

POLICY AND PROCEDURES MANUAL

Fergus Falls Police Department

Policy Title	Policy Statement on Complaints of Misconduct
Policy Number	211 (Formerly 30.07)
References	MN SS 13.43, Subd.2, 419.07, 626.89, MN Rules 6700.2000. Case Law created by: Garrity vs. New Jersey 385 US 493 1967 Gardner vs. Broderick 392 US 273 1968 Policy on Employee Grievances
Effective Date	June 1, 2009
Distribution	All Personnel
Rescinds	July 1992

PURPOSE

To preserve the integrity of the department, it is necessary that a policy be established to assure the prompt and thorough investigation of any alleged or suspected misconduct on the part of its members. Such procedures will:

- A.** Clear the innocent
- B.** Establish the guilt of wrongdoers
- C.** Facilitate prompt and just disciplinary actions
- D.** Uncover defective procedures and processes

POLICY

A prerequisite to an effective operation is the need for personnel to function free from unreasonable, arbitrary, and malicious accusations. As an individual and citizen, constitutional guarantees are sacred. This department must exert all efforts for the protection of the innocent and the identification and disposition of the wrongdoer. We shall do for our own what law enforcement is sworn to do for others.

PROCEDURE

- I.** All alleged or suspected acts of misconduct by members of this department must be investigated.

Included are:

- A.** Those acts reported to supervisors by members of the department, other law enforcement officials or citizens; whether in person, by telephone or in writing.
- B.** Those acts observed or suspected by supervisors.

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- II. The term “misconduct” as used in this policy statement shall be defined as: “A violation of any law, written department policy, rule or order, or conduct or behavior unbecoming a member of the department committed on or off duty.”
 - A. Upon receipt of information of alleged misconduct on the part of any member of the department, the employee receiving such information shall refer the matter to a supervisor.
 - B. The supervisor receiving any complaint of misconduct shall summarize the information on a Fergus Falls Police Department Internal Complaint Form. The complainant should be requested to sign the form. The form should then be forwarded to the Chief of Public Safety.
 - C. If, at the time a complaint is received, the incident is of sufficient seriousness to demand immediate action, the supervisor shall notify the Chief of Public Safety regardless of the hour. If the Chief of Public Safety is not available, the Captain or Lieutenant should be notified. In the meantime, the supervisor shall take temporary measures to prevent the matter from becoming more serious.
 - D. In the event a member of the department is alleged or suspected of misconduct which is considered a violation of criminal law, the person assigned to investigate the alleged misconduct could be a member of the Otter Tail County Sheriff’s Department and may be assigned the task by order of the Sheriff through a written request by the Chief of Public Safety or designee. Other allegations of misconduct will be investigated by a Fergus Falls Police Department Sergeant, Lieutenant, or Captain as assigned by the Chief of Public Safety. All such investigations may include formal statements from all parties concerned and, when appropriate, the gathering and preservation of physical evidence.
 - E. Under both Federal Code and Minnesota State Statutes, police officers are guaranteed certain rights when their formal statements are taken for disciplinary purposes.

III. Definitions

- A. **Administrative hearing** is defined to mean a non-judicial hearing or arbitration to recommend, approve, or order discipline.
- B. **Formal statement** means the questioning of a member in the course of obtaining a recorded, stenographic, or signed statement to be used as evidence in a disciplinary proceeding against the member.
 - 1. The following procedures will apply to the taking of a formal statement:
 - a. The statement must be taken at the Police Department or at a place agreed on by the investigating individual and the investigated member.
 - b. Prior to obtaining any formal statements the department must be in possession of a signed written complaint.
 - c. The investigated member must be given a summary of the allegations prior to giving a statement.

