

**MILTON POLICE DEPARTMENT**

**DATE:** 02-21-2023

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**SUBJECT:** Internal Investigations

**AUTHOR:** Chief Scott E. Marquardt

**REVIEWED BY:** Deputy Chief Michael Chesmore

**PRIOR REVIEWS OR REVISIONS:** 06-01-12, 10-08-15, 03-31-17, 08-16-17, 07-17-2020

**REPEALS:**

**PAGE:** 1 of 18

I. PURPOSE

The purpose of this policy is to establish and define the internal affairs function of the Milton Police Department and to provide a specific procedure for processing and resolving a complaint by any person regarding the conduct of a law enforcement officer or civilian employee as provided in Wisconsin Statutes 62.13(5) and 66.312(3).

II. POLICY

It is the policy of the Milton Police Department to ensure that 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. Such investigations will be conducted in a fair manner consistent with the rights of all concerned and aimed at determining the truth. This internal investigative process shall be invoked for all complaints against the department or its employees.

III. DISCUSSION

It is crucial for the community to have confidence in its local police department. The internal affairs function is important for the maintenance of professional conduct. The ability of an agency to perform can depend on the personal integrity and discipline of each employee. The community will rightfully form a negative opinion of the department if it does not properly respond to allegations of misconduct.

The department encourages citizens to bring forward legitimate complaints regarding misconduct by employees. It also recognizes that malicious and false accusations are sometimes made. Nevertheless, all accusations must be properly investigated to protect the integrity of the agency and employees.

#### IV. DEFINITIONS

- A. **Procedural Complaint:** A complaint based on actions that, if performed properly, are acceptable according to legal guidelines and/or department policy. Procedural complaints, if sustained, could result in disciplinary action of an appropriate level.
- B. **Minor Misconduct Complaint:** A complaint based on allegations of minor misconduct by employees of the department. Minor misconduct complaints, if sustained, could result in disciplinary action ranging from verbal admonishment to limited suspension.
- C. **Serious Misconduct Complaint:** A complaint based on allegations of serious misconduct by employees of the department or repeated acts of minor misconduct. Serious misconduct complaints, if sustained, could result in disciplinary action to include significant suspension, dismissal, reduction in rank, or criminal charges.
- D. **Informal Inquiry:** A meeting between supervisory personnel and an employee who has become the subject of a procedural or misconduct complaint for the purpose of mediating the complaint or discussing the facts to determine whether a formal investigation should be initiated.
- E. **Internal Investigation:** The process of investigation into alleged acts of misconduct that, if sustained, may be the basis for filing administrative charges.
- F. **Criminal Investigation:** The process of investigation into alleged acts of misconduct that, if sustained, may be the basis for filing criminal charges.

#### V. PROCEDURE

- A. **Internal Affairs**
  - 1. The Deputy Chief shall be responsible for investigating allegations of serious misconduct by department employees, monitoring the investigation of procedural and minor misconduct complaints, and maintaining records of all complaints against the agency and its employees.
  - 2. The Deputy Chief may select other department employees to assist with conducting investigations.
  - 3. Complaints directed against the Chief of Police and arising out of specified conduct on the part of the Chief of Police are filed with the President of the Milton Police Commission for investigation pursuant to Wis. Stat. 62.13(5) and the bylaws of the Commission.
- B. **Authority and Responsibility Regarding Internal Affairs**

1. Individual Responsibility
  - a. Each employee shall perform his or her duties and assume the obligations of their rank in the investigation of complaints or allegations of misconduct against any department member.
  - b. Each employee shall cooperate fully with the Deputy Chief or any other member conducting such an investigation.
  - c. Upon the request of the Deputy Chief or other member conducting such an investigation or informal inquiry, an employee shall be required to submit a written report on the matter.
2. Non-Supervisory Personnel
  - a. When misconduct is observed or complaints of misconduct are received by non-supervisory personnel, such members shall notify a supervisor of the matter as soon as practical.
3. Supervisory Personnel
  - a. When misconduct is observed or complaints of misconduct are received by a supervisor, that person shall initiate a preliminary investigation into the matter in accordance with this policy.
  - b. Upon initiation of the investigation, the initiating supervisor shall notify the Deputy Chief as soon as practical.
  - c. Supervisory personnel shall complete a thorough investigation when directed to do so by the Deputy Chief.
  - d. Supervisors shall maintain the confidentiality and security of internal affairs records and investigations.
4. Deputy Chief
  - a. The Deputy Chief shall record, register, and control the investigation of all serious complaints against department personnel.
  - b. The Deputy Chief shall conduct investigations of alleged or suspected misconduct within the department or assign the investigation to another supervisor. If assigned to another supervisor, the Deputy Chief shall supervise and control the investigation.
  - c. The Deputy Chief shall apprise the Chief of Police of the existence, progress, and final outcome of each internal investigation.

