500.07 ALLEGATIONS OF MISCONDUCT

PURPOSE

The purpose of this policy is to inform all personnel and members of the public of the procedures for reporting, receiving, investigating, and resolving misconduct complaints regarding licensed peace officers employed by the Janesville Police Department. The provisions of this policy are applicable to the investigation and disposition of allegations of administrative misconduct. This policy does not apply to criminal investigations.

POLICY

It is the policy of the Janesville Police Department to accept and to fairly and impartially investigate all complaints of misconduct to determine the validity of allegations; and to impose any corrective action that may be justified in a timely and consistent manner.

DEFINITIONS

Administrative Investigation: means an internal investigation conducted in response to a complaint with the goal of determining whether a peace officer engaged in misconduct.

Chief Law Enforcement Officer (CLEO): has the same meaning given to it in MN Administrative Rule 6700.0100, subpart 8.

Complainant: means a person who submits a complaint to the agency or CLEO alleging misconduct by a peace officer.

Complaint: means a statement alleging behavior that constitutes misconduct.

Discipline: means any of the following or a combination thereof:

- oral reprimand,
- written reprimand,
- suspension,
- demotion, and/or
- discharge.

Exonerated: means a fair preponderance of the evidence established that either:

- the peace officer named in the complaint was not involved in the alleged misconduct, or
- the act(s) that provided the basis for the complaint occurred; however, the investigation revealed that such act(s) were justified, lawful, or proper.

Member: means all voluntary and compensated personnel of the agency.

Misconduct: means 1) a violation of an agency policy or procedure governing peace officer conduct or 2) conduct by a peace officer that would be a violation of the POST Standards of Conduct per MN Administrative Rule 6700.1600.

Not Sustained: means the investigation failed to disclose sufficient evidence to prove or disprove the allegations made in the complaint

Policy Failure: means that the complaint revealed a policy failure. The allegation is factual, but the peace officer followed the agency's proper policy/procedure. The policy/procedure is proven to be deficient.

Policies and Procedures: refers to the administrative rules adopted by the agencyregulating the conduct of agency personnel.

Receiving Authority: means the entity who receives and is required to investigate the complaint when the subject of the complaint is a CLEO.

Respondent: means an individual who is the subject of a complaint investigation.

Sustained: means a fair preponderance of the evidence obtained in the investigation established that the peace officer's actions constituted misconduct.

Unfounded: means there is no factual basis for the allegation. The act or acts alleged didnot occur.

PROCEDURE

ACCEPTANCE AND FILING OF COMPLAINTS

Complaint forms must be made available to members of the public through agency personnel, at designated public facilities, and online. Complaints may be received in person, by telephone, in writing, or via the internet. A complainant may remain anonymous but should be advised that remaining anonymous may affect the investigation of the complaint. 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. Personnel must provide assistance to individuals who express the desire to lodge a complaint. The complainant must be advised of the procedures for submitting the complaint and be provided with a copy of their submitted complaint. The complainant should be asked to verify and attest that their complaint is complete and accurate to the best of their knowledge by signing the complaint form. If the complainant elects not to sign, this fact shall be documented and the complaint processed

according to department policy. The CLEO will forward a copy of the written complaint to the respondent only after it is determined that the complaint does not allege a criminal violation. A CLEO or Receiving Authority may delegate the duties and responsibilities required of a CLEO by this policy to an appropriate designee(s).

Any complaint made against a chief of police must initially be made to the city administrator, manager, or mayor. Any complaint made against a sheriff must initially be made to the county attorney, the county administrator, or the board of county commissioners. The city administrator, manager, mayor, county attorney, county administrator, or board of county commissioners must refer investigations of alleged misconduct against a CLEO to a neutral, external investigative entity such as another law enforcement agency or a private investigative firm/organization. The external investigative entity shall not have a discernible conflict of interest.

INVESTIGATION OF A COMPLAINT

Upon receipt of the complaint, the CLEO must make an initial determination as to whether or not the facts alleged require an administrative investigation. The CLEO's determination needs to be based on current agency policies and MN Administrative Rule 6700.1600. If the CLEO decides that an investigation is not required, the disposition of the complaint must be cleared as "unfounded," "not sustained," or "exonerated." The complainant and the respondent will both be notified of this decision and the basis for the determination. If the complainant supplies additional information within thirty (30) days of that initial determination, the CLEO may re-review the complaint and choose to reverse the previous decision and order an administrative investigation.

If the CLEO determines an administrative investigation is required, an appropriate designee will be assigned to investigate the complaint. When the CLEO believes an external investigation is appropriate or when the CLEO is the subject of the complaint, the investigation will be assigned to a neutral, external investigative entity that has no discernible conflict of interest.

The complaint investigator must inform the complainant of his or her name, business phone number, and the status of the complaint as soon as possible after being assigned the investigation. The investigator must 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 agency member, the investigatormust report that fact to the CLEO or, in the case of a complaint against a CLEO, the appropriate city administrator, manager, mayor, county attorney, county administrator, or board of county commissioners. At the completion of the administrative investigation, the investigator shall prepare a report organized in the following manner:

- **Allegations**. The "allegations" section of the report should be an itemized summary of

the acts of misconduct alleged in the complaint. The summary must also include all/any rules, procedures, orders, statutes, or constitutional provisions that would be violated if the allegations were to be sustained.

