

APPLETON POLICE DEPARTMENT POLICY	TITLE: Personnel Complaints		
ISSUE DATE: 06-01-91	REVIEW DATE: 02-06-17	REVISED DATE: 02-06-17	SECTION: Administrative
POLICY SOURCE: Assistant Chief		TOTAL PAGES: 17	
SPECIAL INSTRUCTIONS: Amends: Internal Affairs / 08-06-12			
OTHER POLICIES REFERENCED: •Use of Force •City's Record Retention Policy			

I. PURPOSE

This policy establishes the personnel complaint function of the Appleton Police Department and identifies the purpose and procedures for conducting investigations of complaints against the department or its employees.

II. POLICY

It is the policy of the Appleton Police Department to ensure the integrity of the department and its employees is maintained. This shall be accomplished through an internal system of investigation and review founded on objectivity, fairness, and justice. This personnel complaints process shall be invoked for all complaints against the department or its employees and for serious misconduct allegations resulting from internal sources of information.

III. DISCUSSION

The personnel complaint function is important for the maintenance of professional conduct in a law enforcement agency. The integrity of a law enforcement agency depends on the personal integrity and discipline of each employee and the ability to respond to allegations of misconduct by the agency or its employees.

The Appleton Police Department encourages citizens to bring forward legitimate grievances regarding misconduct by employees. It also recognizes malicious and deliberate false accusations are occasionally made against the department or its employees. Nevertheless, all accusations must be investigated to protect the integrity of the department and its employees and to instill public confidence in the organization. In some cases, the extent of the investigation may be limited to substantiating the accusation is false.

IV. DEFINITIONS

- A. Criminal Investigation: The process of investigation into alleged acts of misconduct that, if sustained, may be the basis for filing criminal charges.
- B. Informal Complaint: A unit level review of a procedural or minor misconduct

complaint. An informal complaint may involve simple mediation of the complaint and/or a meeting with the officer for the purpose of determining the facts and the appropriate form of resolution.

- C. **Formal Complaint:** A matter in which a supervisor determines that a formal investigation of an employee who has become the subject of a serious misconduct, or minor misconduct, complaint is warranted.
- D. **Minor Misconduct Complaint:** A complaint based on allegations of minor misconduct by employees of the department. Examples of minor misconduct include rudeness or verbal abuse by an officer, traffic infractions by an officer, minor rules and regulations violations, etc. Another determinant of minor misconduct is that the alleged action, if sustained, could result in disciplinary action ranging from verbal counseling to a letter of reprimand.
- E. **Preliminary Investigation:** A fact-finding investigation designed to assist a supervisor in determining whether a complaint should be handled through the process of informal inquiry or internal investigation.
- F. **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, 2-5 parking, traffic enforcement, etc.
- G. **Serious Misconduct Complaint:** A complaint based on allegations of serious misconduct by employees of the department. Examples of serious misconduct include, but are not limited to the following:
- Corruption
 - Inappropriate or excessive force
 - Breach of civil rights
 - Exhibition of bias or harassment
 - Untruthfulness under oath, during an investigation, in a police report or about official matters
 - Repeated acts of minor misconduct or a minor misconduct allegation which may result in more than a letter of reprimand
 - Commission of a felony or serious misdemeanor
 - Insubordination
 - Solicitation of gifts or gratuities
 - Failure to report others who commit serious misconduct

Another determinant of serious misconduct is that the alleged action, if sustained, could result in disciplinary action to include suspension, dismissal, and/or criminal charges

V. PROCEDURE

A. Personnel Complaint Function

1. The Assistant Chief shall administer the personnel complaint function of the Appleton Police Department and shall maintain records of all formal complaints against the department and its employees in a secure setting.

B. Authority and Responsibility Regarding Personnel Complaints

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 fully cooperate with the person conducting an investigation involving a complaint or allegation of misconduct against any member of the department.
- c. Any employee who has, or is alleged to have, knowledge of circumstances surrounding a personnel complaint shall submit a written report on the matter upon request by the person conducting such an investigation.

2. Non-Supervisory Personnel

- a. When non-supervisory personnel observe misconduct, or receive complaints of misconduct, they shall immediately notify a supervisor of the matter.

