

Personnel Complaints

1107.1 PURPOSE AND SCOPE

State

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Burnsville Police Department (Minn. R. 6700.2200). 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.

1107.2 POLICY

Best Practice

The Burnsville 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 memorandum of understanding.

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

1107.3 PERSONNEL COMPLAINTS

Best Practice **MODIFIED**

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 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.

1107.3.1 COMPLAINT CLASSIFICATIONS

Best Practice **MODIFIED**

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

Informal - A matter in which the Division Commander is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member (e.g. minor policy violations).

Formal - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the Division Commander, depending on the seriousness and complexity of the investigation (e.g., major policy violations, misuse of force, breach of civil rights, criminal misconduct).

Personnel Complaints

1107.3.2 SOURCES OF COMPLAINTS

Best Practice **MODIFIED**

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 a supervisor.
- (c) Supervisors shall initiate a Citizen Contact Report 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.
- (f) The Minnesota Board of Peace Officer Standards and Training (POST) may refer complaints alleging a violation of a statute or rule that the board is empowered to enforce (Minn. Stat. § 214.10, Subd. 10).
- (g) Any person making a complaint may be accompanied by an attorney or other representative, including at the time the complaint is made.
- (h) Any person wishing to file a complaint against the Chief of Police should be referred to the City Manager for investigation by an outside agency.

1107.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

Best Practice

1107.4.1 COMPLAINT FORMS

Best Practice **MODIFIED**

A supervisor will complete a Citizen Contact Report when one or more of the following conditions exists:

- (a) The individual indicates the desire to make a formal complaint (anonymously or otherwise) against the department or one of its members.
- (b) The individual indicates the desire for disciplinary action or an official response regarding a department member.
- (c) In absence of any apparent desire to make a formal complaint, the individual suggests the possibility of taking further action (e.g., contacting other officials or organizations).
- (d) If the supervisor believes there may be a credible basis to suspect misconduct on the part of the department member.

1107.4.2 ACCEPTANCE

Best Practice **MODIFIED**

Personnel Complaints

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 complete and submit a Citizen Contact Report 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.

1107.4.3 COMPLAINT COPIES

State

After a complaint is filed, the accepting member should sign the document, keep a copy for the department and provide a copy to the complainant.

1107.5 DOCUMENTATION

Best Practice

MODIFIED

Supervisors shall ensure that all formal complaints are documented on a Citizen Contact Report. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

All Citizen Contact Reports should also be documented in a department or internal affairs file. On an semi-annual basis, the Department designee should review the department files to ensure they conform with policy 1110.10 Retention and Purging.

1107.6 ADMINISTRATIVE INVESTIGATIONS

State

Allegations of misconduct will be administratively investigated as follows (Minn. R. 6700.2200).

1107.6.1 SUPERVISOR RESPONSIBILITIES

Best Practice

MODIFIED

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 Citizen Contact Report is completed.
 1. The Citizen Contact Report and any supporting documents will be directed to the Division Commander of the accused member, via the chain of command,

Burnsville Police Department

MN Policy Manual

Personnel Complaints

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 a reasonable period of time of the Department receiving the complaint.
 2. If the matter is resolved and no further action is required, the supervisor will note the resolution on the Citizen Contact Report and forward the form to the Division Commander.
 - (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Division Commander is notified via the chain of command as soon as practicable.
 - (e) Promptly contacting the Division Commander for direction regarding their roles 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 Division Commander, who will determine whether to contact the complainant or assign the complaint for investigation.
 - (g) 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.
 - (h) Ensuring that the procedural rights of the accused member are followed.
 - (i) Ensuring interviews of the complaint are generally conducted during reasonable hours.

1107.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

State **MODIFIED**

Whether conducted by a supervisor or an assigned member of the Internal Affairs Unit, the following shall apply to members covered by the Peace Officer Discipline Procedures Act (Minn. Stat. § 626.89):

- (a) Interviews of an accused member shall be conducted during reasonable hours and preferably when the member is on-duty (Minn. Stat. § 626.89, Subd. 7). 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 Burnsville Police Department or at a place agreed upon by the accused member (Minn. Stat. § 626.89, Subd. 4).

Burnsville Police Department

MN Policy Manual

Personnel Complaints

- (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.
 - 1. The member shall be given a copy of any written complaint signed by the complainant (Minn. Stat. § 626.89, Subd. 5).
- (e) All interviews should be for a reasonable period and the member's personal needs should be accommodated (Minn. Stat. § 626.89, Subd. 7).
- (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.
- (h) The interviewer shall record all interviews of members and witnesses. The member may also record the interview. A complete copy or transcript of the interview must be made available to the member upon written request without charge or undue delay. If the member has been previously interviewed, a copy of that recorded interview shall be provided to the member prior to any subsequent interview (Minn. Stat. § 626.89, Subd. 8).
- (i) All members subjected to interviews that could result in discipline have the right to have an uninvolved representative or attorney present before or during the interview (Minn. Stat. § 626.89, Subd. 9). When a member requests a representative or attorney, no interview may be taken until a reasonable opportunity is provided for the member to obtain that person's presence. 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 may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation.
- (l) Before a formal statement is taken, the member shall be advised in writing or on the record that admissions made may be used as evidence of misconduct or a basis for discipline (Minn. Stat. § 626.89, Subd. 10).

