



CRYSTAL POLICE DEPARTMENT

TITLE: Allegations of Misconduct
NUMBER: 2.8
DATE: April 15th, 2016
NO. PAGES: 7

I. PURPOSE

It is the policy of the Crystal Police Department that any person who believes that an employee of this agency has acted improperly may bring a complaint to the chief law enforcement officer's attention pursuant to the following procedure. This policy serves to provide citizens with a fair and impartial avenue to have complaints against Crystal Police Department members addressed.

II. DEFINITIONS

For the purpose of this policy the terms set forth below are defined as follows:

- A. **Chief Law Enforcement Officer** means the chief of police or a designee. Within this policy, the chief law enforcement officer will be referred to as CLEO.
- B. **Complainant** means a person who submits a complaint to the CLEO alleging misconduct by a Crystal Police Department member.
- C. **Complaint Form** means the official form of the Crystal Police Department used to formally address misconduct or concerns on the part of a Crystal Police Department member.
- D. **Complaint** is the classification given to a complaint form that alleges misconduct, which if found to be sustained, would amount to a policy violation, civil rights violation, or criminal violation that could result in discipline.
- E. **Performance Matter** is the classification given to a complaint form that alleges actions / omissions, which if found to be sustained, would not be classified as misconduct. Complaint forms may be classified as performance matters due to the following considerations;
 - 1. The complaint form refers to a minor rule violation

2. The alleged conduct is likely to be resolved by training, coaching, and counseling
3. There is no evidence of bad faith or intentions of wrongdoing
4. There is no known pattern of similar conduct by the member
5. Examples of performance matters are attitude, demeanor, courtesy, tardiness and attendance issues.

F. *Member* means all voluntary and compensated personnel of the Crystal Police Department.

G. *Discipline* means:

1. oral reprimand,
2. written reprimand,
3. suspension,
4. demotion,
5. discharge.

Discipline does not include employee coaching sessions or supervisory file entries.

H. *Exonerated* means a preponderance of the evidence established that the act(s) that provided the basis for the complaint occurred; however, the investigation or inquiry reveals that such act(s) were justified, lawful, or proper.

I. *Not Sustained* means the investigation or inquiry failed to disclose sufficient evidence to prove or disprove the allegations made in the complaint.

J. *Sustained* means a preponderance of the evidence obtained in the investigation or inquiry established that the accused member's actions constituted misconduct.

K. *Unfounded* means a preponderance of the evidence obtained in the investigation or inquiry established that the act(s) complained of did not occur, or the member complained about was not involved.

L. *Formal Statement* means the questioning of a Crystal Police Department member in the course of obtaining a recorded, stenographic or signed statement to be used as evidence in a disciplinary proceeding against the agency member.

M. *Respondent* means any Crystal Police Department member, whether full-time, part-time, temporary or voluntary, against whom a complaint has been filed.

N. *Misconduct* means:

1. a violation of any Crystal Police Department policy and procedure governing conduct of agency members;
2. a criminal violation of any ordinance or law;
3. conduct which violates a person's civil rights;

4. Intimidation or retribution toward a complainant or witness involved in any complaint proceeding.
- L. *Policies and Procedures*** mean the administrative rules adopted by the Crystal Police Department regulating the conduct of agency members, including the Crystal Police Department Policy Manual and the City of Crystal Policy Manual.
- M. *Shall / Will*** means, as used herein, that the action is mandatory.
- N. *May*** means that the action is permissible.
- O. *Receiving authority*** means the person who receives the complaint when the subject of the complaint is a CLEO.

