



**MIDDLETON POLICE
DEPARTMENT**

DATE
September 18, 2013

POLICY
1.9.01

SUBJECT: **Citizen Complaints**

REVIEWED
May 18, 2017

MRR

Refer to: SS [62.13\(5\)\(b\)](#), [66.0511\(3\)](#), [137.01\(5\)](#), [946.66](#), [NLRA](#), [164.02](#)

History: Created 10/00, Updated 09/12, 09/13, 11/14, 05/17

[WILEAG \(5th Ed.\) Standards](#): **1.9.1** (1.9.1.1, 1.9.1.2, 1.9.1.3, 1.9.1.4), **1.9.2, 1.9.3, 1.9.4, 1.9.5, 1.9.6**

Contents

PURPOSE..... 2

POLICY 2

PROCEDURE..... 2

 Receiving Complaints..... 2

 Shift Commander’s Responsibilities..... 2

 Complainant Options 3

 Informal..... 3

 Formal 3

 Direct to Police Commission 3

 Against Policy, Procedure or Practice 3

 Type I Complaint Process..... 3

 Type II Complaint Process..... 4

 Internal Affairs Responsibility..... 5

 Employee’s Responsibility 5

 Complainant Notifications 5

 Time Limits..... 5

 Finding Definitions 6

 Standard of Proof 6

 Unfounded..... 6

 Exonerated 6

 Undetermined/No Finding 6

 Unintentional Error 6

 Sustained..... 6

 Misconduct Not Based On Complaint 6

 Policy Failure 6

 Withdrawn..... 6

 Police Commission Dispositions 7

Miscellaneous	7
Complaint Records.....	7
Instructions for Use of "Form Required for Attestation and Notarization”	8

PURPOSE

The purpose of this policy is to fulfill the statutory requirements of [66.0511\(3\)](#) requiring a specific procedure for processing and resolving a complaint by any person regarding the conduct of a law enforcement officer of the department. This policy also requires that all complaints against the department or its employees are investigated and specifies the authority and responsibility assigned by the type of complaint.

POLICY

Public and employee confidence is maintained by our ability to investigate and properly resolve complaints. The Middleton Police Department will accept and investigate all complaints against its employees, policies, procedures, or practices, whether through an identified or anonymous complainant. Upon receipt of a complaint, the department will conduct an investigation in an open and fair manner, respecting the rights of the complainants and employees, with the truth as its primary objective. It is the responsibility of each member of the department to see that a complaint is handled in the prescribed manner.

PROCEDURE

Receiving Complaints

Every employee has the responsibility to ensure that a verbal or written complaint, on being expressed, is received and referred to the Shift Commander. Complainants may be referred directly to the Shift Commander. If the Shift Commander is not immediately available, the employee shall attempt to obtain basic complaint information and record it on a complaint form. The complainant shall be advised that the Shift Commander will contact them. If the complainant declines to provide information, the complainant shall be advised that a complaint form could be provided, mailed, or picked up, they could call back at a later time to speak with the Shift Commander, or they could contact the Internal Affairs Officer during normal business hours. Complaint forms shall be provided to anyone who asks for one. Employees receiving complaints shall notify the Shift Commander and provide the Shift Commander with the complaint form, even if the form simply documents that an unidentified person complained about a problem or concern.

Shift Commander’s Responsibilities

It is the responsibility of the Shift Commander to receive written and verbal complaints, to contact and advise the complainant of their options, to gather information, document the complaint, and forward the complaint to the Internal Affairs Officer for assignment. If practical, the receiving Shift Commander shall immediately investigate and attempt to resolve apparent Type I complaints. All apparent Type II complaints shall be referred to the Internal Affairs Officer. Shift Commanders shall notify complainants that their complaint may be subject to

public disclosure. The department will try to respect requests for confidentiality, but confidentiality can not be guaranteed. Shift Commanders shall obtain a complaint tracking number from Internal Affairs as soon as practical.

