Professional Standards and Internal Affairs Complaint Investigation

Eff. Date ~~02/03/2025~~

Complaint Acceptance and Investigation

1. General Purpose

   It is essential that public and employee confidence be maintained in the ability of the Madison Police Department (MPD) to investigate and properly resolve complaints against its employees, policies, or procedures. It is also essential that the rights of the employee, as well as those of the public, be preserved. Therefore, the MPD is committed to investigating complaints in a fair manner with the truth as the primary objective.

   Community member complaints of code of conduct or procedural violations or alleged officer misconduct will be entered into the Professional Standards & Internal Affairs (PSIA) records system, including service complaints. All complaints will be given a PSIA investigation number.

2. Employee's Responsibility

   When involved in an investigation, employees are required to cooperate fully, answer questions truthfully, and to provide material and relevant statements to the investigating supervisor or commander.

3. Supervisory Responsibility

   Supervisors assigned to investigate a complaint against an employee are responsible for conducting a thorough and fair investigation, and for respecting the dignity of all persons involved.

4. Guideline for Complaint Acceptance

   All community member complaints will be reviewed and/or investigated as appropriate. Where a significant time delay has elapsed from the time of the incident to the time of the complaint, the complaint will be reviewed/investigated as best as possible given the available information (witness recollection, physical evidence, etc.).

5. Prompt Disposition of Complaints

   Investigations of complaints against employees will be prompt. The disposition of PSIA investigations will be within 90 days of the assignment of the complaint. An extension of these time limits may be granted by the Chief of Police.

6. False Complaints of Police Misconduct

   Per Wisconsin (WI) Statute 946.66(2), whoever knowingly makes a false complaint regarding the conduct of a law enforcement officer is subject to a Class A forfeiture.

Responsibility For Accepting/Referring Complaints

Every employee has the responsibility to ensure that a community member complaint is received and is referred to the appropriate unit or supervisor.

Methods Available For Receiving Community Member Complaints

The methods available for receiving complaints from community member are listed below:

1. Verbal complaints can be tendered by a complainant either personally or by telephone.
2. A complainant may tender a complaint in writing or online on the MPD's website. A community member will not be required to submit a complaint in writing.
3. A community member may file a complaint against a commissioned employee with the Board of Police and Fire Commissioners, as provided in WI Statute 62.13.
4. A community member who has complaints against any MPD Code of Conduct provision or standard operating procedure (SOP) of MPD will be directed to submit their complaint in writing to the office of the Chief of Police.

Anonymous complaints will be accepted and investigated based on the available information.

Responsibility of Supervisor Receiving Community Member Complaints

1. Supervisors receiving community member complaints will obtain the nature of the complaint and a description of the events in question.

2. If the incident in question can be readily resolved because there are no disputed facts and because there is not an allegation of a significant Code of Conduct violation (i.e., alleged criminal conduct, excessive use of force, or other violations that if sustained would result in a letter of reprimand or more severe disciplinary action), the supervisor may document the circumstances and forward their investigative documentation/recommendation to their command staff for review. Command staff will review the investigation and forward to PSIA for final disposition.

3. A supervisor taking a complaint with an allegation of significant misconduct shall document the nature and description of the allegation, as well as the contact information for witnesses. This will be submitted to PSIA by entering it into the PSIA records system via Blue Team. The supervisor should then follow the appropriate command notification protocol.

Allegations of Criminal Activity, Serious Misconduct, and Critical Incidents

1. In all cases where a felony or other serious misconduct is alleged, the following individuals will be contacted as soon as possible:

    a. The Chief of Police
    b. The PSIA Lieutenant
    c. The employee's commanding officer

2. The investigation into significant allegations will begin as soon as possible upon receipt of the complaint.

3. Employee statements will generally not be compelled until after review by the District Attorney's Office in any case with the potential for criminal liability.

4. If the investigating supervisor determines that there may be probable cause for a criminal violation, the case shall be forwarded to the District Attorney's Office for review. This does not preclude an immediate physical arrest if there is a threat to public safety.

5. Allegations of criminal conduct that are unclear may be taken to the District Attorney's Office for informal review at the investigator's discretion.

