

CITY OF ONALASKA POLICE DEPARTMENT

Policy: Citizen Complaint and Internal Investigations

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I. PURPOSE

This policy establishes the internal affairs function of the Onalaska Police Department and identifies the purpose and procedures for conducting investigations and complaints against the Police Department or its employees.

II. POLICY

It is the policy of the Onalaska Police Department to insure that the integrity of the agency and its employees is maintained. This shall be accomplished through an internal system of investigation and review founded on objectivity, fairness and justice. This internal investigative process shall be invoked in accordance with the following policy and procedure.

III. DISCUSSION

The internal affairs function is important for the maintenance of professional conduct in a law enforcement agency. The integrity of the agency depends on the personal integrity and discipline of each employee. To a certain degree the public opinion of the agency is determined by the quality of the internal affairs function in responding to allegations of misconduct by the agency or its employees.

The department welcomes citizens to bring forward legitimate grievances regarding misconduct by its employees. The department also recognizes that malicious and deliberate false accusations are occasionally made against the agency or its employees. Whoever knowingly makes a false complaint regarding the conduct of a law enforcement officer is subject to a Class A forfeiture, state statute 946.66(2). Nevertheless, all complaints shall be investigated in accordance with the policy and procedure to instill public confidence in the agency.

IV. DEFINITIONS

- A. **Procedural Complaint:** A complaint based on actions that, if performed properly, are acceptable according to legal guidelines and department policy; e.g. complaints over towing vehicles, parking, traffic enforcement, etc.
- B. **Level 1 Misconduct Complaint:** A complaint based on allegations of less serious misconduct by employees of the department. Examples of less serious misconduct include, but are not limited to, rudeness or verbal abuse by an officer, traffic infractions by an officer, minor rules and regulations violations, etc. Another determinant of less serious misconduct is that the alleged action, if sustained, could result in disciplinary action ranging from verbal reprimand to limited suspension.
- C. **Level 2 Misconduct Complaint:** A complaint based on allegations of more serious misconduct by employees of the department. Examples of more serious misconduct include, but are not limited to, corruption, brutality, misuse of force, breach of civil rights, criminal misconduct or repeated acts of less serious misconduct. Another determinant of more serious misconduct is that the alleged action, if

sustained, could result in disciplinary action which includes significant suspension, dismissal or criminal charges.

- D. **Anonymous Complaint:** A complaint where the person(s) making the complaint refuse to identify themselves, wishes to remain anonymous, or says they don't want anything done.
- E. **Third Party Complaint:** Citizens, including relatives, who are not directly involved in the matter or incident in questions.
- F. **Informal Inquiry:** A meeting between supervisory personnel and an employee who has become the subject of a procedural or misconduct complaint for the purpose of mediating the complaint or discussing the facts to determine whether a formal investigation should be initiated.
- G. **Internal Investigation:** The process of investigating alleged acts of misconduct that, if sustained, may be the basis for filing administrative charges.
- H. **Criminal Investigation:** The process of investigation into alleged acts of misconduct that, if sustained, may be the basis for filing criminal charges.

V. PROCEDURE

A. Internal Affairs

1. The Chief shall be responsible for investigating and/or monitoring allegations of misconduct by department employees and maintaining records of all complaints against the agency and its employees.
2. The Chief may select other supervisory department employees or utilize other law enforcement agencies to assist with conducting investigations of complaints against the department or its employees.

B. Authority and Responsibility Regarding Internal Affairs

1. **Individual Responsibility**
 - a. Each employee shall perform his/her duties and assume the obligations of his/her rank in the investigation of complaints or allegations of misconduct against any member of the department.
 - b. Each employee shall cooperate fully with the Chief or any other department member conducting such an investigation.
 - c. Any employee who has, or is alleged to have, knowledge of circumstances surrounding an internal investigation or informal inquiry shall submit a written report on the matter upon request by the Chief or any other member conducting such an investigation.
2. **Non-Supervisory Personnel**
 - a. When misconduct is observed or complaints of misconduct are received by non-supervisory personnel, such members shall immediately notify a supervisor of the matter.
3. **Supervisory Personnel**

- a. When misconduct is observed or complaints of misconduct are received by a supervisor, that person shall immediately initiate a preliminary investigation into the matter in accordance with this policy.
- b. Upon initiation of the investigation, the initiating supervisor shall notify the Chief as soon as practical.
- c. Supervisory personnel shall complete a thorough investigation when directed to do so by the Chief.
- d. Supervisors shall maintain the confidentiality and security of internal affairs investigations and records.
- e. Upon completion of an investigation, a supervisor shall make recommendation to the Chief of Police regarding final disposition of the matter.