If a complainant sets forth specific believable facts relating to the allegation and wishes to remain anonymous, the Shift Commander shall become the complainant. If the Shift Commander has reasonable grounds to believe that the anonymous complaint is unfounded, he/she shall have the authority to require the person to identify himself or herself. If the person refuses to do so, and this refusal makes it impractical to move forward with the complaint, the Shift Commander may refuse to initiate a complaint and shall so advise the person. The Shift Commander shall submit a written report to the Internal Affairs Officer detailing the complaint and why he/she deemed it unfounded.

Complainant Options

Informal

The complainant tenders a complaint, either written or verbal, alleging inappropriate behavior by an employee but does not give a sworn statement.

Formal

The complainant tenders a written complaint alleging inappropriate behavior by an employee, and the complainant is duly sworn before an official authorized to administer oaths (e.g. Notary Public).

Direct to Police Commission

A written complaint against a sworn employee by an aggrieved person may be filed directly with the Police Commission, as provided in Wisconsin State Statute [62.13\(5\)\(b\)](#).

Against Policy, Procedure or Practice

Citizen complaints of this nature will be referred, in writing, directly to the office of the Chief of Police, and shall include a description of the complaint and information regarding how the complainant can be re-contacted.

Type I Complaint Process

A complaint is classified as Type I if it alleges minor violations of department policy, operating procedures, rules, standards of conduct, or other minor misconduct. Type I Complaints will normally be referred to the employee's immediate supervisor for investigation and mediation, if the complaint is not resolved at intake. Employees who become the subject of an investigation shall be notified of the complaint/allegation, including the nature of the complaint/allegation, and provided a description of the employee's rights and responsibilities relative to the investigation, including the right to representation ([164.02](#)). However, if early notification may hinder an investigation, employee notification will be made as soon as practical.

It is the responsibility of the investigating supervisor to fairly and objectively gather the facts, while respecting the rights and dignity of employees and complainants. This effort normally will include interview of the complainant, witnesses, and focus employee, and the gathering of evidence. If the supervisor finds probable cause that the employee violated department policy,

procedure, rules or standards of conduct, the employee shall be informed of the specific alleged violation and given an opportunity to respond. If the employee provides new information warranting further consideration or investigation, it shall be done. After completion of the investigation, the investigating supervisor shall notify the complainant and employee of the finding. Formal complaints require a written notice. If either the complainant or employee is not satisfied with the investigation or finding, they may request a review by Internal Affairs. If the finding is “Sustained,” “Misconduct Not Based on Complaint,” or “Unintentional Error,” the employee’s supervisor shall take appropriate action (see Discipline Policy). A summary report and all supporting materials shall be forwarded to the Internal Affairs Officer for review, filing, and updating CA tracking.

Type II Complaint Process

A complaint is classified as Type II if it alleges criminal behavior or a serious violation of department policy, operating procedures, rules, standards of conduct, or other serious misconduct. Examples of Type II Complaints include allegations of corruption, brutality, misuse of force, breach of civil rights, criminal misconduct, and other serious misconduct. Type II complaints shall be referred to the Internal Affairs function for assignment and investigation.

The Internal Affairs Officer shall review all Type II complaints to determine if the allegation requires an internal, external, or criminal investigation and shall then make such assignment. A written acknowledgement of the complaint shall be forwarded to the complainant, if known. Employees who become the subject of a Type II investigation shall be notified of the complaint/allegation, including the nature of the complaint/allegation, and provided a description of the employee’s rights and responsibilities relative to the investigation. However, if early notification may hinder an investigation, employee notification will be made as soon as practical.

It is the responsibility of the assigned department investigator to thoroughly, fairly and objectively gather the facts, while respecting the rights and dignity of employees and complainants. This effort normally will include interview of the complainant, witnesses, and focus employee, and the gathering of evidence. The investigator shall forward completed investigations to the Internal Affairs Officer for review. The Internal Affairs Officers shall review the investigation to ensure that it is complete, thorough, fair, and objective.