Personnel Complaints

- (m) A member may not be required to produce financial records (Minn. Stat. § 626.89, Subd. 11).
- (n) A member's photograph will not be released unless allowed by law (Minn. Stat. § 626.89, Subd. 12).

1107.6.3 ADMINISTRATIVE INVESTIGATION FORMAT

Best Practice

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.

1107.6.4 DISPOSITIONS

Best Practice **MODIFIED**

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

Exonerated – A fair preponderance of the evidence established either that:

- (a) The act or acts complained of did not occur;
- (b) The agency member named in the complaint was not involved in the alleged misconduct; or
- (c) The act(s) that provided the basis for the complaint occurred; however, the investigation reveals that such act(s) were justified, lawful or proper.

Not Sustained – The investigation failed to disclose sufficient evidence to prove or disprove the allegations made in the complaint.

Sustained– A fair preponderance of the evidence obtained in the investigation established that the accused person's actions 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

The Chief of Police may authorize that any investigation be re-opened any time substantial new evidence is discovered concerning the complaint.

1107.6.5 COMPLETION OF INVESTIGATIONS

State MODIFIED

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 a reasonable period of time from the date of discovery by an individual authorized to initiate an investigation.

Notice to the complaining party shall be provided as soon as practicable following final disposition and be consistent with the provisions of the Minnesota Government Data Practices Act (Minn. Stat. § 13.43 Subd. 2; Minn. R. 6700.2200).

1107.6.6 EXTERNAL INVESTIGATIONS

State

The Chief of Police may request that an outside agency conduct an investigation anytime the Chief of Police determines an external investigation is appropriate.

This department should not conduct an investigation when the Chief of Police is the subject of the complaint. An external investigation should be requested through the City Manager.

1107.6.7 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

State MODIFIED

The member conducting the investigation shall provide the complainant with periodic updates on the status of the investigation, as appropriate, and consistent with the provisions of the Minnesota Government Data Practices Act (Minn. Stat. § 13.43, Subd. 2; Minn. R. 6700.2200).

1107.7 ADMINISTRATIVE SEARCHES

Best Practice

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.

1107.8 ADMINISTRATIVE LEAVE

Best Practice

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.

Personnel Complaints

- (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.

1107.9 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Best Practice **MODIFIED**

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the Division Commander. The Division Commander 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.

1107.9.1 DIVISION COMMANDER RESPONSIBILITIES

Best Practice **MODIFIED**

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

The Division Commander 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 Division Commander 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 Division Commander shall include all relevant materials supporting the recommendation.

1107.9.2 CHIEF OF POLICE RESPONSIBILITIES

Best Practice **MODIFIED**

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 Division Commander 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 and the following:

- (a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (b) An opportunity to respond to the Chief of Police within five days of receiving the notice.

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

Personnel Complaints

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.

1107.9.3 MINNESOTA POST INVESTIGATIONS

State

The Minnesota POST Board may require an administrative investigation based upon a complaint alleging a violation of a statute or rule that the board is empowered to enforce.

Any such misconduct allegation or complaint assigned to this department shall be completed and a written summary submitted to the POST executive director within 30 days of the order for inquiry (Minn. Stat. § 214.10, Subd. 10).

The Department shall cooperate with POST's investigation and provide requested information unless (Minn. Stat. § 626.8457):

- (a) There is an active criminal investigation or active criminal proceeding regarding the same incident or misconduct that is being investigated by POST.
- (b) An active internal investigation exists regarding the same incident or misconduct that is being investigated by POST during 45 days from the time the request was made by POST. The Chief of Police or the authorized designee shall comply with the request upon completion of the internal investigation or once 45 days has passed, whichever occurs first.

1107.9.4 DISCIPLINE

State

Disciplinary action may include, but is not limited to (Minn. R. 6700.2200):

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

1107.9.5 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

State

The Chief of Police or the authorized designee shall ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint. Notice must be consistent with the provisions of the MGDP (Minn. Stat. § 13.43, Subd. 2; Minn. R. 6700.2200).

1107.10 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

Best Practice **MODIFIED**

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.

Personnel Complaints

1107.11 POST-DISCIPLINE APPEAL RIGHTS

State MODIFIED

Non-probationary employees have the right to appeal discipline as noted in policy 1107.9.4. The employee has the right to appeal using the procedures established by any collective bargaining agreement and/or personnel rules (Minn. R. 6700.2200).

Employees covered by the Veterans Preference Act are entitled to written notice of the right to request a hearing within 30 days of receipt of the notice of intent to terminate, suspend or demote. 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).

1107.12 RETENTION OF PERSONNEL INVESTIGATION FILES

State

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

1107.12.1 LETTERS OF DISCIPLINE AND REPRIMANDS

State

Letters of discipline and reprimands may only be placed in a member's personnel file after they are received by the member (see generally Minn. Stat. § 626.89, Subd. 13).

1107.13 CRIMINAL INVESTIGATION

Agency Content

The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct.

1107.14 REQUIRED REPORTING TO POST

State

The Chief of Police or the authorized designee shall notify POST of certain officer personnel events, including but not limited to:

- (a) A termination or resignation of an officer who is the subject of an internal or criminal investigation due to alleged misconduct regardless of whether the investigation has been initiated or completed, or whether the officer was criminally charged (Minn. Stat. § 626.8457, Subd. 4).
- (b) The violation of a required POST model policy identified in Minn. R. 6700.1615 (Minn. R. 6700.1615, Subd. 2).