



Edina Police Operations Manual

Policy Number
365.00

Subject:
INVESTIGATION AND RESOLUTION OF MISCONDUCT ALLEGATIONS

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02/12/2020

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PURPOSE:

To provide a procedure for the investigation and resolution of complaints regarding the conduct of employees of the Edina Police Department.

365.01

GENERAL STATEMENT OF POLICY

It is the policy of the Edina Police Department to receive complaints involving the conduct of its employees when a person believes that a law enforcement act or conduct of a department employee is improper.

365.02

DEFINITIONS

For the purposes of this section the following terms are defined as:

Subd. 1 Complaint

A communication, written, verbal or otherwise, alleging that a department member has engaged in an act that constitutes misconduct or violates federal/state law, city code or department policy.

Subd. 2 Complainant

A person who files a complaint with the department alleging misconduct or improper conduct by an employee of the department including any aggrieved party who assists the person in filing the complaint.

Subd. 3 Witness

A person who can produce evidence, relevant to an incident of alleged misconduct.

Subd. 4 Finding(s) Conclusion(s)

Results of the investigation of misconduct.

Subd. 5 Discipline

Oral reprimand, written reprimand, suspension, demotion, change of assignment or termination.

Subd. 6 Misconduct

Any act or omission by an employee or appointee of the department that may result in disciplinary action. This may be a violation of a rule, procedure or order of the department policy or it may be a violation of a law, whether codified by city code or federal/state laws. Examples of such acts or omissions include, but are not limited to:

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- a) Incompetence or negligence in the performance of duty.
- b) Insubordination
- c) Use of offensive conduct or language toward the public, city officials or employees.
- d) The use of abusive, insulting language or conduct which is derogatory of a person's race, religion, lifestyle, gender or national origin.
- e) Carelessness or negligence in the use, handling, control or protection of city property.
- f) Dishonesty in the performance of duties.
- g) Asking for, expecting, or accepting compensation, gifts, or gratuities unless approved by the chief of police.
- h) Engaging in harassment, intimidation or practical jokes that may discomfort another employee.
- i) Violation of federal, state or city statutes/ordinances/codes defining criminal offenses.
- j) The use of unnecessary or excessive force.
- k) Abuse of authority.
- l) Conduct that violates a person's civil rights.
- m) Failure to act, negligence or failure to carry out a duty.
- n) Continued violations of department policies.
- o) Conduct which threatens the safety of the public or of department personnel.
- p) Conduct of an employee, on or off duty, which seriously violates ordinary, reasonable rules or expectations of good conduct, and would bring discredit or embarrassment to the employee and the department.

Subd. 7 Disposition

The status assigned to the case following the conclusion of the investigation to include:

a) Non-regulated Conduct

Conduct that does not violate a federal/state statute, city code, city personnel rule, or department policy, procedure, rule or regulation.

b) Not Sustained, Exonerated

The disposition assigned to a complaint where the alleged incident did occur but was lawful and proper or conduct that has been determined by the chief of police to not adversely reflect upon the department or the employee.

c) Not Sustained, Inconclusive

The disposition assigned to a complaint when there is insufficient evidence to prove or disprove an allegation.

d) Not Sustained, Unfounded

The disposition assigned a complaint when the allegation upon which the complaint is based is false, untrue or not supported by evidence.

e) Sustained

The disposition assigned to a complaint when the allegation is supported.

365.03 PROCEDURE**Subd. 1 Receipt of Complaint**

- a) All written complaints shall be on EPD form 2200 to report all instances of alleged employee misconduct prior to the initiation of this procedure.
- b) Unresolved complaints of non-regulated conduct, conduct infraction and misconduct shall be forwarded to the chief of police by the on-duty supervisor as soon as practical.
- c) The chief of police shall formally classify complaints and implement this procedure.

365.04 NOTIFICATION TO EMPLOYEE

- Subd. 1** The chief of police shall inform the employee using EPD form 2210, that a complaint has been received and that this procedure is in effect, except, at such times that a criminal investigation is in effect or when such notification would impede the investigation.

365.05 INVESTIGATION OF THE COMPLAINT

- Subd. 1** The primary responsibility of the investigation lies with the investigative lieutenant, unless the chief of police has reason to assign another department member as the Investigator designee. This designee shall perform all functions which would have been performed by the investigative lieutenant.
- Subd. 2** The chief of police shall initiate a criminal investigation if criminal elements are found to exist for such an action.

