



COLUMBIA HEIGHTS POLICE DEPARTMENT POLICY MANUAL

TITLE: COMPLAINT HANDLING AND INVESTIGATION	GENERAL ORDER NUMBER: 501
REFERENCES: M.S. § 626.89, and Chapter 13 ATTACHMENTS: List of attachments <ul style="list-style-type: none"> ▪ Complaint Form ▪ Attachment A General Overview of Complaint Handling ▪ Attachment B Complaint Sorting Flowchart ▪ Complaint / Allegation Tracking Record ▪ Criminal Investigation Advisory ▪ Receipt of Complaint ▪ Notification of Interview ▪ Investigation Interview Advisory (and Internal Investigation Warning) ▪ Formal Complaint ▪ Investigative Report ▪ Complaint Findings to Subject of Complaint ▪ Complaint Findings to Complainant ▪ Statement Template 	EFFECTIVE DATE: 06/01/2016
REVIEW DATE: 01/01/2019	DISTRIBUTION: A

The purpose of this General Order is to establish a departmental procedure for the initiation and investigation of complaints involving any employee of the Columbia Heights Police Department. This directive addresses only administrative and internal criminal investigations of the Columbia Heights Police Department.

It shall be the policy of the Columbia Heights Police Department to investigate all allegations of misconduct concerning Department employees. Complaints and allegations of misconduct shall be accepted from any source, including internal, external, and anonymous sources. Malicious or false accusations shall also be appropriately investigated to protect the Department and its employees, as well as to instill public confidence.

501:1 Definitions

Serious Misconduct

Serious misconduct means conduct that, if established, constitutes the violation or attempted violation of constitutional provisions, laws, and rules having the force of law. *Serious misconduct* also includes violations of state of Minnesota and departmental policies, orders, or instructions that

are designed to promote a violence-free and nondiscriminatory workplace.

Misconduct

Misconduct means conduct other than *serious misconduct* that, if established, constitutes the violation of other directives, work rules, procedures, policies, or instructions of the City of Columbia Heights or Columbia Heights Police Department.

Repeat Misconduct

Repeat misconduct means a case of *misconduct* where the employee has been previously warned or disciplined for the same or similar violation.

Performance Concern

Performance concern means concern, disagreement, or criticism of an officer's exercise of discretion or manner of carrying out the officer's duties. A *performance concern* does not involve *misconduct* or *serious misconduct*.

Complaint

Complaint, for purposes of this directive, means an oral or written allegation that an officer has engaged in *misconduct* or *serious misconduct*. As used in this directive, *complaint* is not synonymous with the same terms as used in the Minnesota Government Data Practices Act (reference Minnesota Statutes, Chapter 13), or the Peace Officer Discipline Procedures Act (reference Minnesota Statutes § 626.89).

Service Review

Service review is an informal, non-disciplinary process carried out by supervisors for resolving performance concerns.

Formal Statement

A *formal statement* is the questioning of an officer in the course of obtaining a recorded, stenographic, or signed statement to ascertain the facts. An officer is compelled to truthfully answer questions during a formal statement.

Investigator

Investigator is the supervisor or command staff officer assigned the responsibility of coordinating an investigation.

Officer

Officer means a sworn, POST licensed peace officer employed by the Columbia Heights Police Department.

Supervisor

Supervisor, for purposes of this directive, is the shift supervisor of the officer who is the subject of a complaint, or other supervisor designated to address the complaint.

Evaluation Files

The purpose of an *evaluation file* is to record information needed to evaluate performance. Maintaining such a file separate from the employee or officer's personnel file is the best way to prepare for an annual review. The Department shall maintain one centralized file located in the Office Manager's office. The information in the *evaluation file* shall be purged once it is used in the performance evaluation.

The file shall include:

- Any instances of outstanding performance;
- Any instances of inadequate performance;
- Any supervisory actions taken to improve performance, such as further training, mentoring, or counseling;
- How well the employee or officer responded to those actions;
- Any significant expression of appreciation or praise from members of the public or other agencies;
- Any concerns raised about the officer or employee;
- Any complaints made regarding the officer or employee; and
- Any substantiated complaints.

