

## Personnel Complaints

### 1011.1 PURPOSE AND SCOPE

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

### 1011.2 POLICY

The Mar-Mac Police Department is committed to addressing all complaints concerning the agency's services and the conduct of its members.

The Agency will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law and rules.

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

### 1011.3 DEFINITIONS

As used in this chapter unless the context otherwise requires:

- (a) **Complaint** – Is a formal written allegation signed by the complainant or a signed written statement by an officer receiving an oral complaint stating the complainant's allegation.
- (b) **Formal administrative investigation** – Is an investigative process ordered by a commanding officer of an agency or commander's designee during which the questioning of an officer is intended to gather evidence to determine the merit of a complaint which may be the basis for seeking removal, discharge, or suspension, or other disciplinary action against the officer.
- (c) **Informal inquiry** – Is a meeting by supervisory or command personnel with an officer who is the subject of an allegation, for the purpose of resolving the allegation or determining whether a formal administrative investigation should be commenced.
- (d) **Interview** – Is the questioning of an officer who is the subject of a complaint pursuant to the formal administrative investigation procedures of the investigating agency, if such a complaint may be the basis for seeking removal, discharge, or suspension, or other disciplinary action against the officer. "Interview" does not include questioning as part of any informal inquiry or questioning related to minor infractions of agency rules which will not result in removal, discharge, suspension, or other disciplinary action against the officer.
- (e) **Officer** – Is a law enforcement officer employed by the Mar-Mac Unified Law Enforcement District.

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- (f) **Prosecuting agency** – Is the attorney general, an assistant attorney general, the county attorney, an assistant county attorney, a special prosecutor, a city attorney, or an assistant city attorney.
- (g) **Statement** – Is the statement of the officer who is the subject of an allegation in response to a complaint.

#### 1011.4 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance or behavior, or actions involving improper profiling or bias that, if true, would constitute a violation of agency policy or 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 agency 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 Agency.

##### 1011.4.1 COMPLAINT CLASSIFICATIONS

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

**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 Professional Standards, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

**Formal Disciplinary Action** – Is an investigative process ordered by a commanding officer of an agency or commander's designee during which the questioning of an officer is intended to gather evidence to determine the merit of a complaint which may be the basis for seeking removal, discharge, or suspension, or other disciplinary action against the officer.

**Shift Level Discipline** - Is an informal disciplinary action and shall be construed by the employee to mean that the conduct in question is contrary to the District's rules, regulations, orders, policies, or procedures.

##### 1011.4.2 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 agency 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.

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- (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.

#### 1011.4.3 IDENTIFICATION OF COUNSELING AND DISCIPLINARY MEASURES

The Administration Division Commander, in coordination with the Administration Division, shall develop a system for counseling and disciplining employees, including:

- (a) Types of measures that may be used as discipline (e.g., suspension, demotion, termination)
- (b) Use of counseling and/or remedial training, if appropriate
- (c) The authority of each level of supervision to impose discipline.

#### **1011.5 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS**

##### 1011.5.1 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 agency website. Forms may also be available at other District facilities.

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

##### 1011.5.2 ACCEPTANCE

All complaints will be courteously accepted by any agency member and promptly given to the appropriate supervisor. Although written complaints are required (Iowa Code § 80F.1), a complaint may also be filed orally, either in person or by telephone. The oral complaint shall be written, recorded, and signed by the receiving member. 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 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.

#### **1011.6 DOCUMENTATION**

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. On an annual basis, the Agency should audit the log and send an audit report to the Chief of Police or the authorized designee.

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All records of inquiries and complaints, including the log, will be secured in accordance with the Personnel Records Policy.

#### **1011.7 ADMINISTRATIVE INVESTIGATIONS**

Allegations of misconduct will be administratively investigated as follows.

##### **1011.7.1 SUPERVISOR RESPONSIBILITIES**

In general, the primary responsibility for the 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 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 complaint form is completed.
  - 1. The original complaint form will be directed to the Shift Supervisor 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 Division Commander or the Chief of Police, who will initiate appropriate action.
- (b) Responding to all complaints in a courteous and professional manner.
- (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 Agency receiving the complaint.
  - 2. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Shift Supervisor.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Shift Supervisor and Chief of Police are notified via the chain of command as soon as practicable.
- (e) Promptly contacting the Administration Division and the Shift Supervisor for direction regarding the supervisor's role in addressing a complaint that relates to sexual, racial, ethnic, or other forms of prohibited harassment or discrimination.
- (f) Forwarding unresolved personnel complaints to the Shift Supervisor, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Informing the complainant of the investigator's name and the complaint number within three days after assignment.

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- (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.
  - 1. Accused members should be provided with a written statement of their rights and responsibilities related to the investigation.
- (j) Ensuring interviews of the complainant are generally conducted during reasonable hours.

### 1011.7.2 EXTERNAL AGENCY REQUEST

In specific instances, an external law enforcement agency will conduct the investigation. These instances include allegations of brutality, member involvement in a shooting, criminal acts classified as felonies, situations involving multiple Agency members, deaths involving a member, or when the Chief of Police specifically orders an external investigation.