If there is probable cause that an employee violated department policy, operating procedures, rules, or standards of conduct for which disciplinary action may be appropriate, the affected employee shall be given a formal opportunity to answer the allegations before a decision is made. In such case, the affected employee shall be given a written notice of allegations, as well as the date, time and place of a predetermination hearing. The purpose of the predetermination hearing is to provide the employee an opportunity for rebuttal. The employee may choose to appear or not, may bring representation if desired, and is entitled to make no response. Any new and pertinent information that comes to light shall be investigated before a decision is made. (It may be necessary to continue the hearing at a later date if additional investigation is required.) A decision shall be rendered only after the hearing has been completed and all available information has been given careful consideration. The complainant and employee shall be notified in writing of the finding. If the finding is “Sustained,” “Misconduct Not Based on Complaint” or “Unintentional Error,” the Internal Affairs Officer shall refer the matter to the Chief of Police for disposition (see Discipline Policy).

Internal Affairs Responsibility

The Chief of Police shall designate a Division Commander to be the Internal Affairs Officer who is responsible for the internal affairs function. The Internal Affairs Officer shall have the authority to assign personnel to conduct investigations and report findings. The Chief of Police has the concurrent authority to appoint or remove investigators or investigative supervisors. It is the responsibility of the Internal Affairs Officer to notify the Chief of Police of Type II complaints, to assign and supervise Type II investigations, to audit all complaints for compliance with department procedures, to maintain records, and to compile annual statistical summaries, based on complaint data, that may identify trends, patterns, or tendencies that may need to be addressed. The Internal Affairs Officer shall document this annual review and forward information gathered to the Chief of Police so that organizational deficiencies can be identified and addressed.

Internal Affairs Investigations may be assigned to members of the command staff, investigative component, or to an external agency.

Employee's Responsibility

It is the responsibility of every employee to be familiar with department policy, procedures, rules and standards of conduct. When involved in an investigation, employees are required to cooperate, to fully and truthfully answer questions, and to render material and relevant statements to the investigating officers. Although employees have statutory protections under Section 7 of the National Labor Relations Act to communicate with coworkers about the terms and conditions of employment, there may be legitimate reasons for the department to instruct an interviewee to keep the subject matter of the interview confidential. The need for confidentiality will be weighed against the employee's right to communicate with coworkers on a case-by-case basis. The following factors weigh in favor of confidentiality:

1. Witnesses need protection;
2. Evidence is in danger of being destroyed;
3. Testimony is in danger of being fabricated; or
4. There is a need to prevent a cover-up.

A confidentiality order shall only be imposed for the length of time that is reasonably necessary.

Complainant Notifications

Complainants shall be periodically informed about the status of their complaint, including, but not limited to, acknowledgment of receipt of the complaint, periodic progress updates on the investigation, and final disposition upon conclusion. Complainant notifications shall be documented on a Complainant Notification Record form. Formal and Type II complaint final disposition notifications shall be in writing.

Time Limits

Citizen complaints will not be investigated if the complaint is received more than ninety (90) days after the alleged incident, except if the complaint involves an alleged law violation, or the complainant can show good cause for not making the complaint within the specified time limit. Investigations against members of the department will be prompt, and findings will be made

within thirty (30) days of the assignment of the complaint. If requested in writing prior to the end of the thirty (30) day period, the Chief of Police may grant an extension of this time limit. In those cases where the investigation shall exceed the 30-day standard, the complainant and employee shall be give a status update, unless it would potentially hinder the investigation.

Finding Definitions

Standard of Proof – The standard of proof is a preponderance of the evidence. The evidence must satisfy you to a reasonable certainty by the greater weight of the credible evidence. Greater weight of the evidence means that when weighed against opposing evidence, it has more convincing power. Credible evidence is evidence, which in the light of reason and common sense is worthy of your belief.

Unfounded

The investigation has produced sufficient evidence to prove that the act or acts alleged did not occur. This finding shall also apply when individual personnel named in the complaint were not involved in an act that did occur.

Exonerated

The act alleged did occur, but the employee’s actions were justified, legal and proper.

Undetermined/No Finding

There is insufficient evidence to either prove or disprove the allegation.