6. The same legal standards regarding Miranda warnings shall be applied to employees as would be applied to individuals not employed by the MPD.

7. Employees involved in significant misconduct, which could result in discipline, termination, or criminal charges, shall be offered services from the City's Employee Assistance Program (EAP). This does not preclude offering employee assistance services in other disciplinary matters.

Investigative Responsibility

1. PSIA will review, intake/document, and assign complaints.

2. PSIA will ensure that the Chief of Police and the employee's commanding officer have been notified of significant complaints.

3. **Category A** (as listed in PSIA Discipline Matrix) allegation investigations will generally be assigned to the employee's assigned work group supervisor or district command for investigation. Upon completion of the investigation, the investigating supervisor will contact PSIA to ensure consistency with similar investigations and that matrix guidelines have been followed.

4. **Category B** (as listed in the PSIA Discipline Matrix) allegation investigations **may** be sent to the assigned employee's work group supervisor or district command for investigation. PSIA will confer with the employee's commanding officer or supervisor to determine the most appropriate venue for investigation.

5. PSIA will typically investigate all **Category C, D, and E** (as listed in the PSIA Discipline Matrix) allegations.

6. When the PSIA investigator is unavailable or unable to conduct an investigation, a commanding officer assigned by the Chief of Police or their designee will be responsible for the investigation.

7. The Chief of Police reserves the right to request PSIA investigate allegations at any category level when circumstances merit.

8. Notification of the involved employee will be completed at the discretion of the investigating supervisor in order to protect the integrity of the investigation.

9. In cases where community member complaints are filed against arresting officers, the investigation of an allegation will generally be conducted promptly. However, the investigation may be suspended, only at the discretion of the Chief of Police, until the court proceedings are completed. In these cases, a notice will be placed in the case file, and the involved employee, and their commanding officer shall be notified.

10. In cases of potential criminal conduct when it is necessary to assign additional investigators, the PSIA unit will be kept informed as to the progress and details of the investigation and assigned investigators.

11. When there are allegations of insubordinate or disrespectful behavior towards a supervisor, the commanding officer of the involved employee will designate someone other than the directly involved supervisor to investigate. In other instances when the appearance of an interpersonal conflict exists, the commanding officer of the involved employee may designate a non-involved supervisor to conduct the investigation.

12. The investigating supervisor will forward the file to the employee's commander for review. PSIA will review all complaint investigations/dispositions and will brief the Chief (or designee) of final disposition.

13. For all internal investigations, PSIA will ensure that:

    a. The investigation was conducted in a fair, dignified, and thorough manner in accordance with Chapter 164 and Sec. 62.13, Wis. Stat.
    b. All documents of a completed investigation shall be forwarded through the chain of command to the PSIA office for review and entry into the PSIA records system.
    c. The investigation was completed within the allowable time period.

Steps in a Complaint Investigation

1. Complaint received.

2. Complaint entered into the PSIA records system. Contact PSIA to discuss the case and determine investigative venue.

3. Conduct investigation. Interview witnesses, review police reports, etc.

   a. In all cases, the investigator shall review available information to determine if a Code of Conduct violation occurred. When a complainant or witness fails to follow through with the investigating supervisor, the attempts to contact the complainant/witness shall be documented in the record.

   b. Interview notice should be sent to the employee(s) alleged to have committed the violation with at least 48 hours' notice, when appropriate. An employee must be allowed to contact a representative in any interview if desired. Interview notice is not required for coaching, mentoring, training, feedback, interviews of employee witnesses, or basic fact finding.

   c. In cases where the allegations, if proven true, would likely result in discipline, interviews with the officer(s) alleged to have committed the violation will be audio recorded. This does not apply to instances where the factual circumstances of the incident are clear and undisputed, or if recording the interview is impractical. Interviews may also be recorded at the employee's request or if other circumstances indicated that recording is appropriate.

   d. The decision to audio record interviews with victims, witnesses, or complainants will take the following factors into account:

      i. The severity of the allegation
      ii. The complexity of the allegation
      iii. The location of the interview
      iv. The relevance of the interview to the investigation/allegation
      v. The willingness of the interviewee to have the interview recorded

      When the allegations, if proven true, would likely result in discipline, complainant interviews should be recorded unless it is impractical to do so or the complainant declines to have the interview recorded.

   e. Interviews of key witnesses in significant investigations should be recorded when possible.

   f. Employees should be informed of and referred to the City's EAP.

   g. Employees may be ordered to not discuss their involvement in an investigation with others. Such an order should only be imposed for the length of time reasonably necessary. It is not the MPD's intent to restrict employee rights to prepare a defense to a complaint filed against them.