501:2 Acceptance, Sorting, Consulting, and Documentation of Complaints**501:21 Responsibility to Accept Complaints**

All employees are required to explain the complaint procedure to citizens upon request. All complaints shall be forwarded to the shift supervisor or Captain as soon as possible for processing and appropriate action. The Complaint Form shall be completed and signed by the complainant whenever possible.

501:211

When a complaint is received from a citizen, the complainant shall be referred to the shift supervisor or Captain. If a shift supervisor or Captain is not immediately available, the initial complaint shall be taken by the senior officer and forwarded to the shift

supervisor or Captain as soon as possible. No complaint shall be taken by any employee who is the subject of the complaint.

illustrated in the Complaint Sorting Flowchart (Attachment B).

501:212

Any Department employee may file a complaint. Complaints made by Department employees shall be submitted to the shift supervisor. Employees may also file a complaint with a member of the management staff.

501:213

The employee receiving a complaint shall elicit basic identifying information and details sufficient to determine whether the complaint is in the nature of misconduct, serious misconduct, repeat misconduct, or a service concern.

501:22 Sorting and Consulting

If the complaint appears to involve misconduct or serious misconduct, the supervisor receiving the complaint shall consult with his/her supervisor or the Captain to determine the level of misconduct alleged, and how the complaint will be handled. Decisions to conduct investigations shall be based on a reasonable belief that there is a need to discover the actual facts underlying a complaint. (Reference: General Overview of Complaint Handling - Attachment A.)

501:221

If it is apparent that the complaint involves nothing more than a performance concern, the supervisor shall attempt to immediately resolve the concern by the methods described in section 501:3 of this General Order.

501:23 Documentation

All complaints shall be documented, regardless of source or content on the form prescribed by the division for this purpose. A Complaint / Allegation Tracking Record form shall be initiated by the supervisor, attached to the complaint as a cover sheet, and forwarded as

501:3 Service Review**501:31 In General**

A *service review* is an informal process for resolving complaints that involve no more than performance concerns. Special circumstances (e.g., a pattern of complaints or repeat misconduct) may call for addressing service concerns through more formalized means.

501:311

A *service review* is a non-disciplinary problem-solving process. If the result of the process is a conclusion that the officer's performance was sound, the officer shall be provided with this feedback so as not to discourage similar performance in the future. If the result of the process is the conclusion that an officer's performance would improve, for example, through coaching, additional training, or more clearly defined instructions or expectations, the supervisor shall implement these actions as part of the *service review* process.

501:312

Complaints about an officer's demeanor or manner during an enforcement transaction that are received more than one hundred-twenty (120) days after the date of the incident, and do not involve serious misconduct, may be processed as a service review.

501:32 Procedures**501:321**

Service reviews should generally be conducted by the supervisor of the officer who is the subject of the complaint.

501:322

When it is apparent that a complaint involves no more than a performance concern, the supervisor shall make

immediate efforts to resolve the concern. The availability of this process shall not be used as an opportunity to dissuade someone from making a complaint about misconduct or serious misconduct. Efforts to resolve a complaining party's concerns might include, for example, providing an explanation of the law or an explanation of law enforcement procedures. Alternatively, the supervisor may attempt to reach agreement with the complaining party on a plan for resolving the concern, such as speaking with the officer to obtain additional information about the incident and then re-contacting the complaining party.

501:323

If the performance concern is resolved during the initial contact, the supervisor shall document this fact along with information as to how the concern was resolved. The supervisor shall also advise the officer who was the subject of the complaint of the nature of the performance concern, and how it was resolved.

501:324

If the supervisor deems it advisable, the supervisor may elicit a verbal account of the incident from the officer, either in person or by phone, or require the officer to prepare (or submit any already prepared) written reports, memoranda, or other documentation concerning the incident.

501:3241

In either case, the supervisor shall advise the officer that the information is being sought as part of a *service review* process, and that this process will not lead to disciplinary action against the officer.

501:3242

If an officer who is the subject of the complaint declines to cooperate with the *service review* process, the matter may be handled through investigation.

501:4 Misconduct**501:41 Initial Inquiry**

When an allegation of misconduct or policy violation is made by a citizen or by another employee, the supervisor shall conduct an initial inquiry to determine the exact nature and seriousness of the violation.