Unintentional Error

The act (or omission) did occur and it is deemed improper, but was the result of an employee’s mistake made in good faith. Ignorance of fact(s), policy, procedure, or standards of conduct the employee reasonably could have been expected to know does not constitute a mistake made in good faith.

Sustained

The investigation disclosed enough evidence to prove the allegation.

Misconduct Not Based On Complaint

Investigation in to the complaint reveals other actions that would be a violation of policy, operating procedure, rules, standards of conduct, or law, but these actions were not a part of the original complaint.

Policy Failure

The employee’s actions were in accordance with policy, procedure, or rules, but there is some flaw in the policy that permitted the actions, or there is no applicable policy to address the situation and/or the employee’s actions.

Withdrawn

The complainant has withdrawn the complaint, and no further investigation or action is warranted.

Police Commission Dispositions

Wisconsin Statute [62.13\(5\)\(e\)](#) provides for the disposition of charges filed against an officer with the Police Commission by an aggrieved person.

Miscellaneous

Complaints relative to differences of opinion between police employees and members of the public over arrests, citations and parking tickets do not come under the purview of this policy, unless there is an allegation of a violation of law, policy, procedure, or standards of conduct.

When there are allegations of insubordinate or disrespectful behavior towards a supervisor, or when the appearance of an interpersonal conflict exists, the commanding officer of the involved employee shall ask the Internal Affairs Officer to designate someone other than the directly involved supervisor to investigate. The intent of this policy is to reinforce the atmosphere of fairness and objectivity, and to ensure due process.

Nothing in this policy shall be construed to limit the management prerogative of the Chief of Police, nor any other supervisory officer, to take corrective action whenever appropriate, nor to prevent the Chief of Police from filing formal charges against an employee with the appropriate authorities, irrespective of a citizen or internal complaint.

Complaint Records

To protect the confidentiality and security of the information, records of completed investigations shall be maintained by the Internal Affairs function in the secure and restricted Administrative Records Room organized by C/A number. A C/A database shall be maintained in the restricted Command Staff folder on the department's P-Drive for status tracking, and to correlate C/A numbers, employee names, complainant names, type of complaint/allegation, disposition, received date, closed date, supervisor assigned, and case status.

Complaint/Allegation files shall be accessed only by the Chief, Captains, Office Manager, and assigned investigators. The release of any or all information regarding citizen complaints and findings shall be controlled by the Chief of Police. The release of information pertaining to Police Commission matters shall be handled by the Commission and in accordance with state statute.

The written complaint form shall include the procedures for filing a complaint and a notice of the prohibition against filing a false complaint as outlined in [66.0511\(3\)](#) and [946.66](#). Please see the following (available in P-Drive Forms and MIPD SharePoint Forms):

[Complaint-Allegation Form](#)

[Complaint-Allegation Employee Notice](#)

[Complaint-Allegation Complainant Notification Record](#)

[Complaint-Allegation Final Disposition Notice](#)

The instructions for the attestation and notarization for a formal written complaint follow.

Instructions for Use of "Form Required for Attestation and Notarization"

Section [137.01\(5\)](#) of the Wisconsin State Statutes provides, in part, that a Notary Public is empowered to administer oaths. The attestation form states that the complainant was first sworn on oath before s/he says that the matters in the complaint are true. Section 990.01(24) of the Wisconsin State Statutes states that if an oath is administered it shall end with the words “so help me God.”

When a formal complaint is filed with the department, the attestation and notarization form will be attached, unless the complaint is already notarized. Department notaries shall follow the procedure outlined below:

1. Have the complainant fill in his/her name.
2. Have the complainant read the attestation form and the attached facts forming the basis of the complaint.
3. Raise your right hand and ask the complainant to do the same while the oath is being administered.
4. Administer to the complainant an oath utilizing the following words, “Do you solemnly swear that the facts contained in your complaint are true and correct to the best of your knowledge, so help you God.”

The complainant must sign his/her name in the presence of the Notary, and the Notary must then sign as a witness and notarize the document in the presence of the complainant.

If a translator, or alternate signer, has been utilized during the above, s/he must sign in the applicable space.