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- Subd. 3** The investigative lieutenant will commence the investigation based on the allegations contained in EPD form 2200. If during the investigation other misconduct is discovered, this misconduct shall be investigated. Newly discovered misconduct shall be reported to the chief of police and appropriate employee notification made.
- Subd. 4** The investigative lieutenant shall investigate and report all aspects of the case in a manner that is fair and impartial to all concerned.
- Subd. 5** Any statements taken from a complainant or witness by the investigative lieutenant shall contain the following questions, and responses from the witness:
- a) Is this a true and correct statement to the best of your knowledge?
 - b) Do you understand that any false statement made by you regarding this investigation could result in criminal or civil penalties?
- Subd. 6** When conducting a formal statement with the employee, upon the request of the employee, the employee may be allowed, without unreasonable delay, to have their union representative or attorney present during the interview. The employee's representative shall act as an observer and not take an active part in the interview. The employee shall not be allowed to read other reports nor have access to other information obtained during the investigation without prior approval of the chief of police. The formal statement shall be recorded.
- Subd. 7** In accordance to [MN SS 626.89 Subd.7](#); an officer's formal statement may not be taken unless there is filed with the employing or investigating agency a written complaint signed by the complainant stating the complainant's knowledge, and the officer has been given a summary of the allegations.
- Subd. 8** Conversations concerning the investigation should not be discussed with anyone except the staff assigned to the investigation or persons who have information concerning the case. Employees interviewed shall be directed not to discuss the case with anyone except the assigned investigator.
- Subd. 9** The investigative lieutenant shall complete the investigation expeditiously and submit the report to the chief of police.
- Subd. 10** EPD Forms 2220 and 2220-A shall be used for administrative statements.
- Subd. 11** The Investigative Lieutenant shall be familiar with and follow the procedures established in MSS [626.89](#), (Peace Officers Discipline Procedures Act).

365.06 FINDING(S)/CONCLUSION(S) REPORT

- Subd. 1** A Finding(s)/Conclusion(s) Report shall be prepared by the investigative lieutenant and should include:

- a) A summary of the act or acts constituting misconduct and the specific statutes, rules, orders or constitutional provisions violated.
- b) A summary of the investigative findings.
- c) The number of witnesses interviewed as well as witnesses, by name, who were suggested for interviewing by the complainant.
- d) The extent of physical evidence examined and the findings of such examination.
- e) A recommendation of disciplinary or remedial action to be taken to prevent recurrence of the misconduct.
- f) As much additional information as the chief of police may find applicable or other information that may have a bearing on the investigation.

Subd. 2 The Finding(s)/Conclusion(s) Report shall be delivered to the chief of police.

365.07 **DISPOSTION**

Subd. 1 The chief of police shall be responsible for the assembly of all pertinent information for the formulation of a disposition.

Subd. 2 Dispositions of sustained complaints may include, but are not limited to:

- a) Remedial action including coaching, counseling and training
- b) Oral reprimand
- c) Written reprimand
- d) Suspension with or without pay
- e) Demotion
- f) Change of assignment
- g) Termination

Subd. 3 Dispositions may be delayed due to criminal proceedings.

Subd. 4 If the decision is 'exonerated' or 'not sustained', the chief of police shall notify the complainant and the respondent of the decision.

Subd. 5 If the complaint is 'sustained' the chief of police will conduct an administrative hearing and will:

- a) In accordance to [MN SS 626.89 Subd. 5](#); before the administrative hearing has begun, provide the employee a copy of the signed complaint.

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- b) Issue findings of fact including a summary of the acts constituting misconduct and specific statutes, city codes, policies, regulations or procedures violated.
- c) Offer the employee an opportunity to present their version of the event or mitigating evidence associated to the allegation or investigation.
- d) Take appropriate remedial and/or disciplinary action.

365.08 APPEALS/RIGHT TO APPEAL

Subd. 1 Appeals of the disposition and/or discipline shall be made in accordance with contractual organized labor agreements when applicable or as set forth in the Edina Employee handbook. These include:

- a) Contractual grievance and arbitration, if applicable
- b) Appeals process, City of Edina Employee Handbook - step four

Subd. 2 Choice of remedy shall be declared by the employee at the time of appeal. An appropriate signed statement shall indicate this choice precluding the aggrieved employee from making subsequent appeal through another choice.

365.09 MAINTENANCE AND DISCLOSURE OF DATA

Subd. 1 The placement of the Findings Report or other data in an employee's personnel file shall be governed by any applicable employee labor agreement and/or the City of Edina's Employee Handbook and in compliance with state and federal law.

Subd. 2 All data collected, created, or received by the department in the connection with this policy shall be maintained in accordance with the City of Edina's record retention schedule.

Subd. 3 Access to data collected, created, or received in connection with this policy may only be authorized by the department head or as the City of Edina's Data Practices Responsible Authority and as provided by [Chapter 13](#), "Minnesota Government Data Practices Act," or valid court order.