

Personnel Complaints / Internal Investigations

1010.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Missoula Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1010.2 POLICY

The Missoula Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state, and local law and municipal ordinances and the requirements of any collective bargaining agreements.

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

1010.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

1010.3.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

Inquiry - A matter in which the complainant is merely seeking clarification of a policy or procedure.

Complaint - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the Office of Professional Standards, depending on the seriousness and complexity of the investigation.

1010.3.2 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.

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- (b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.

1010.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1010.4.1 COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public area of the police facility and be accessible through the department website. Forms may also be available at other City facilities.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

1010.4.2 ACCEPTANCE

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

1010.5 DOCUMENTATION

Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Department should audit the log and send an audit report to the Chief of Police or the authorized designee.

1010.6 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows.

1010.6.1 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor

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is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Chief of Police or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
 - 1. The original complaint form will be directed to the Office of Professional Standards, who will take appropriate action and/or determine who will have responsibility for the investigation.
 - 2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Captain or the Chief of Police, who will initiate appropriate action.
- (b) Responding to all complaints in a courteous and professional manner.
- (c) Resolving those personnel complaints that can be resolved immediately.
 - 1. Follow-up contact with the complainant should be made as soon as reasonably practicable.
 - 2. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Office of Professional Standards.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Shift Commander and Chief of Police are notified via the chain of command as soon as practicable.
- (e) Promptly contacting a Lieutenant or above for direction regarding the supervisor's role in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
- (f) Forwarding unresolved personnel complaints to the Office of Professional Standards, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Informing the complainant of the investigator's name and the complaint number within a reasonably practicable time after assignment.
- (h) Investigating a complaint as follows:
 - 1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
 - 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (i) Ensuring that the procedural rights of the accused member are followed.

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- (j) Ensuring interviews of the complainant are generally conducted during reasonable hours.

1010.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or a member of the Office of Professional Standards, the following applies to employees:

- (a) Interviews of an accused employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, he/she shall be compensated.
- (b) Unless waived by the employee, interviews of an accused employee shall be at the Missoula Police Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused employee.
- (d) Prior to any interview, an employee should be informed of the nature of the investigation.
- (e) All interviews should be for a reasonable period and the employee's personal needs should be accommodated.
- (f) No employee should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
- (g) Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
 - 1. An employee should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a *Garrity* advisement. Administrative investigators should consider the impact that compelling a statement from the employee may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).
 - 2. No information or evidence administratively coerced from an employee may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (h) The interviewer should record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview should be provided to the employee prior to any subsequent interview.
- (i) All employees subjected to formal interviews that could result in discipline of any employee have the right to have an uninvolved representative present during the interview. However, to maintain the integrity of each individual's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.

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- (j) All employees shall provide complete and truthful responses to questions posed during interviews.
- (k) No employee may be compelled to submit to a lie detector examination, nor shall any refusal to submit to such examination be mentioned in any investigation (§ 39-2-304, MCA).

1010.6.3 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete, and essentially follow this format for the Complaint Investigation Report:

Introduction - Include the identity of the members, the identity of the assigned investigators, the initial date, source of the complaint, associated call for service (CFS) number(s) if applicable, and assigned complaint number.

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

Summary - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

Investigation - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

Findings or Conclusion - A recommendation regarding further action or disposition should be provided.

References or Exhibits - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

The Complaint Findings Report includes:

Introduction - Include the identity of the members, the identity of the assigned investigators, the initial date, source of the complaint, associated call for service (CFS) number(s) if applicable, and assigned complaint number.

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

Summary - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

Findings or Conclusion - A recommendation regarding further action or disposition should be provided.

1010.6.4 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

No finding - When the investigation cannot proceed because the complainant failed to disclose promised information to further the investigation or the complainant wishes to withdraw the

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complaint or the complainant is no longer available for clarification. This finding may also be used when the information provided is not sufficient to determine the identity of the officers or employees involved.

Inquiry - If during the investigation, it is determined that a citizen is merely requesting clarification of a policy or procedure, the complainant with the concurrence of the investigating supervisor's commanding officer maybe considered an inquiry.

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded.

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained - The investigation failed to discover sufficient evidence to clearly prove or disprove the allegations made.

Sustained - When the investigation disclosed a preponderance of evidence to prove the allegation(s) made.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations. These additional findings shall not be disclosed to the original complainant.

1010.6.5 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within 30 days from the date of assignment by an individual authorized to initiate an investigation. Additional time may be provided to the investigator based on sufficient reasoning and approval of a supervisor.

1010.6.6 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation should notify the complainant within 10 days and provide the complainant with periodic updates on the status of the investigation, as appropriate.

1010.6.7 COMPLAINTS ALLEGING RACIAL PROFILING

The Chief of Police or the authorized designee is responsible for reviewing all written complaints of racial profiling. The Chief of Police or the authorized designee shall ensure that the complainant is notified that the complaint was received and notified of the results of the review as required by § 44-2-117, MCA.