4. Chief of Police

- a. The Chief shall record, register and control the investigation of all complaints against department personnel.
- b. The Chief shall conduct investigations of alleged or suspected misconduct within the department or assign the investigation to a supervisor. If assigned to a supervisor, the Chief shall supervise and control the investigation.
- c. The Chief shall maintain the confidentiality and security of internal investigations and internal affairs records.
- d. The Chief shall review recommendations for disciplinary action and will take such action as deemed appropriate.
- e. Nothing in this policy diminishes the authority of the Chief to order suspensions, terminate temporary or probationary employees or to file charges with the Police and Fire Commission irrespective of recommendations made by subordinates.

C. Citizen Complaint Report

- 1. Generally, complaints received more than thirty (30) days from date of occurrence will be heard, but not documented, unless there is an allegation of a criminal act or ordinance violation by a member of the department.
- 2. For each complaint against the department or its employees, the receiving supervisor shall complete a Citizen Complaint Report (see Appendix B) and forward copies to the immediate supervisor and to the Chief.
- 3. The Chief and the immediate supervisor shall use the Citizen Complaint Report to determine further action regarding the complaint. In situations where the complaint can be immediately resolved through an informal inquiry, the report shall serve as the only record of the complaint.
- 4. The Onalaska Police Department will accept complaints from those who are directly involved with the matter or incident in question. Concerns from parents of dependent children will also be heard. Other than the parents of dependent children, the department will not allow third parties to

file Procedural or Level 1 Misconduct Complaints. Level 2 Misconduct Complaints from a third party will be accepted at the Chief's discretion.

5. The Chief shall maintain a file of all Citizen Complaint Reports.

D. Handling the Anonymous Complaint

1. The Constitution of the State of Wisconsin and the United States recognize that one accused of wrongdoing is entitled to face his or her accuser. In view of this basic right, anonymous citizen complaints will be handled as follows:
 - a. It is recognized that anonymous complaints can come in the form of a written letter, telephone call, or e-mail. Those called in by telephone shall be put into a written form by the person receiving the telephone call.
 - b. As a general rule, anonymous complaints will not be investigated.
 - c. The written complaint will be shared with the employee against whom the allegations have been made.
 - d. The anonymous complaint will then be filed in the department's "general" complaint file.
 - e. Exception to the general rule (see b above):

If the anonymous complaint alleges that an employee has violated any city or county ordinance or a state law, a complete investigation of the complaint shall be made. If, after the investigation, the complaint is proven to be true, the Chief of Police may take the appropriate disciplinary action.

Anonymous complaints that allege that an employee violated an ordinance or a state law, which cannot be substantiated by investigation, will be filed in the department's "general" complaint file.

E. Complaint Investigation

1. All complaints against the department or its employees will be courteously received and thoroughly investigated, excluding anonymous complaints (See Section V.D. Anonymous Complaints) and complaints received more than 30 days after occurrence.
2. Upon receipt of a complaint and completion of the Citizen Complaint Report, the receiving supervisor shall initiate a preliminary investigation into the matter, to include requesting a written statement from the complainant.

He/she shall also take any action that may be immediately required; e.g. take steps to prevent further misconduct from occurring.
3. The supervisor will forward copies of his/her report(s) to the Chief. The Chief shall determine whether the complaint is based on procedure, Level 1 misconduct or Level 2 misconduct and whether the complaint would best be resolved through an informal inquiry, internal investigation or criminal investigation.

- F. Procedural and Level 1 misconduct complaints will generally be handled by the officer's immediate supervisors. These complaints will usually be addressed through informal inquiry resulting in discipline ranging from verbal reprimand to limited suspension. Upon completion of the investigation of procedural

and Level 1 misconduct complaints, the supervisor shall forward a copy of the Citizen Complaint Report containing the final disposition to the Chief. This report shall be included in the internal affairs files.