### 1011.7.3 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or a member of the Professional Standards, the following applies to members covered by the peace officer bill of rights (Iowa Code § 80F.1):

- (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 Mar-Mac 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.
- (e) Prior to the interview, a member who is the subject of the complaint shall be provided, at a minimum, a written summary of the complaint.
  - 1. If the complaint alleges domestic abuse, sexual abuse, or sexual harassment, the member shall not receive more than a written summary of the complaint.
- (f) All interviews should be for a reasonable period and the member's personal needs should be accommodated.
- (g) No member should be subjected to offensive or threatening language, nor shall any promises, rewards, or other inducements be used to obtain answers.
- (h) 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. A member shall be advised that answers to questions shall not be used against the member in any subsequent criminal proceedings.

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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.
  - (i) The interviewer shall record all interviews of a member subject of the complaint and should record the interviews of 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.
  - (j) All members subjected to interviews that could result in discipline have the right to have legal counsel or an uninvolved representative present during the interview. 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.
    1. Members also have the right to counsel at any subsequent disciplinary or administrative proceedings.
  - (k) All members shall provide complete and truthful responses to questions posed during interviews.
  - (l) No member may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation.

#### 1011.7.4 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.

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

#### 1011.7.5 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 agency 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.

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.

Personnel complaints classified as "sustained" shall proceed to a disciplinary determination consistent with the Disciplinary Action Following a Sustained Complaint Section, where the Chief of Police shall determine the appropriate level of corrective or formal disciplinary action.

Following a sustained finding, corrective actions may include remedial training, counseling, or formal disciplinary measures, as appropriate to the nature and severity of the misconduct.

Remedial training may be utilized as a corrective action to address sustained misconduct, in addition to counseling or formal disciplinary actions.

#### 1011.7.6 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.

#### 1011.7.7 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.

#### 1011.7.8 EXTENSIONS

When an investigator or supervisor determines additional time is necessary to complete the investigation, a written request to extend the investigation should be submitted to the Chief of Police for approval.

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### **1011.8 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.

### **1011.9 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 Agency, the Chief of Police may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any agency badge, identification, assigned weapons and any other agency 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.

### **1011.10 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.

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 Mar-Mac 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.

If a complainant is determined to be in violation of Iowa Code § 718.6 (false reports), the investigator shall file the necessary paperwork with the county attorney's office for possible charges (Iowa Code § 80F.1).

### **1011.11 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 the report and

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include their comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

#### 1011.11.1 CHIEF OF POLICE RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Chief of Police 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. 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, all relevant materials supporting the recommendation shall be included. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

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 for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by the investigator, 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 and the following:

- (a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline (Iowa Code § 80F.1).
- (b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.
  1. Upon a showing of good cause by the member, the Chief of Police 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 Agency. Upon request, the member shall be provided with a copy of the recording.

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 written 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. The Chief of Police shall also ensure that the member is provided with written notice that the information in their personnel file as a result of the disciplinary action may become a public record (Iowa Code § 22.15).

#### 1011.11.2 DISCIPLINARY ACTION FOLLOWING A SUSTAINED COMPLAINT

Upon a finding of a sustained complaint, disciplinary action shall be imposed according to the nature, severity, and circumstances of the misconduct, as follows:

Shift Level Discipline (informal action):

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- (a) Corrective Action/Counseling/Instruction.
- (b) Guidance.
- (c) Specialized Training.
- (d) Oral Reprimand.
- (e) Performance Improvement Plan (PIP).

Formal Disciplinary Action (formal action under Iowa Code § 80F.1 procedures):

- (a) Oral Reprimand.
- (b) Written Reprimand.
- (c) Unpaid Suspension.
- (d) Demotion in Rank.
- (e) Discharge.

The Chief of Police shall determine whether shift level discipline or formal disciplinary action is appropriate based on the seriousness of the misconduct, the member's disciplinary history, and any applicable mitigating or aggravating factors. All formal disciplinary actions shall comply with the requirements for notice, response, and appeal rights as outlined in this policy and Iowa Code.

### **1011.11.3 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.

### **1011.11.4 NOTICE TO OFFICER**

In matters where the investigation has a disposition of not sustained, exonerated, or unfounded, the Chief of Police or the authorized designee should ensure the officer is notified in writing of the outcome of the investigation (Iowa Code § 80F.1).

### **1011.12 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.

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- (d) In the event that the Chief of Police elects to conduct further investigation, 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.

### **1011.13 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.

### **1011.14 POST-DISCIPLINE APPEAL RIGHTS**

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by any collective bargaining agreement and/or personnel rules.

In the event of punitive action against an employee covered by the peace officer bill of rights, the appeal process shall be in compliance with Iowa Code § 80F.1.

### **1011.15 PROBATIONARY EMPLOYEES AND OTHER MEMBERS**

At-will employees, probationary employees not covered by the peace officer bill of rights 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 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.

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

### **1011.16 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 Records Policy.

### **1011.17 FALSE COMPLAINT**

If a complaint is determined by the investigating officer to be a violation of Iowa Code § 718.6 – False Reports to or Communications with Public Safety Entities, the investigating officer shall be responsible for filing the necessary paperwork with the County Attorney's Office in order for the

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cCounty Attorney to make a determination as to whether to charge the person with a violation of Iowa Code § 718.6.

#### **1011.18 CRIMINAL MISCONDUCT BY OTHERS**

Whenever an internal investigation yields evidence of possible criminal misconduct by persons other than members of the District, the investigator shall immediately notify the Chief of Police, who shall take whatever action deemed appropriate.

#### **1011.19 TRAINING**

The Training Officer should ensure that officers who are responsible for administrative investigations receive the required training as provided in Iowa Code § 80F.1. Training records should be retained in accordance with the established records retention schedule.