- d. Upon conclusion of an investigation, the Deputy Chief shall make a recommendation to the Chief of Police regarding final disposition of the matter.
- e. The Deputy Chief shall 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 Use of Force, Officer Involved Critical Incidents, and Internal Investigations Policies. The Deputy Chief may also convene the Use of Force Review Team for the purpose of reviewing an internal affairs investigation based upon "use of force" that does not automatically fall under the jurisdiction of the review team.

5. Chief of Police

- a. The Chief of Police shall review recommendations for disciplinary action and will take such action as he/she deems appropriate.
- b. Nothing in this policy diminishes the authority of the Chief of Police to take corrective action, order suspensions, terminate temporary or probationary employees, or file charges with the Police Commission irrespective of any complaint or recommendations made by subordinates.
- c. Upon completion, the Chief of Police shall maintain the official record of each internal investigation in a locked file cabinet.

C. Citizen Complaint Report

- 1. Individuals may file a complaint using the Citizen Complaint Forms (Annex C) or by speaking with a supervisor. For each complaint against the department or its employees, the receiving supervisor shall complete a Citizen Complaint Report (Annex D) and forward copies to the Deputy Chief. The receiving supervisor and/or the Deputy Chief will advise the citizen that the complaint was received and will be processed.
- 2. The Deputy Chief shall use the Citizen Complaint Report to determine further action regarding the complaint. In situations where the complaint can be immediately resolved through an informal inquiry, the report shall serve as the only record of the complaint.
- 3. The Chief of Police shall maintain a file of all Citizen Complaint reports. A summary of all complaints filed against the department and its employees shall be compiled on an annual basis as part of the annual report.

4. The Citizen Complaint Report shall include:
  - a. Name and contact information of the person making the complaint, if known.
  - b. Name of the employee(s) involved, if known, or action, policy or procedure in question.
  - c. Date, time, and location of the incident and when the incident is being reported.
  - d. Specific details of the complaint, including any related incident numbers.
  - e. Receiving supervisor's assessment as to the validity of the complaint.
  - f. Supervisor's recommendations on subsequent actions.
  - g. Final disposition (to be completed upon conclusion of the informal inquiry or internal investigation).
    - a. The Chief of Police or designee may inform the complainant that if not satisfied with the results of the investigation, he/she may, within 30 days of the date of such notification, file a written request with the President of the Milton Police Commission for a formal hearing on the complaint before the Commission.
    - ii. The Milton Police Commission shall review all investigatory reports of the incident and any supporting or conflicting documentation and in its discretion either schedule a formal hearing before the Board or place the complaint on file.
    - iii. Filing of a complaint on the police department's Citizen Complaint Form will be considered as a voluntary waiver by the complainant of his or her right to file a complaint directly with the Police Commission.

D. Complaint Investigation

1. All complaints against the department or its employees, including those received anonymously, will be courteously received and thoroughly investigated.
2. Upon receipt of the complaint and completion of the Citizen Complaint Report, the receiving supervisor shall initiate a preliminary investigation

into the matter, to include requesting a written statement from the complainant. The supervisor shall also take any action that may be immediately required.