III. PROCEDURE

A. INITIATING COMPLAINT

1. Anyone who has personal knowledge of facts or reliable hearsay information may file a complaint form. Any Crystal Police Department member who has personal knowledge of misconduct shall file a complaint form according to the procedures stated herein.
2. The CLEO shall report to the Peace Officer Standards and Training Board any action, inaction, or condition of an agency member which the CLEO reasonably believes would constitute grounds for disciplinary action under any of the Peace Officer Standards and Training Board's regulatory provisions.
3. Upon receiving a verbal, email, or telephone complaint/concern about a member of the Crystal Police Department, any supervisor or the CLEO shall ask the complainant what he/she wants done about his/her concern/complaint. In many cases, the complainant wishes to have the issue addressed with coaching. This request shall be honored unless the CLEO or supervisor determines that the complaint needs further investigation, may warrant discipline, or the complainant requests to file a complaint form. No complaint form shall ever be refused by a member of the Crystal Police Department. Supervisors / the CLEO may assist a complainant in the completion of the complaint form upon request of the complainant.
4. If the person making a complaint sets forth specific believable facts supporting an allegation of misconduct but wishes to remain anonymous, the CLEO receiving the complaint may, with sole discretion, permit the complainant to remain anonymous. In this instance the CLEO shall sign the complaint as the complainant. If the CLEO has reason to believe the complaint is unfounded, the CLEO shall have the authority to require an anonymous complainant to identify himself/herself. If that complainant refuses to do so, the CLEO may refuse to accept a complaint and shall advise the anonymous person of that fact.
5. After a signed complaint form is received, the CLEO shall copy the document keeping the original for the agency and providing a copy to the complainant. The

CLEO may forward a copy of the document to the respondent only after it is determined that the notification will not impede a criminal or internal investigation.

6. A complainant may be accompanied by an attorney or other representative at the time a complaint is filed or at any other stage of the process.
7. Any complaint made against a chief of police shall be forwarded to the city manager.

B. THE INVESTIGATION OF A COMPLAINT

1. Upon receipt of the Complaint Form the CLEO shall sort complaint forms in to two categories; *complaint* and *performance matter*.
2. *Performance Matter* is the classification given to alleged actions / omissions described in a complaint form, which if found to be sustained, would amount to a minor policy violation that can be remedied through training, coaching, and counseling. Performance Matters may be assigned to a CLEO's designee to conduct a preliminary inquiry. The designee will report back to the CLEO with the findings of the inquiry. Based upon receipt of inquiry findings, the CLEO may chose to order additional investigation, or assign a supervisor to perform corrective action / coaching. Complaint forms that are ultimately handled as performance matters will not receive a disposition. Complainants shall be notified when their complaint form is assigned as a performance matter.
3. *Complaint* is the classification given to alleged misconduct described in a complaint form, which if found to be sustained, would amount to a policy violation, civil rights violation, or criminal violation that could result in discipline.
4. Many complaints can be handled through an inquiry into facts sourced from recorded media, police reports, information in the complaint form, witness statements, CAD data, and dispatch information. If a disposition of a complaint can be reached through and inquiry, a formal internal affairs investigation is not required.
5. The CLEO will determine if a formal internal affairs investigation is required. All formal internal affairs investigations will receive an administrative internal affairs case number. Factors that determine whether a formal investigation is required include, but are not limited to;
 - a) Seriousness of the allegations.
 - b) If the facts of the incident are not known, or are in dispute.
 - c) When discipline of a member resulting in loss of employment or income is possible.
 - d) If criminal charges on a member are possible
 - e) The investigation requires that a formal recorded statement be taken from the respondent.