3. Supervisory Personnel

- a. The supervisor shall immediately conduct a preliminary investigation into the matter to determine whether the complaint alleges serious or minor misconduct or is procedural in nature.
- b. Upon completion of a preliminary investigation, the initiating supervisor shall notify a member of Senior Command Staff as soon as practical. A determination will be made to proceed as an informal or formal complaint.
- c. Supervisory personnel shall complete a thorough investigation when directed to do so as part of the personnel complaint function of the department.
- d. Supervisors shall maintain the confidentiality and security of all records generated through the personnel complaint function of the

department.

4. Assistant Chief Responsibilities

- a. The Assistant Chief shall register all formal complaints against department personnel.
- b. The Assistant Chief shall apprise the Chief of Police of the existence, progress, and final outcome of each formal investigation initiated within the department.
- c. Upon conclusion of a formal investigation, the Assistant Chief shall review the investigation for thoroughness and make a recommendation to the Chief of Police.
- d. The Assistant Chief may serve on the Use of Force Review Team as a resource to ensure continuity in situations where concurrent investigations of a single incident are being conducted according to guidelines established in the policies entitled, Use of Force and Personnel Complaints. The Assistant Chief may request a use of force review for the purpose of reviewing an internal investigation based upon "use of force" that does not automatically fall under the jurisdiction of the use of force review team.

5. Chief of Police

- a. The Chief of Police shall review completed formal investigations and recommendations for disciplinary action to determine the final disposition of the investigation.
- b. Nothing in this policy diminishes the authority of the Chief of Police to order suspensions, terminate temporary or probationary employees, or to file charges with the Police and Fire Commission regardless of recommendations made by subordinates.

C. Personnel Complaint Process

1. All complaints against the department or its employees will be courteously received and thoroughly investigated. This shall include complaints received anonymously, as well as those reported by a citizen not directly associated with the complaint.
2. The supervisor receiving the complaint shall provide the complainant with a copy of the Personnel Complaint Process (APD form #195) as written verification that the complaint has been received for processing.

3. Upon receipt of a complaint, a supervisor shall initiate a preliminary investigation into the matter, and may prepare a Personnel Complaint Report (APD form #187), documenting his or her findings. The preliminary investigation may include such steps as:
 - a. Interviewing the complainant, reporting person, or witnesses
 - b. Collecting written statements
 - c. Reviewing documents or audio/visual tapes
 - d. Observing injuries or physical evidence supporting the allegation
4. The preliminary investigation shall result in a determination as to whether the complaint alleges serious misconduct, minor misconduct, or is procedural in nature.
5. Copies of the Personnel Complaint form shall be forwarded to the employee's immediate supervisor, unit commander and Assistant Chief.
6. The supervisor who took the complaint (if not the employee's direct supervisor) will coordinate the transfer of the investigation of allegations of minor misconduct or procedural complaints through the informal complaint process. The informal complaint should be conducted by the employee's immediate supervisor. If the immediate supervisor is unavailable for an extended period and the process cannot be delayed by this absence, the investigation should then be assigned by the unit commander in cooperation with the other unit commander(s) if necessary.
7. If the complaint alleges serious misconduct, the Assistant Chief or designee will initiate an internal investigation.
8. The Assistant Chief shall ensure the records confidentiality by maintaining a secure file of all citizen complaints and shall compile a summary of all complaints filed against the department and its employees on an annual basis.

D. Informal Complaint

1. The informal complaint process shall be used to investigate allegations of minor misconduct or complaints of a procedural nature.
2. The decision to resolve a citizen complaint through informal complaint shall be made following a preliminary investigation into the alleged misconduct or procedural concern and a determination that the matter does not involve serious misconduct.