- **Investigation.** The "investigation" section of the report should be a chronological summary of the investigation and include all pertinent facts obtained through interviews with the complainant, accused agency personnel, and all available witnesses. Written statements, descriptions, analysis of any physical evidence, and all other relevant information must be included in this section.
- **Conclusions.** The "conclusions" section of the report should detail the investigator's findings and conclusions as to whether any misconduct occurred. If misconduct did occur, the report should state which provisions were violated and the underlying reasons for the investigator's findings and conclusions.

All agency personnel must cooperate with administrative investigations. When the respondent is a licensed peace officer, the investigation must comply with the requirements of MN Statute 626.89, the [*officer's*] collective bargaining agreement, and any other applicable laws, administrative rules, or policies. The investigation should be completed within thirty (30) days of the filing of the complaint unless the CLEO or Receiving Authority determines there is good cause to grant an extension. The complainant and respondent must be informed of any extension given to the investigative process.

REVIEW AND DISPOSITION

Upon completion of the investigation, the investigator must submit the report, case file, and all investigative notes to the CLEO or Receiving Authority. The CLEO or Receiving Authority may make a request for additional investigative work or make one or more of the following determinations regarding the complaint:

- unfounded,
- exonerated,
- not sustained,
- sustained, and/or
- policy failure.

The CLEO or Receiving Authority may postpone making a decision until any related criminal charges are resolved. If a determination is postponed, the complainant and respondent must be informed of the decision.

If the decision is "unfounded," "exonerated," "not sustained," or "policy failure" the CLEO or Receiving Authority must notify the complainant and the respondent of the disposition as soon as practical. If the complaint is "sustained" the CLEO or Receiving Authority will:

- issue findings of fact including a summary of the acts constituting misconductand the specific statutes, policies, regulations, and/or procedures violated,

- impose an appropriate remedial plan and/or disciplinary action, and
- advise the complainant of any public information regarding the disposition.

Prior to the implementation of any remedial and/or disciplinary action, the respondent must be provided with a copy of the findings of fact. The CLEO, Receiving Authority, and/or designee must review the findings of fact with the respondent and explain the reasons for the remedial and/or disciplinary action. When a "sustained" disposition is finalized, the respondent may appeal the disposition pursuant to the rules and law governing the accused member's employment.

An administrative complaint investigation may be re-opened by the CLEO or Receiving Authority at any time if substantial new evidence is discovered concerning the complaint.

MAINTENANCE AND DISCLOSURE OF DATA

The public disclosure of any data connected to an investigative complaint process created or received by the agency in connection with this policy and procedure is governed by the provisions of the MN Government Data Practices Act. All data collected, created, received, or maintained by the agency in connection with this policy must be retained in accordance with the agency's "Record Retention Schedule." Likewise, the placement of the disposition report or other data related to the complaint investigation in an employee's personnel file must be governed by the agency's personnel policy. The access to data collected, created, received, or maintained in connection with this policy may only be authorized by the CLEO, the "Responsible Authority," the "Minnesota Government Data Practices Act," or by a valid court order.

POST BOARD REPORTING REQUIREMENTS

According to MN Administrative Rule 6700.1610, a licensed peace officer must self-report any Standards of Conduct violations to the POST Board. The rule also states that an unlicensed person with knowledge of peace officer misconduct constituting grounds for action under MN Statute, chapter 14, or MN Administrative Rule 6700.1600, may report the violation to the Board.

According to Administrative Rule 6700.1615, subpart 2, when a CLEO confirms that a peace officer employed by the agency has violated a board-required policy or the Standards of Conduct, the CLEO must report the violation to the POST Board in a timely manner.

MN Statute 626.8457, subdivision 3, requires CLEOs to report to the POST Board any confirmed allegations of misconduct by a peace officer of their agency. CLEOs must report the incident to the board as soon as a determination has been made that a violation occurred. CLEOs must update the information submitted to the board within 30 days after the final disposition of a complaint or investigation has been issued. Law enforcement agencies and political subdivisions are prohibited from entering into a confidentiality agreement that would

prevent disclosure of the data identified in MN Statute 626.8457, subdivision 3, paragraph (b) to the POST Board. Any such confidentiality agreement is void as to the requirements of this section.

MN Statute 626.8457, subdivision 4, requires CLEOs to cooperate with the POST Board after receiving written notification from the board that it is investigating an allegation of misconduct within its regulatory authority. Cooperation includes providing an individual peace officer's public and private data related to the allegation(s) of misconduct when requested by the board.

STATUTORY REFERENCES

- MN STATUTE 626.8457 – Professional Conduct of Peace Officers
- MN STATUTE 626.89 – Peace Officer Discipline Procedures Act
- MN STATUTES; CHAPTER 14 – Administrative Procedure
- ADMINISTRATIVE RULE 6700.1600 – Standards of Conduct
- ADMINISTRATIVE RULE 6700.1610 – Reporting Obligations and Cooperation
- ADMINISTRATIVE RULE 6700.1615 – Required Agency Policies
- ADMINISTRATIVE RULE 6700.2200 – Development of Written Procedures
- ADMINISTRATIVE RULE 6700.2300 – Affirmation of Compliance
- ADMINISTRATIVE RULE 6700.2400 – Copies of Procedures
- ADMINISTRATIVE RULE 6700.2500 – Documentation of Complaints
- ADMINISTRATIVE RULE 6700.2600 – Processing of Complaints