G. Level 2 misconduct complaints shall require notification of the Chief as soon as possible. Upon reviewing the complaint, the Chief shall complete an Internal Investigation Report and either conduct the internal investigation, assign the investigation to a supervisor or utilize another law enforcement agency. When the investigation is assigned to another, the Chief shall supervise completion of the investigation.

1. When the employee is notified that he/she is the subject of an internal investigation, he/she shall be informed of the allegations and his/her rights and responsibilities relative to the investigation.
2. Regardless of who conducts the investigation, prior to interviewing the employee(s) identified in the complaint, consideration shall be given to the likelihood that criminal charges or department disciplinary action are possible outcomes of the investigation. This will enable the investigator to ensure that the involved employee is extended all rights appropriate to the situation.
3. Absent exceptional circumstances, internal investigations shall be completed within 30 days of the receipt of the complaint.
4. Upon conclusion of the investigation, the Chief shall insure that the complainant is advised of the final outcome of the internal investigation. For lengthy investigations an effort shall be made to communicate the status of the investigation to the complainant on a periodic basis.

H. Rights of Employee Under Investigation

1. When an employee is notified that he/she has become the subject of an internal investigation, the employee shall be informed of the allegations and his/her rights and responsibilities related to the investigation.
2. The rights of an employee under investigation shall be determined by the nature of the investigation. Rights associated with an administrative investigation shall differ from those associated with a criminal investigation. In a situation where the investigation may result in criminal charges being preferred against the employee under investigation, the employee shall be afforded rights consistent with a criminal investigation.
3. During an internal investigation for strictly administrative purposes, an employee may be compelled to answer questions directly related to his/her official duties. Answers received in such a manner may not be used in a criminal proceeding involving the employee. Prior to any questioning, the employee shall be read the standardized "Administrative Investigation Rights" that appear in Appendix A of this policy.
4. After reading the Administrative Investigation Rights, the employee will be asked if they would like a representative present for those matters that could lead to possible disciplinary action.
5. The following guidelines apply to an interview during an investigation for strictly administrative purposes.
 - a. The purpose of the investigation is to obtain information to determine whether disciplinary action is warranted. The answers obtained may be used in disciplinary proceedings resulting in reprimand, demotion, suspension or dismissal.
 - b. All questions asked of the employee under investigation that are specifically related to employment must be fully and truthfully answered. Refusal to answer may result in disciplinary action, up to and including termination.

- c. No Miranda Rights are required.
 - d. As determined by Garrity v. New Jersey, 385 U.S. 483, 87 S.Ct. 616 (1967), the employee has no Sixth Amendment right to counsel as the interview does not serve a criminal prosecution.
6. During a criminal investigation involving an employee, the investigator shall perform the following prior to any interview with the accused employee.
- a. Advise the employee of Miranda Rights.
 - b. Advise the employee that if he/she asserts his/her rights not to answer questions, no adverse administrative action will be taken based upon the refusal. Gardner v. Broderick, 392 U.S. 273, 88 S.Ct. 1913, 1916 (1968), indicates that a public employee may not be fired for asserting his/her Fifth Amendment right not to incriminate himself/herself.
 - (1) If the employee decides to answer questions at this point, the responses may be used in both criminal and disciplinary proceeding.
 - (2) The Miranda admonition includes the provision that a lawyer may be present at an interview. While technically the employee has no right to counsel until the employee has been criminally charged or his/her freedom of action has been deprived, the department wishes the employee to have the option. The department wishes no possibility to arise in which its actions might be construed as coercive.

I. Status of Employee Under Investigation

- 1. Release from Duty. If the condition of an employee is such that a supervisor deems that he/she should not be performing police duties, or if the alleged misconduct is of such a serious nature that the best interest of the department and the community would be served by the employee being relieved from duty, the supervisor shall place the employee on administrative leave with pay and provide the employee with instructions for reporting to the department.
- 2. Administrative suspension may continue pending the outcome of an investigation if the Chief deems it in the best interest of the department and the community.