3. The informal complaint process may involve mediation of the complaint with the citizen or reporting party, but will always involve an interview with the identified employee.
4. Prior to interviewing an employee regarding his or her involvement in a complaint alleging minor misconduct or a procedural concern, the inquiring supervisor shall advise the employee of the nature of the allegation and that the intent is to resolve the matter through the informal complaint process. The employee shall be permitted to have representation if he or she desires.
5. In the event an informal complaint will take more than 30 days to complete, the assigned supervisor shall provide the complainant with a status report, and will continue to do so, on 30-day intervals, thereafter.
6. Upon conclusion of an informal complaint, the unit commander shall take the following action:
 - a. Make a determination regarding the final disposition of the complaint
 - b. Notify the employee of the final disposition of the complaint
 - c. Notify the complainant of the final disposition of the complaint
 - d. Take any appropriate corrective action
 - e. Make any necessary entries into the Personnel Early Warning System

E. Formal Complaint

1. The formal complaint process shall be used to investigate allegations of serious misconduct and some minor misconduct allegations.
2. The investigation is a fact-finding process to determine the truth. The facts obtained may exonerate the employee or may be used as the basis for disciplinary action.
3. The decision to address a personnel complaint through formal investigation shall be made following a preliminary investigation into the alleged misconduct.
4. Upon determining through preliminary investigation that a personnel complaint involves an allegation of serious misconduct or some minor misconduct allegations, the supervisor shall notify the Assistant Chief.

This notification shall occur as soon as practical.

5. The Assistant Chief shall register the complaint, complete an investigation or assign a supervisor as an investigator, and notify the Chief of Police that a formal investigation has been initiated. The Assistant Chief shall monitor the complaint through its completion.
6. Once received, the Assistant Chief or designee shall conduct a thorough investigation, documenting it on an Internal Affairs Investigations form (APD form #196) and provide status reports to the Assistant Chief every ten business days until completion. Every effort shall be made to complete the investigation within 30 days. The Assistant Chief may grant extensions to the 30-day requirement.
7. During the course of the formal investigation, the assigned supervisor shall ensure the confidentiality and security of all information and records generated is maintained.
8. In the event a formal investigation will take more than 30 days to complete, the assigned supervisor shall provide the complainant with a status report, and will continue to do so at 30-day intervals, thereafter.
9. When an employee is notified that he or she is the subject of a formal investigation, the employee shall be provided a written notice of the allegations and his or her rights and responsibilities relative to the investigation. (Appendix C)
10. Upon conclusion of a formal investigation, the investigating supervisor shall forward the investigation for review and comment to the unit commander of the employee under investigation. The investigation shall then be forwarded to the Assistant Chief for final review and submission to the Chief.
11. Following a final ruling by the Chief, the Assistant Chief shall ensure the complainant and employee are advised in writing of the final outcome of the formal investigation.

F. Criminal Investigations

1. During the review of a preliminary investigation of alleged serious misconduct, the Assistant Chief shall consider the need for a criminal investigation. In the event a criminal investigation is deemed appropriate, the matter shall be assigned to the coordinator of the Investigative Services Unit. At the direction of the Chief, the assistance of an outside investigative agency may be sought.

2. The Investigative Services Unit Coordinator shall oversee the criminal investigation and report the investigative status to the Assistant Chief.
3. The Investigative Services Unit Coordinator shall ensure that liaison is maintained with the district attorney's office in investigations involving alleged criminal conduct on the part of an employee.
4. If a criminal investigation is initiated at any point following a review of a preliminary investigation alleging serious misconduct or the initiation of a formal investigation, all matters related to the formal investigation will be suspended pending the outcome of the criminal investigation.

G. Rights and Responsibilities of an Employee under Investigation

1. When an employee is notified that he or she is the subject of an internal investigation, the employee shall be provided a written notice of the allegations and his or her rights and responsibilities relative to the investigation. (Appendix C)
2. No Miranda rights are required.
3. The employee has no Sixth Amendment right to counsel, as the interview does not serve criminal prosecution.
4. During a formal investigation, an employee may be compelled to answer questions directly related to his or her official duties. All questions asked of the employee under investigation that are specifically related to employment must be fully and truthfully answered. Answers received in such a manner may not be used in a criminal proceeding involving the employee. Refusal to answer may result in disciplinary action.
5. Prior to any compelled questioning, the employee shall be read or provided the opportunity to read the "Administrative Investigation Rights" (APD form #154) that appear in Appendix A of this policy.
6. At the request of an employee under investigation, he or she may have a representative of his or her choice present during any interview.
7. In a situation where a formal investigation has been suspended in lieu of a criminal investigation, the employee shall be afforded rights consistent with a standard criminal investigation.
 - a. The investigating supervisor shall advise the employee of his or her Miranda rights.
 - b. The investigating supervisor shall advise the employee that if he or

she asserts his or her rights not to answer questions, no adverse administrative action will be taken based upon the refusal.