501:411

If the violation is not serious and there is no prior record of a similar violation by the officer, the Captain or other supervisor designated by the Chief of Police shall investigate.

501:412

If the incident is serious or is a repeat violation, the supervisor shall refer the complaint to the Captain.

501:5 Investigations of Serious, Repeat, or Criminal Misconduct**501:51 Leave from Duty, With Pay**

Complaints alleging criminal activity, serious misconduct, or misconduct that impairs the employee's ability to perform may require that the employee be immediately placed on leave from duty with pay.

501:52 Arrest

Alleged crimes where probable cause exists may require the employee be immediately arrested. The Chief shall be notified as soon as practicable after arrest.

501:53 Criminal Investigation Advisory

The subject of the complaint/allegation(s) shall receive a Criminal Investigation Advisory prior to an interview.

501:54 Protective Rights

Any employee alleged to have committed a crime shall be afforded all protective rights guaranteed by the Constitution.

501:6 Case Assignment**501:61 Assignment to Investigator**

The Captain has the responsibility to review all complaints of misconduct. Complaints alleging criminal conduct, bias policing, brutality, corruption, misuse of force, or a breach of civil rights shall be assigned to an investigator, within or outside the Department, selected by the Chief. The Chief shall ensure that a thorough, impartial, and objective investigation is completed.

501:611

The Captain shall be responsible for informing, briefing, and updating the Chief as to the status of all investigations alleging criminal activity or misconduct on the part of any employee. All reports to the Chief shall be made verbally. The initial notification shall be accomplished as soon as possible. Briefing and updating the Chief shall be done at least weekly, although some investigations may require daily updates.

501:612

A control number is assigned to each investigation. Control numbers consist of the year the complaint was received, followed by a two-digit sequential number (04-01, 04-02, etc.). Alleged criminal violations shall be assigned a control number, and an initial complaint number (ICR).

501:613

All internal investigative reports and information shall be securely stored. Access to investigative reports and information shall be securely stored. Access to investigative information and records is subject to Data Practices laws and Minnesota Statutes § 626.89, Peace Officer Discipline Procedures Act, known as Police Officer Bill of Rights.

501:7 Investigative Process**501:71 Extent of Investigation**

The Chief shall determine the extent of any investigation necessary, and who shall conduct the investigation.

501:711

The complainant shall be provided with the identity of the investigator, and a telephone number at which to contact the investigator (reference Receipt of Complaint).

501:72 Investigative Steps

Investigative steps shall include, but are not limited to:

- Gathering statements from persons believed to have knowledge of the incident;
- Gathering and analyzing physical evidence, documentary evidence, reports, law enforcement records, court documents, medical records, computer files, photographs, and any other data bearing on the truth or falsity of the allegations; and
- Viewing the scene of the alleged incident.

501:73 Written Notice to Officer Under Investigation

Prior to taking a formal statement, an officer under investigation shall receive a Notification of Interview, which provides the identity of the primary investigator, and a summary of the allegations (including the date, time, and place of the alleged misconduct, if this information is known with specificity).

501:74 Supervisor Authority

Supervisors assigned to conduct investigations shall be deemed to have the full authority of the appointing authority for purposes of requiring officers to cooperate with investigations and administering an Investigation Interview Advisory.

501:75 Written Report

All investigations shall conclude with the issuance of a written report. When an investigation is carried out at the direction of the Chief, the report shall be submitted to the Chief.

501:8 Guidelines for Conducting Investigations

501:81 Procedures

Supervisors/investigators conducting investigations shall use the following procedures unless instructed to proceed differently by the Chief:

- The Notification of Interview shall generally be given 48 hours in advance to an officer whose formal statement will be taken. But in all cases, a summary of the allegations shall be provided to an officer prior to the taking of a formal statement. This summary of the allegations shall include the date, time, and place of the alleged misconduct, if this information is known with specificity. Based on the information available at the time, this summary shall also include the laws, rules, policies, directives, procedures, or instructions allegedly violated. This advance notice and summary shall be prepared in consultation with the Chief;
- Immediately advise the Chief if any additional serious misconduct is discovered during the investigation;
- Ensure that the Investigation Interview Advisory is given as appropriate;
- Interview witnesses or persons with information relevant to the complaint(s) or investigations; and
- Obtain and properly secure all physical evidence.