J. Complaint Adjudication

- 1. The Chief will classify completed internal investigations using the following guidelines:
 - a. Substantiated: The allegations are supported by sufficient evidence to conclude they are true.
 - b. Not substantiated: Insufficient evidence to either prove or disprove the allegations.
 - c. Unfounded: Investigation indicates that the allegations are false.
 - d. Exonerated: Investigation indicates that the incident occurred but was justified, lawful and proper under the circumstances.
 - e. Policy failure: The investigation reveals that the allegations are true, however, the employee was acting in accordance with established department policy.

2. Complaints that are substantiated will be placed in the employee's personnel file, including all investigatory documents relevant thereto.
3. All not-substantiated complaints (b, c, d, e above) shall be placed in the "general" complaint file.
4. All investigations relating to unsubstantiated complaints will be maintained in the department's "general" complaint files. As a general rule, these internal affairs files shall be maintained for a period of seven (7) years.

K. Complaint Notification of Disposition

1. The Chief of Police or designee shall inform the complainant named in the complaint in writing of the disposition and the reasons therefore within a reasonable period of time.

L. Appeal Procedures

Employees wishing to appeal the outcome of any internal investigation shall do so according to the grievance procedure established by the collective bargaining unit and the City of Onalaska and/or all applicable laws.

M. Complainant's Right to a Commission Hearing

1. As part of the written notification of the disposition of the complaint, the Chief of Police or designee shall inform the complainant that if not satisfied with the results of the investigation, he/she may, within 30 days of the date of such notification, file a written request with the President of the Board of Police and Fire Commissioners, for a formal hearing on the complaint before the Board.

N. Conflict with other laws

It is intended that the provisions of this policy be consistent with any applicable laws, collective bargaining agreements and Police and Fire Commission procedures. In the event any provision of this policy is not so consistent, the applicable law(s), agreement or Police and Fire Commission procedures shall govern.

Randy A. Williams
Chief of Police

Date

APPENDIX A

ADMINISTRATIVE INVESTIGATION RIGHTS

I wish to advise you that you are being questioned as part of an official investigation of the police department. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all rights and privileges guaranteed by the laws and the Constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to departmental charges which could result in your dismissal from the police department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent departmental charges.

Do you want a representative present? _____

Yes

No

Employee

Chief/Supervisor

Time: _____

Date: _____

APPENDIX B

ONALASKA POLICE DEPARTMENT
CITIZEN COMPLAINT FORM

Nature of the Complaint: _____

Officer(s) Involved: _____

Receiving Supervisor: _____

Date/Time of Incident: _____

Date/Time Reported: _____

Location of Incident: _____

Related Incident Numbers: _____

Complainant Information - Name: _____

DOB: _____ Address: _____

Phone: _____

Witness Information - Name: _____

DOB: _____ Address: _____

Phone: _____

Details of the Complaint: _____

Officer's Response: _____

Supervisor's Assessment of Complaint Validity: _____

Supervisor's Recommendations: _____

Chief's Review: _____

Final Disposition: _____ Date: _____

Citizen Contacted with Disposition:

Date: _____ Time: _____ In Person: _____ By Phone: _____

APPENDIX C

CITIZEN COMPLAINT STATEMENT FORM

Complainant Name _____ DOB _____

Address _____ Phone _____

I, _____, give the following statement to _____ of the Onalaska Police Department. I am making this statement freely and voluntarily and understand that:

1. The Onalaska Police Department has an obligation to investigate the alleged wrongdoing of any of its employees and will investigate the situation or circumstances as I have presented them in my statement.
2. The officer involved in this situation may be subject to discipline by the Onalaska Police Department and/or prosecuted for violations of the law.
3. I may be subpoenaed and required to testify under oath in a civil or criminal proceeding pertaining to my statements.
4. The making of a false complaint against a law enforcement officer which I do not believe to be true is subject to a Class A forfeiture, state statute 946.66(2).

Knowing this, I hereby give the following statement:

The above statement is true and correct to the best of my knowledge. Any erasures, strikeouts, additions or corrections have been initialed.

Signature (Full Name)

Date/Time

Witness

Date/Time