- c. If the employee decides to answer questions after being advised of his or her Miranda rights, the responses may be used in both criminal and administrative proceedings.

H. Investigative Tools and Resources

1. Polygraph Procedures

- a. All personnel shall be required to submit to a polygraph examination when ordered to do so by the Chief of Police and when the examination is specifically directed and narrowly related to a particular internal investigation being conducted by the department in accordance with §111.37 (5)(a) Wis. Stats. (Use of honesty testing devices in employment situations [exemptions]).
- b. When a citizen complaint is the basis for the investigation, employees shall not be required to submit to a polygraph unless the complainant first participates in a like examination.
- c. No employee shall be compelled to submit to a polygraph examination if, at any time, the investigator determines the investigation is likely to result in criminal charges being brought against the employee under investigation.

2. Medical and Laboratory Examination

- a. Any supervisor may, based on reasonable suspicion, require a department employee to submit to a test for alcohol or drug use while on duty, in accordance with the City's personnel policies.
- b. When ordered by the Chief of Police, employees shall be required to submit to any additional medical and laboratory examinations specifically directed and narrowly related to a formal investigation of the employee's performance or fitness for duty.
- c. Whenever an employee is ordered by the Chief of Police to undergo a medical or laboratory examination as a condition of his or her employment, the examination will be provided at no cost to the employee.
- d. If, at any time, the investigator determines the investigation is likely to result in criminal charges being brought against the employee under investigation, the investigator shall confer with the City Attorney's Office before proceeding under this section.

3. Photograph and Lineup Identification Procedures

- a. When ordered by the Chief of Police, an employee shall submit to being photographed for the purpose of creating a photograph lineup when such a lineup is needed to identify an employee accused of misconduct.
- b. When ordered by the Chief of Police, an employee shall be required to stand in a lineup for the purpose of identifying an employee accused of misconduct.
- c. If, at any time, the investigator determines the investigation is likely to result in criminal charges being preferred against the employee under investigation, the investigator shall confer with the City Attorney's Office before proceeding under this section.

4. Financial Disclosure Statements

- a. When ordered by the Chief of Police, an employee shall be required to make financial disclosure statements when such statements are directly and narrowly related to a formal investigation.
- b. If, at any time, the investigator determines the investigation is likely to result in criminal charges being preferred against the employee under investigation, the investigator shall confer with the City Attorney's Office before proceeding under this section.

I. Duty Status of Employee Subject of an Investigation

1. Release from duty

- a. If the alleged misconduct is of a serious nature, or the employee does not appear fit to continue performing official duties, the supervisor shall place the employee on administrative leave with pay and provide the employee with instructions for reporting to the department. The Chief of Police may assign the employee under investigation to administrative duties pending the conclusion of the formal investigation.
- b. When placed on administrative leave, the supervisor shall:
 - (1) Provide the employee with a copy of "Rules While on Administrative Leave". (Appendix B)

(2) Take possession of the employee's department issued equipment.

2. Administrative leave with pay may continue pending the outcome of an investigation.

J. Complaint Adjudication

1. Completed formal investigations shall be classified using the following guidelines:

a. Unfounded: Investigation indicates the allegations are false.

b. Not sustained: Insufficient evidence to either prove or disprove the allegations.

c. Sustained: The allegations are supported by sufficient evidence to conclude they are true.

d. Exonerated: Investigation indicates the incident occurred, but was justified, lawful, and proper under the circumstances.

e. Policy failure: The investigation reveals the allegations are true; however, the employee was acting in accordance with established department policy.

2. A conclusion of fact shall support the final complaint classification.

3. All completed investigations will be maintained in the department's formal complaint files. Formal complaint files shall be maintained in a manner consistent with the City of Appleton Records Retention Policy.