4. If the preliminary finding is a sustained SOP or Code of Conduct violation and the Chief is considering discipline ~~that may result in discipline~~, a pre-determination hearing will be scheduled.

   a. A pre-determination notice should be sent to the employee (and MPPOA President, MPPOA Vice President, and employee's respective Captain ~~representative if a representative has previously been involved~~) at least one (1) week before the hearing.

   b. In lieu of a personal appearance/hearing, the employee can opt to submit a written response. A written response may be submitted in addition to the hearing, but must be submitted at least 24 hours before ~~or at~~ the time of the hearing. The employee is allowed to have a representative present during the hearing if so desired.

c. Pre-determination findings should document any mitigating or aggravating factors that employee discussed in pre-determination response.

5. The district/section Captain of the employee shall conduct a command review of the final investigation. The Captain will review the investigation and may direct further investigative steps if warranted. Once reviewed, the district/section Captain will forward the investigation and recommended finding to PSIA for final review with the Chief.

6. A discipline meeting will be held with PSIA, the employee's command staff, and the Chief of Police.

7. The Chief of Police has final authority on all discipline decisions.

8. The employee will be notified in writing of any discipline. The complainant will be notified of the final outcome of the case as well (in the manner in which they prefer to be contacted).

9. If a complainant is not satisfied with the outcome of the investigation, they should be advised that they have the option to pursue their complaint to the Police and Fire Commission.

Complaint Disposition

Upon completion of an investigation, the investigating supervisor will make a conclusion for each allegation from among the following dispositions:

1. Exonerated: The alleged incident occurred, but was lawful and in accordance with MPD Code of Conduct and standard operating procedures.

2. Unfounded: The evidence shows that the alleged conduct did not occur.

3. Not Sustained: The allegation is not supported by a preponderance of evidence.

4. Sustained: A preponderance of evidence shows that the action of the employee was not consistent with MPD Code of Conduct, standard operating procedure, or City of Madison Administrative Procedure Memoranda (APM).

Seven Tests For Just Cause

The Chief of Police must show "Just Cause" when issuing discipline to a sworn employee. In any internal investigation resulting in discipline, per Wis. Stat. Sec. 62.13, there are seven "Just Causes" that must be met:

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.

2. Whether the rule or order that the subordinate allegedly violated is reasonable.

3. Whether the Chief of Police, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did, in fact, violate a rule or order.

4. Whether the effort described under sub. 3 was fair and objective.

5. Whether the Chief of Police discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.

6. Whether the Chief of Police is applying the rule or order fairly and without discrimination against the subordinate.

7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the Chief of Police's department.

Police Bill of Rights

Wis. Stat. Sec. 164.02 provides guidance on police interviews as it relates to the Police Bill of Rights.

(1) *If a law enforcement officer is under investigation and is subjected to interrogation for any reason which could lead to disciplinary action, demotion, dismissal, or criminal charges, the interrogation shall comply with the following requirements:*
   (a) *The law enforcement officer under investigation shall be informed of the nature of the investigation prior to any interrogation.*
   (b) *At the request of any law enforcement officer under interrogation, he or she may be represented by a representative of his or her choice who, at the discretion of the officer, may be present at all times during the interrogation.*

(2) *Evidence obtained during the course of any interrogation not conducted in accordance with sub. (1) may not be utilized in any subsequent disciplinary proceeding against the law enforcement officer.*

Professional Staff Employees

All employees are expected to adhere to MPD Code of Conduct, standard operating procedures, and City of Madison Administrative Procedure Memoranda (APM). This SOP describes the complaint investigation process for all employees; however, discipline matters resulting from a sustained finding involving non-commissioned personnel follow the overall City of Madison Personnel Rules.