6. If the CLEO determines that a formal internal affairs investigation is required a designee will be assigned to investigate the complaint. The designee shall be a trained internal affairs investigator. When the CLEO determines an external investigation is appropriate the complaint will be assigned to an external agency or firm for investigation.
7. The CLEO may suspend a respondent with pay at any time during the investigation of a complaint.
8. As soon as possible after being assigned the complaint for inquiry or investigation, the complainant shall be notified of the investigator's name, business phone number and the status of the complaint.
9. The respondent who is the subject of a formal internal affairs investigation may be notified of the investigation and presented with a summary of the allegations, unless such notification would disrupt or interfere with the internal affairs investigator's ability to conduct a thorough and impartial investigation. The respondent shall be presented with a summary of the allegations, list of alleged violations, and a brief description of the details of the complaint prior to giving a formal statement.
10. The investigator shall thoroughly investigate all allegations contained in the complaint and any other potential misconduct discovered in the course of the investigation. If the investigation reveals potential misconduct by another Crystal Police Department member the investigator shall report that fact to the CLEO or, in the case of a complaint against a CLEO, the city manager.
11. All Crystal Police Department members shall cooperate with the investigation. When the respondent is a licensed peace officer the investigation shall comply with the requirements of MN STAT 626.89 (Police Officer Discipline Procedures Act) and acts amendatory thereto.
12. Any member who receives an order to keep confidential the details, status, or existence of a formal internal affairs investigation or the incident which is being investigated, is subject to discipline for violating said order.
13. The investigator shall prepare a report which will contain all relevant information organized into the following three (3) sections.
 - a) *Allegations*: an itemized summary of the acts of misconduct alleged in the complaint. Reference shall be made to those rules, procedures, orders, statutes, or constitutional provisions that would be violated if the allegations are taken as true.
 - b) *Investigation*: a chronological summary of the investigation including all pertinent facts obtained through interviews with the complainant, accused agency member and all available witnesses. Written statements, descriptions and analysis of any physical evidence, and all other relevant information shall be included.
 - c) *Conclusions*: the investigator's findings, conclusions as to whether any misconduct occurred and the underlying reasons for the finds and conclusions.

14. The investigation shall be completed within forty-five (45) days of the filing of the complaint unless the CLEO determines there is cause to grant an extension to the investigation time.
15. A complaint received through the Minnesota Board of Peace Officer Standards and Training will be handled pursuant to this policy; the Board will be advised of the status of the complaint upon completion of any investigation or issuance of a disposition.

C. ADDITIONAL INVESTIGATION, REVIEW AND DISPOSITION

1. Upon completion of the investigation or inquiry into a complaint the investigator/designee shall submit a report, case file and all investigative notes to the CLEO. The CLEO may require additional investigation or assign one of the following dispositions: “exonerated,” “not sustained,” “sustained,” or “unfounded”
2. The CLEO may postpone making a decision until any related criminal charges are resolved. The complainant and respondent may be informed of this decision, unless disclosure of this information would impede the criminal or internal investigation.
3. If the decision is “exonerated,” “unfounded” or “not sustained” the CLEO shall notify the complainant and the respondent of the decision.
4. If the complaint is “sustained” the CLEO will:
 - a) issue findings of fact including a summary of the acts constituting misconduct and the specific statutes, policies, regulations and procedures violated; and
 - b) take appropriate remedial and/or disciplinary action including training, counseling, oral reprimand, written reprimand, suspension, demotion, or discharge.
5. Prior to the implementation of remedial and/or disciplinary action the respondent will be provided with a copy of the findings of fact. The CLEO and/or appropriate person shall review the findings of fact with the respondent and explain the reasons for the remedial and/or disciplinary action. If the disciplinary finding results in suspension, demotion, or discharge, the CLEO shall provide an opportunity for the member to hear / respond to disciplinary findings.
6. The investigation may be re-opened by the CLEO at any time if substantial new evidence is discovered concerning the complaint.
7. When a “sustained” disposition is final the respondent may appeal the disposition pursuant to the rules and law governing the accused member's employment, and the procedures included in the labor contract.
8. In the case of “sustained” complaint disposition, the complainant shall be notified of the disposition after a final disposition is assigned and all appeals have been exhausted.

D. MAINTENANCE AND DISCLOSURE OF DATA

- 1.** Disclosure to the public, complainant, and respondent of data collected, created or received by the Crystal Police Department in connection with this policy and procedure shall be governed by the provisions of the MN Government Data Practices Act. Retention of data collected or maintained in connection with this policy shall be retained in accordance with the Crystal Police Department's "Record Retention Schedule."
- 2.** All data collected, created, or received by the Crystal Police Department in connection with this policy and procedure shall be maintained in accordance with the "Record Retention Schedule."
- 3.** The placement of the disposition report or other data in an employee's personnel file shall be governed by the City of Crystal's personnel policy.
- 4.** Access to data collected, created, or received in connection with this policy and procedure may only be authorized by the CLEO or the agency's Data Practices "Responsible Authority," and as provided by Chapter 13, the "Minnesota Government Data Practices Act," or valid court order.