501:82 Provisions of Peace Officer Discipline Procedures Act

Supervisors/investigators conducting investigations shall comply with the provisions of the Minnesota Statutes § 626.89, Peace Officer Discipline Procedures Act, as appropriate, including the following:

- Ensure that a complaint has been signed and the officer has been provided a copy or a summary of allegations (reference Formal Complaint Notification) before taking any formal statements;
- Attempt to conduct a formal interview during an officer's regular duty hours at the Columbia Heights Police Department, unless another location is mutually agreed upon. Reasonable rest periods shall be provided, and the duration of the interview shall be a reasonable time period;
- An officer has the right to have an attorney or union representative, or other representative present during a formal interview, as provided for in the appropriate work or collective bargaining agreements. When the presence of an attorney or union representative is requested, no formal statement shall be taken unless the officer has had a reasonable opportunity to obtain a representative. A formal statement may be taken if the officer has not obtained representation after being given a reasonable amount of time to do so;
- The entire session at which a formal statement is taken shall be tape-recorded. Upon written request, the officer shall be provided a transcript or copy of the tape recording within a reasonable amount of time;
- Employees shall not be required to produce financial records, except if required by a valid search warrant or subpoena; and
- Employee photographs may be displayed to a witness as part of the investigation,

but shall not otherwise be released to the public without the officer's written permission.

501:83 Questions Asked During Investigations

- Questions asked of officers during investigations as to the officer's performance of official duties or fitness for office, or another officer's official duties or fitness for office, shall be related to the matters or subject being investigated.
- Supervisors shall, if necessary, order officers to answer all questions relevant to the investigation through the administration of an Investigation Interview Advisory (and Internal Investigation Warning).

501:84 Polygraph Examination

No officer shall be asked, required, or encouraged to submit to a polygraph examination.

501:85 Investigative Functions

Supervisors shall perform other investigative functions as appropriate.

501:86 Investigative Report

Investigating supervisors shall prepare an Investigative Report that shall include:

- A summary of the allegations against the officer identifying the rules, procedures, policies, directives, statutes, or constitutional provisions that would likely be violated if the allegations were true;
- A written evaluation, based on an analysis of the evidence, as to whether each allegation is supported by the evidence;
- Any mitigating circumstances relevant to the complaint, allegations(s), or investigation;
- Any relevant statements, reports, documents, photos, or other matters of an evidentiary nature; and

- Findings for each separate allegation in the complaint shall be determined as one of the following:

Sustained – The particular allegation of misconduct is supported by the evidence.

Not Sustained – There is insufficient evidence to prove or disprove the particular allegation of misconduct.

Unfounded – The particular allegation of misconduct is false.

Exonerated – The particular allegation is true, but the officer's actions do not constitute misconduct.

Administratively Cleared – Circumstances are such that prevent completion of the investigation.

501:87 Mitigating Circumstances

Mitigating circumstances affecting the misconduct, if applicable, shall also be identified (in the Tracking Record and Investigative Report) as one of the following:

Training Deficiency – The misconduct stems, in whole or in part, from a deficiency in the officer's training.

Policy Deficiency – The misconduct of the officer results, in whole or in part, from adherence to an adequate departmental policy.

Supervisory Deficiency – The misconduct was directed by, or tolerated by, a supervisor.

501:88 Personnel File / Disciplinary Action

The officer shall be given a copy of any Supervisor Recording Form or Employee Disciplinary Notice **prior** to a copy of the notice being placed in the officer's personnel or supervisory file, or given to a complainant. No notice of a disciplinary action shall be placed in an officer's personnel file or given to a complainant,

unless the officer has first been given a copy of the notice.

501:9 Integrity of the Investigatory Process

501:91 Answering Questions

Upon written order (i.e., the administration of an Investigation Interview Advisory) officers shall answer questions truthfully and completely.

501:92 Discussion of Complaint or Investigation

No officer shall impede or interfere with an investigation, solicit information regarding an investigation from investigators or other individuals, or discuss any aspect of the complaint or investigation with other officers or individuals. This does not prohibit discussions or communications between an officer and the officer's bargaining unit representative or attorney.

501:93 Destruction of Evidence

No officer shall destroy any evidence, documents, logs, photos, recordings, or any other information or property that may be relevant to an investigation.

