breach of conduct or after counseling, training, or verbal reprimand have failed to correct a performance or behavioral problem. Lieutenants have the authority to issue a written reprimand. Written reprimands are summarized on personnel orders and posted at the completion or expiration of the grievance process.
- (f) Suspensions - Lieutenants and above have the right to suspend employees for up to 240 working hours (aggregated during one calendar year, Police Contract Section 34.2) for serious breaches or when other actions have failed. Suspensions are in accordance with Civil Service Rules, labor contracts, and current case law. Suspensions are summarized on personnel orders and posted at the completion, or expiration of the grievance process.
- (g) Demotions - the Deputy Chiefs and Chief have the ability to demote employees if warranted. Demotions are in accordance with Civil Service Rules, labor contracts, Veteran's Preference Act, and current case law. Demotions are summarized on personnel orders and posted at the completion, or expiration of the grievance process.
- (h) Terminations - the Chief of the appointing authority has the ability to terminate employees if warranted. Terminations are in accordance with Civil Service Rules, labor contract, Veteran's Preference Act, and current case law. Terminations are summarized on personnel orders and posted at the completion or expiration of the grievance process.

Disciplinary Action Against Probationary Employees

In the event that a probationary employee as defined by police union contract is terminated for misconduct, unsatisfactory performance, or the failure to meet department standards, the employee shall have no right to appeal, except for an employee covered by the Veterans Preference Act. A probationary employee covered by the Veterans Preference Act is additionally entitled to written notice of the charges and the intent to terminate, suspend, or demote, and his/her right to request a hearing within 60 days of receipt of the notice. Failure to request the hearing in the time specified waives the right to the hearing and all other legal remedies. Any hearing shall be held in compliance with law (Minn. Stat. 197.46). Probationary employees are allowed union representation during this process.

1004.8 ALLEGATIONS OF CRIMINAL CONDUCT

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The Chief has the responsibility to review all disciplinary actions. For the protection of the employee the Chief will only be privy to the information contained in the summary provided by the Administrative Lieutenant, prior discipline, and the employee development reports. The Chief has the authority to amend any disciplinary action.

1004.9 ADMINISTRATIVE INVESTIGATION WITH THE EMPLOYEE

Employees may appeal any disciplinary action. Appeals must be in accordance with current labor contracts.

Complaint Audit

Purpose of Audit - to provide an independent examination of the Duluth Police Department complaint intake process and to assure the public that the department's process works.

Audit Definition - the audit will provide a checks and balance system to insure complaints are being taken at all entry points and being delivered to the Administrative Lieutenant in order to provide timely investigation of all complaints.

Audit Procedure - the Civilian Review Board (CRB) will assist the Duluth Police Department in conducting twice a year complaint receipt audits. This process will include members of the CRB or their designees filing test complaints to the Duluth Police Department through all entry points. These audits will occur during sanctioned times and with prior notification to the Chief or the Chief's designee. These points will include individual officers, internet, telephone and at the Public Safety Building and substation desks. An audit will be considered successful if the test complaints are forwarded to the office of the Administrative Lieutenant.

A member of the CRB or designee will file complaints either by telephone, mail, email or in person. The individual making the complaint will state their name and contact phone number. The employee will advise them that the Administrative Lieutenant or other Lieutenant will contact them shortly and take full complaint details. The individual receiving the initial information shall forward the contact information to the Administrative Lieutenant or Shift Lieutenant. If given to the shift Lieutenant, it should be forwarded to the Administrative Lieutenant as soon as possible. The Administrative Lieutenant will call back the CRB member or designee to verify that the original contact information made it to the correct locations in the department to start the complaint process.

The police department will conduct training twice a year on this policy.