3. During the preliminary investigation, the receiving supervisor shall determine whether the complaint is based on procedure, minor misconduct, or serious misconduct and whether the complaint would best be resolved through an informal inquiry, internal investigation, or criminal investigation.
4. Procedural and minor misconduct complaints will generally be handled through the chain of command. The supervisor may also request the assistance of the Deputy Chief.
  - a. These complaints may be addressed through either informal inquiry or internal investigation. The internal investigation option shall be pursued if it appears that the allegations, if sustained, could result in discipline greater than a letter of reprimand.
  - b. Upon completion of the investigation, the supervisor shall forward a copy of the Citizen Complaint Report containing the final disposition to the Chief of Police. This report shall be included in the internal affairs files.
5. Serious misconduct complaints shall require notification of the Chief of Police and Deputy Chief as soon as such notification is practical.
  - a. Upon reviewing the complaint, the Chief of Police and Deputy Chief will collaborate on next steps. The Deputy Chief will either conduct the internal investigation or assign the investigation to another supervisor. When the investigation is assigned to another, the Deputy Chief shall supervise completion of the investigation.
  - b. The Deputy Chief shall also consider whether the alleged misconduct should result in a criminal investigation. The Chief of Police will determine who will conduct the criminal investigation, which will generally be an outside agency.
  - c. The Deputy Chief shall insure that liaison is maintained between the district attorney's office and criminal investigation personnel when there is alleged criminal conduct on the part of an employee.
6. When the employee is notified that he or she is the subject of an internal investigation, he or she shall be provided a written statement of the allegations and his or her rights and responsibilities relative to the investigation.

7. Consideration shall be given to the likelihood that criminal charges and/or department disciplinary action are possible outcomes of the investigation. This will enable the Investigating Officer to ensure that the involved employee is extended all rights afforded by the situation.
8. Absent exigent circumstances investigations shall be completed within 30 days of the receipt of the complaint. During the investigation, weekly status reports shall be submitted to the Deputy Chief. The final outcome of every internal investigation shall be reported to the Chief of Police for inclusion in the internal affairs files. If the completion is delayed beyond 30 days, the complainant will be contacted and advised of the status of the investigation.
9. Upon conclusion of the investigation, the Deputy Chief shall ensure the complainant is advised of the final outcome of the internal investigation.

E. Investigative Tools and Resources

1. Rule and regulations pertaining to medical, ballistics, chemical, other tests, photographs and lineups may be utilized in internal investigations.
  - a. When a citizen complaint is the basis for an investigation, employees shall not be required to submit to a polygraph unless the complainant first participates in a like examination.
  - b. No employee shall be compelled to submit to a polygraph examination if, at any time, the Investigating Officer determines the investigation is likely to result in criminal charges being preferred against the employee under investigation.
  - c. A department employee may be required to submit to a test for alcohol or drug use while on duty in accordance with department rules.
  - d. If the Investigating Officer determines the investigation is likely to result in criminal charges against the employee being investigated, they should confer with legal counsel before proceeding under this section.
2. 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 an internal investigation.
  - b. If the Investigating Officer determines the investigation is likely to result in criminal charges against the employee being investigated,

they should confer with legal counsel before proceeding under this section.

F. Rights of Employee Under Investigation

1. When an employee is notified that he or she has become the subject of an internal investigation, the employee shall be provided a written statement of the allegations and his or her rights and responsibilities related to the investigation.
2. The rights of an employee under investigation shall be determined by the nature of the investigation. Rights associated with an administrative investigation differ from those associated with a criminal investigation.
3. During an investigation for strictly administrative purposes, an employee may be compelled to answer questions directly related to his or her official duties. Answers received in such a manner may not be used in a criminal proceeding involving the employee. Prior to any questioning, the employee shall be read the appropriate "Informing the Employee" form. (Annex A & B)
4. The following guidelines apply to an interview during an investigation for strictly administrative purposes.
  - a. The purpose of the investigation is to obtain information to determine whether disciplinary action is warranted. The answers obtained may be used in disciplinary proceeding resulting in reprimand, demotion, suspension or dismissal.
  - b. All questions asked of the employee under investigation that are specifically related to employment must be fully and truthfully answered. Refusal to answer may result in disciplinary action.
  - c. No Miranda rights are required.
  - d. The employee has no sixth amendment right to counsel.
  - e. The Wisconsin Police Bill of Rights applies and will be adhered to.
5. During a criminal investigation involving an employee, the Investigating Officer shall perform the following prior to any interview with the accused employee.
  - a. Advise the employee of Miranda rights.
  - b. 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.

- (1) If the employee decides to answer questions at this point, the responses may be used in both criminal and disciplinary proceedings.
- (2) In order to ensure that the department actions can't be construed as coercive, the request for an attorney will be granted even if the employee has not yet been criminally charged or had their freedom of action deprived.