1010.7 ADMINISTRATIVE SEARCHES

Administrative searches shall be conducted in accordance with the Administrative Search policy.

1010.8 ADMINISTRATIVE LEAVE

All administrative leave will be administered in compliance with policy Administrative Leave policy.

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1010.9 INTERNAL / CRIMINAL INVESTIGATIONS

Internal investigations can be initiated for any reason but only by the Chief of Police or designee. Common examples include use of force cases, gross misconduct, criminal activity by an officer or family member, or any major complaint investigation as defined in this policy.

1. An Internal Investigation will be investigated by a Lieutenant or higher.
2. The Professional Standards Lieutenant will handle most Internal Investigations unless unavailable.
3. All Internal Investigations will be conducted in accordance with the Officer's Bill of Rights found in the Collective Bargaining Agreement
4. Internal investigators will not make recommendations concerning subsequent disciplinary action as a result of their findings. Resulting discipline will be determined by the Chief of Police or his designee.
5. If, based upon the alleged misconduct, a criminal investigation is initiated by the Missoula Police Department, a separate internal investigation may be initiated
 - a. If an internal investigation is conducted simultaneously with the criminal investigation, the investigations must be done by separate investigators.
 - i. If information and materials gained from an internal investigation have been gained because an officer was compelled to make a statement pursuant to Garrity Rights, the information and materials may not be used in a criminal investigation. Information and materials gained from a criminal investigation may and should be used in the internal investigation.
 - b. If a criminal investigation is initiated and/or conducted by an outside agency, an internal investigation may be conducted in parallel with the criminal investigation.
 - c. In the case of a criminal investigation the determination of charges will be handled by the appropriate prosecutorial authority.
 - d. The Missoula Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action shall be taken until an independent administrative investigation is conducted.

All Missoula Police Department personnel, sworn or unsworn, have the duty to report known instances or allegations of gross misconduct by a Missoula Police Department employee to the first available supervisor. Any member of this department, who fails to report employee misconduct may be subject to disciplinary action up to and including dismissal from the department. Personnel may go outside the formal chain of command to directly report allegations of supervisor misconduct.

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1010.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the chain of command. Each level of command should review the report and include their comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

1010.10.1 CAPTAIN RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Captain of the involved member shall review the entire investigative file and may review the member's personnel file and any other relevant materials.

The Captain may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Chief of Police, the Captain may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Chief of Police, the Captain shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

1010.10.2 CHIEF OF POLICE RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Captain for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Chief of Police shall provide the member with a written notice and the following:

- (a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (b) Provide the member an opportunity to give notice of a potential grievance to the Chief of Police in the manner and time frame set forth in the Missoula Police Officer Association (MPOA) collective bargaining agreement. All grievance procedures will be adhered to as outlined in that collective bargaining agreement.

1010.10.3 NOTICE OF TERMINATION

When an officer is terminated from employment, the Chief of Police shall, at the time of termination, serve upon the officer a statement in writing that sets forth the cause or causes for the termination (§ 7-32-2108, MCA).

1010.10.4 NOTICE OF FINAL DISPOSITION

The Chief of Police or the authorized designee should ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint. The

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complainant, the involved member(s), and the member(s)' supervisor(s) shall be provided with a copy of the Complainant Findings Memo.

The Complainant Findings Memo is completed only by the Office of Professional Standards and includes:

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

Findings or Conclusion - A recommendation regarding further action or disposition should be provided.

1010.11 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

1010.12 POST-DISCIPLINE APPEAL RIGHTS

Employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment for non-probationary members. The employee has the right to appeal using the procedures established by any police commission, collective bargaining agreement and/or personnel rules (§ 7-32-4155, MCA).

1010.13 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

At-will and probationary employees and members other than non-probationary employees may be disciplined and/or released from employment without adherence to any of the procedures set out in this policy, and without notice or cause at any time. These individuals are not entitled to any rights under this policy. However, any of these individuals released for misconduct should be afforded an opportunity solely to clear their names through a liberty interest hearing, which shall be limited to a single appearance before the Chief of Police or the authorized designee.

In accordance with 7-32-221 Montana Code Annotated, Reserve Officers may be terminated at any time by written notification without any cause.

1010.14 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.

1010.15 NOTICE TO MONTANA PEACE OFFICER STANDARDS AND TRAINING (POST) COUNCIL

The Chief of Police or the authorized designee shall notify the Montana POST Council whenever any officer resigns or is terminated because of any disciplinary action. The notification shall be made within 10 days of the resignation or termination (§ 7-32-303, MCA).

In accordance with 23.13.703(4) Administrative Rule of Montana, the Department must make notification to the POST Council within 30 days of an allegation, or in making its own allegation

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of misconduct, the Department's investigation, action, ruling, finding, or response to any allegation and description of any remedial or disciplinary action pending or taken against the officer and a recommendation from the Department regarding whether POST should impose a sanction.