Cooperation With Investigations Required Notice

In some cases where there is a possibility of criminal liability and an employee is interviewed, the employee shall be given an MPD memo called **"Cooperation with Investigation Required."**

This memo advises that although employees are required to cooperate in an internal investigation (Code of Conduct #20), that the employee's statement cannot be used against the employee in any subsequent criminal proceedings. If a statement is going to be ordered from an employee, the following procedure will be adhered to:

1. PSIA will order the officer(s) to provide a statement. The order will be documented in writing.
2. The interview will be audio recorded and transcribed.

Suspension

Should an employee be suspended without pay, the order shall be issued by the Chief of Police. Disciplinary actions against commissioned personnel requesting demotion or dismissal will be filed by the Chief of Police with the PFC, pursuant to Wis. Stat. Sec. 62.13.

Disciplinary actions against professional staff employees will be in accordance with the relevant City Ordinances.

Notification/Documentation

After the imposition of a sanction or discipline, the imposing supervisor will direct a memorandum drafted by PSIA to the employee ~~with a copy to PSIA~~ indicating the complaint number, employee involved, policies violated, ~~and~~ date and the type of sanction or discipline imposed. A copy of this memorandum will be placed in the employee's PSIA file.

Notification of Disposition ~~Decision~~

Following completion of a complaint investigation, the employee who is the subject of the complaint and the complainant(s), shall be informed in writing of the disposition by PSIA or by the Commander/Manager of the employee. This notification should be made as soon as possible, but not later than 10 days following completion of the investigation and command review procedure. Notification to the complainant shall be documented and attached to the PSIA case file.

For investigations with an unfounded, exonerated, or not sustained finding, PSIA will provide notice to the employee, their respective Captain or Manager (Professional Staff), and MPPOA President and Vice President.

For investigations with a sustained finding, PSIA will provide notice to the employee's respective Captain or Manager and the Captain or Manager will notify the affected employee of the sustained complaint disposition.

The Police and Fire Commission will be notified of any dispositions involving suspension of a sworn employee. Such notification will be made immediately upon issuing the suspension to the employee.

Professional Standards & Internal Affairs Records

1. PSIA will maintain secure, electronic records of:
   a. All PSIA complaints
   b. All received complaints, including dispositions
   c. Complaints against professional staff employees
   d. Expired work rules/performance improvement plans
   e. Documentation of verbal and documented counseling

2. No records of complaints resulting in the dispositions of unfounded, exonerated, or not sustained will be maintained in an employee's personnel file.

3. PSIA records will not be released from the MPD without approval from the Chief of Police.

Administration of Sanctions/Discipline

Methods of correcting inappropriate behavior may range from counseling, where the immediate effect is on the individual, to corrective sanctions, or termination of employment, where the positive effect is in the reassurance to other employees and the community that unacceptable conduct will not be tolerated. In each case, care must be exercised to obtain a desired and just result and to ensure the uniform application of corrective action, including discipline, department-wide.

Role of the EAP

MPD recognizes that problems in the workplace may be related to alcoholism, other drug dependency, emotional disorders, or other personal problems. In order to address problems such as these, MPD has an EAP. Employees are encouraged to use the program as a prevention measure, as well as a parallel system to the disciplinary process.

PSIA Summaries

Quarterly summaries will be sent out to all MPD personnel, as well as to the local media on all PSIA cases regarding sustained complaints that result in discipline. Employees will not be named in these summaries. The summaries will include the PSIA case number, allegation, description, disposition, and discipline.

An individual summary may be sent out in cases that are deemed to be significant in nature. If an employee's alleged conduct is serious and "public" in nature and it is determined to be a sustained violation, the MPD may release the employee's name in a separate, individual summary. The Madison City Attorney's office will be

consulted and will review the summary. This will be weighed on a case-by-case basis in determining the public's right to know about the conduct.

Rules of Wis. Stat. Sec. 19.356 “Notice to Record Subject” will be followed if employee’s name is to be released. This statute requires that an employee be notified in writing if the employee’s name is to be released. A copy of the record released will be provided at the time of the notification to the employee. The notification may occur in person or by certified mail. This statute also allows for an employee to challenge the records release in circuit court. The notice will be served on the employee according to statutory time requirements.

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