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- d. Before a formal statement is taken, the investigated member shall be advised in writing that the formal statement may be used as evidence of misconduct or as a basis for discipline. This warning shall be given on one of the two applicable internal forms. For that purpose, these forms are titled "Tennessee Advisory-Warning/Voluntary Interview Employee Under Investigation" and "Garrity/Tennessee Warning for Internal Affairs Investigation." In an effort to clarify the use of these forms, the following shall apply:
 - 1) The Tennessee Warning will be given to the investigated member to read in all investigations for disciplinary purposes. The investigated member shall be requested to sign the form after reading it. The Tennessee Warning is not required when criminal conduct on the part of a member is alleged.
 - 2) In the event that a member refuses to voluntarily respond to questions, the investigating member must decide whether or not to compel those answers through a Garrity Advisory. The following will serve as general guidelines in providing the investigating officer with options.
 - a) If there is no basis for suspecting that the member committed a crime, proceed to give the Garrity Advisory and conduct the interview.
 - b) If it appears that the member may have committed a crime, the Garrity interview should be postponed and a criminal investigation should be initiated through the procedure previously stated.
 - c) Or, both a criminal investigation and a Garrity interview may be conducted by furnishing the appropriate form to be read by the investigated member. Following a Garrity interview, you wish to thereby ensure that the evidence gathered through the criminal investigation is independent from the Garrity induced and immunized statement. This will be accomplished through the appointment of completely separate investigators (by the procedure previously stated) who will not communicate with each other about the case and will maintain completely separate case files.
 - e. The member whose formal statement is taken has the right to have an attorney or union representative present at the session and should be so advised.
 - f. A complete record of sessions at which a formal statement is taken must be made by electronic recording. Upon written request, the investigated member is entitled to a transcript.
 - g. Sessions at which a formal statement is taken must be of reasonable duration and allow the member rest. If off duty, the investigated member is entitled to compensation.
2. The following procedures will apply to the investigation of an alleged incident of misconduct:

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- a. Officers cannot be compelled to produce personal financial records without the appropriate judicial order.
 - b. Photographs of the investigated member will not be publicly released without the officer's permission. The officer's photograph, however, may be shown to prospective witnesses as part of the investigatory process.
 - c. Both the department and the investigated member are entitled to lists of witnesses that each may call to testify at a hearing. The investigated member is entitled to a copy of the investigation report. However, the identities of confidential informants will not be disclosed unless ordered by the person presiding over the hearing.
3. No member may be discharged, disciplined, or threatened with discharge or discipline as retaliation of the officer's exercise of the rights outlined in the preceding procedures.
- C.** When the investigation is completed, the final report will conclude with the classification of the investigation into one of the following categories:
1. Unfounded: Allegation is false or not factual.
 2. Exonerated: Incident occurred but was lawful and proper.
 3. Not Sustained: Insufficient evidence to prove or disprove.
 4. Sustained: Allegation is supported by sufficient evidence to justify disciplinary or other corrective action.
- D.** If the complaint is sustained, the Chief of Public Safety shall take appropriate disciplinary action. Such action will be based on the investigation report and the accused member's record of service and shall be in conformance with any applicable regulation relating to discipline of members. The disciplinary action may include counseling, remedial education, an oral reprimand, a written reprimand, suspension with or without pay, demotion, or discharge. Any appeal of the findings and/or resultant disciplinary action may be made through the processes covered under the policy on Employee Grievances.
- E.** When the act complained of is a crime and the evidence is such that had the action been by a private person and resulted in his/her arrest, the investigating member will explain the circumstances to the Chief of Public Safety for a decision as to whether:
1. The accused person should be arrested forthwith.
 2. Criminal action should be delayed pending further investigation.
- F.** If a member of this department is arrested by any other law enforcement agency, the Chief of Public Safety shall be notified immediately and an investigation begun.
- G.** The Chief of Public Safety shall be kept constantly apprised of the status of each personnel investigation, and upon completion of such investigation, shall review each case including the recommendation of the supervisor, and then take appropriate action.

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1. The complainant and the affected employee shall be notified in writing of the results of the investigation and the disposition of the case.
 2. A copy of the disposition shall be placed in the Internal Investigation (I.A.) case file and may also be placed in the employee's personnel file.
- H.** Data collected, created, received, and maintained in connection with this policy and procedure shall be governed by the Minnesota Data Practices Act. Such data will be maintained in accordance with the Police Department's Retention Schedule. Specific procedures governing files are as follows:
1. Each incident will be assigned an internal complaint control number which will accompany all originals of the case. This number will consist of year, month, day, and alpha designation, i.e., 090101A for the first case or the year originating January 1, 2009.
 2. All documentation and information relating to disciplinary complaints will be maintained in an administrative file separate from the department's criminal justice records system.
 3. Data relating to criminal complaints against a member, whatever the finding, will be entered and maintained in the department's criminal justice records system and as such will be assigned an original case number through that system.
 4. The accused member will receive a summary report which sets forth the complaint, essential facts revealed from the investigation, disposition, and recommended disciplinary action. A copy of this summary sheet will be placed in the Internal Investigation (I.A.) case file.
 5. Notification to the complainant should be provided in writing stating the disposition of the complaint and whether or not disciplinary action was taken. The specific disciplinary action taken should not be released.
 6. Either the complainant or the accused member within fifteen (15) days after notification of the disposition may request the Chief of Public Safety, for good cause, to reopen the investigation. If no such request is made, the disposition is considered final.