501:94 Discussion of Details

Until the completion of the investigation, officers who are involved in an investigation, either as the subject or a witness, shall not discuss the details of the incident, investigation, statement, complaint, or allegation with anyone other than the investigator, their attorney, or union representative.

501:10 Pre-Disciplinary Procedure

Prior to the imposition of disciplinary action involving suspension without pay, demotion, or discharge of a non-probationary officer, the officer shall be provided with a summary of the information and findings from the investigation and the disciplinary action being considered, excluding evidence that would identify

confidential sources (reference Supervisor Recording Form or Employee Disciplinary Notice). An officer shall have an opportunity to respond to the evidence and appropriateness of any disciplinary action being considered.

501:11 Disciplinary Action

If imposed, disciplinary action shall be determined according to the appropriate work agreements or policies. Disciplinary action may include reprimand, suspension, demotion, or discharge. The officer's entire work record, prior findings or determinations of misconduct, other aggravating factors, and any mitigating factors shall be considered in determining level or extent of discipline. The officer shall be given a copy of the Supervisor Recording Form or Employee Disciplinary Notice **prior** to a copy being placed in the officer's personnel or supervisory file. No disciplinary letter or reprimand shall be placed in an officer's personnel record, unless the officer has been given a copy of the letter of discipline or reprimand.

501:12 Appeals

An officer who is the subject of disciplinary action may appeal the action as provided by the work or collective bargaining agreements, plans, policies, or statutory provisions governing the officer's employment.

501:13 Post-Investigation Notifications

501:131 Officer Under Investigation

The officer who is alleged to have engaged in misconduct shall receive notification of the complaint findings. The officer's immediate supervisor shall receive a copy of the notification.

501:132 Complainant

All complainants shall receive notification of the complaint findings when the review or investigation has been completed. The Department acknowledges that more detailed disclosures might well promote sound police/community relations, but the content of these notifications are governed and restricted by the Minnesota Government Data Practices.

501:133 No Disciplinary Action

In cases where the complaint will not result in disciplinary action (i.e., service review process or findings of *not sustained*, *unfounded*, *exonerated*, or *administratively cleared*), the complainant shall be provided with written notification that the Department review of the complaint has been completed, and no disciplinary action will be taken (reference Complaint Findings notification). The complainant shall not be provided with the reasons or circumstances for the determination, unless appropriate informed consent or a court order allowing disclosure has been obtained.

501:134 Disciplinary Action Imposed

Where the complaint has resulted in disciplinary action as defined under the appropriate work agreement, the complainant shall be provided with written notification of those allegations that have been sustained, and that appropriate action has been imposed (reference Complaint Findings notification). If the complainant requests additional information, it may be provided only within the limits of the Minnesota Government Data Practices Act.

501:135 Ongoing Investigations

The above notifications shall not be made in cases where notification could jeopardize any ongoing criminal, civil, or administrative investigation being conducted by this Department or any other government agency.

501:14 Records and Retention**501:141 Service Review Data**

Service review data shall be stored separately from investigative files and personnel records. Service review data shall be maintained in its existing form in the evaluation file of the Police Department.

501:142 Misconduct and Serious Misconduct

The Office Manager shall immediately log complaints that involve allegations of misconduct or serious misconduct. The log shall include the date of the complaint, the date of the alleged misconduct, the officer who is subject of the complaint or allegation, the nature of the alleged misconduct, the complainant, and the disposition of the complaint or allegation.

501:143

Investigation files shall be maintained separately from personnel files and service review files.

501:144

Notices or information about disciplinary actions may be included in personnel files as provided by appropriate work or collective bargaining agreements or other policies, and as provided by the Minnesota Government Data Practices Act.

501:145

Records of misconduct investigations of which an officer is the subject shall be retained for six years following the year in which that officer's employment with the Department ceased. Records shall be inventoried annually to provide for the removal of records according to policies governing record retention by the Department.

501:146

The Department may continue to maintain, for administrative purposes, records of prior incidents of disciplinary action even after such records have been removed from an officer's personnel file.

501:147

The Office Manager shall be responsible for ensuring that all forms necessary to implement this General Order are available in electronic format.

BY ORDER OF:

Scott Nadeau, Chief of Police

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