K. Appeal Procedures

Employees wishing to appeal the outcome of any investigation shall do so according to the grievance procedure established in the City of Appleton Personnel Policies, unless the employee is a member of a collective bargaining unit that has agreed with the City on an alternate grievance procedure.

L. Release of Information

1. During the course of an investigation the department or its members will not identify any employee under investigation.

2. On an annual basis, the Assistant Chief shall prepare a statistical summary for dissemination to the public and agency employees.

02-22-17

Todd L. Thomas
Chief of Police

Date

APPENDIX A**APPLETON POLICE DEPARTMENT
ADMINISTRATIVE INVESTIGATION RIGHTS**

Employee:

District/Unit:

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.

I understand the Administrative Investigative Rights that were read to me and I acknowledge that a written copy of the rights was provided to me.

Employee Signature

Date

Investigating Supervisor

Date

APPENDIX B**[DATE]**To: **[Name]**From: **[Name]**

Subject: Rules while on Administrative Leave

By way of this letter, I am informing you that effective **[date]**, you are hereby placed on Administrative Leave with pay.

This decision is based on the seriousness of recently reported allegations of [describe misconduct allegation or fit-for-duty issue] occurring on [date and location of incident]. A formal investigation will be conducted. The investigation is a fact-finding process to determine the truth. The facts obtained may exonerate you or may be used in disciplinary proceeding resulting in reprimand, demotion, suspension or dismissal.

Therefore, pending further investigation, you are placed on Administrative Leave. During such time, you must comply with the following rules:

1. You are not authorized to perform any official duties as a law enforcement officer to include conducting any official police business over the telephone. Additional restrictions include:
 - a. You shall not go armed with a firearm.
 - b. Should you witness a violation of the law that you feel requires a law enforcement officer to investigate, you should contact the Department or the Outagamie County Dispatch Center to report the matter.
 - c. If you are contacted at home or while out in the community by a person who requests your assistance or advice about a law enforcement matter, you should refer them directly to the Department and not become involved.
2. You are required to turn in any department issued equipment, such as, identification card, facility keys and access card, squad car and keys, police radio, SWAT and/or other specialized equipment if not stored and maintained within the police facilities. The above-mentioned equipment may be stored in your locker for safekeeping.
3. You are required to provide a phone number to allow your supervisor or commander to reach you during your administrative leave, between the hours of 7:45 a.m. and 4:00 p.m., Monday through Friday. During this time frame, you must be available to meet at the department, respond to phone inquiries, etc. In addition, you are required to report daily **(by telephone)** to **[name supervisor(s)]**. Alcohol consumption during these hours, Monday through Friday is prohibited.
4. You are required to check your department voice-mail on a daily basis and report any requests for service to your District or Unit Commander, or to any on-duty supervisor, only if a [assigned unit] supervisor is not available.
5. You must notify your District or Unit Commander of any subpoena you receive that mandates your appearance in court during the Administrative Leave period.
6. You are required to provide your District or Unit Commander notice of any continued cases,

pending meetings, scheduled training, or any other obligation as it relates to your employment with the Department.

7. You are not permitted in the secured areas of the police department, unless accompanied by a supervisor.

If you have any questions during this time, please see me or call [832-55XX].

cc: Chief

APPENDIX C

**APPLETON POLICE DEPARTMENT
ADMINISTRATIVE INVESTIGATION**

Employee: _____

APPA Representative: _____

Date: _____

Wisconsin Statute Chapter 164
Law Enforcement Officers' Bill of Rights

164.02. Interrogation

- (1) If a law enforcement officer is under investigation and is subject to interrogation for any reason which could lead to disciplinary action, demotion, dismissal or criminal charges, the interrogation shall comply with the following requirements:
 - (a) The law enforcement officer under investigation shall be informed of the nature of the investigation prior to any interrogation.
 - (b) At the request of any law enforcement officer under interrogation, he or she may be represented by a representative of his or her choice who, at the discretion of the officer, may be present at all times during the interrogation.
 - (c) Evidence obtained during the course of any interrogation not conducted in accordance with sub. (1) may not be utilized in any subsequent disciplinary proceeding against the law enforcement officer.

Nature of the investigation:

Investigating Supervisor

Employee

Personnel Complaint Process