**G. Status of employee Under Investigation**

**1. Release from duty**

- a. If the condition of an employee is such that a supervisor deems that he or she should not be performing police duties, the supervisor shall place the employee on administrative leave with pay.
- b. If the alleged misconduct is of such a serious nature that the best interest of the department would be served by the employee being relieved from duty, the supervisor shall place the employee on administrative leave with pay.
- c. Before placing the employee on administrative leave, the supervisor will consult with the Chief of Police. If the Chief is not available, the Supervisor should order the leave and then notify administration as soon as possible.
- d. An employee placed on administrative leave will be ordered to contact the Chief within 48 hours for duty instructions.

2. Administrative suspension with pay may continue pending the outcome of an investigation if the Chief of Police deems it in the best interest of the department and the community.

**H. Complaint Adjudication**

1. The Deputy Chief will classify completed internal investigations using the following guidelines.
  - a. Unfounded: Investigation indicates that 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 that the incident occurred, but was justified, lawful, and proper under the circumstances.
- e. Policy failure: The investigation reveals that the allegations are true, however, the employee was acting in accordance with established department policy.

- 2. All completed investigations will be maintained in the department's internal affairs files located in the Chief's office. Internal affairs files shall be maintained in accordance with open records laws. Notices of disciplinary action will be maintained in the employee's personnel file.

#### I. Disciplinary Guidelines

- 1. Employees of the Milton Police Department are subject to disciplinary action for the commission of any act that is prohibited, or the omission of any act that is required.
- 2. Non-compliance with any rule or regulation, policy, administrative directive, law or ordinance may result in disciplinary action.
- 3. Discipline and/or remedial training is a means of improving employee effectiveness, productivity, and performance. Disciplinary action should be based on fairness to the employee and to the Department. Discipline should also be administered in a fair and consistent manner with regard to the rights of all concerned.
- 4. All supervisors of the Milton Police Department are vested with the authority to take immediate action regarding infractions of rules, regulations, and policies by subordinates. Supervisors may also recommend formal discipline and/or remedial training for any subordinate.

#### J. Types of Discipline

- 1. Counseling: Any supervisor, or any member acting in such capacity, may exercise the prerogative of immediate correction or admonishment of a subordinate whenever the nature or circumstances of an incident may not warrant a written reprimand or any other formal disciplinary action.
  - a. The supervisor may also initiate and/or recommend appropriate remedial training with a goal of improving employee performance.
  - b. A supervisor may also choose to note the problem for use in the officer's evaluation. (Refer to Evaluation of Employees policy).

- c. If the application of immediate correction or admonishment is not effective, or if the violation represents a repeated or more serious problem, the supervisor may recommend various other forms of discipline.
  2. Written/Oral Reprimand: Reprimands are used for various minor infractions and do not necessarily require either an internal or a formal investigation.
    - a. A formal reprimand is imposed by the Chief of Police or his designee.
    - b. Before a reprimand is imposed, a review will be made of previous discipline. If this review indicates repeated infractions of a similar nature, more serious forms of discipline may be administered.
  3. Suspension without Pay: Suspension without pay is a period of time during which an employee's salary is withheld for disciplinary reasons.
    - a. Supervisory personnel may recommend a suspension, but only the Chief of Police has the right to impose such discipline and to set the severity of the suspension.
    - b. Suspension is reserved for a serious violation and/or repeated minor infractions of a similar nature. Suspension without pay is not to be confused with a member being relieved of duty with pay, pending an investigation or bringing of formal charges.
    - c. If employee misconduct results in suspension, the employee shall be provided with the following information:
      - if. A statement citing the reason for the suspension.
      - ii. The effective date of the suspension.
      - iii. Employees rights to appeal and hearing rights in accordance with statute 62.13(5)(c).
  4. Dismissal/Demotion: Dismissal is an involuntary separation of a member of the Milton Police Department. Demotion is a transfer of a member from a position in a higher grade to a position in a lower grade.
    - a. Dismissal and demotion are reserved for a particularly serious violation and/or repeated violations of a similar nature.
    - b. Demotion and dismissal must be with the approval of the Milton Police Commission. These disciplinary procedures are in accord with

the provisions of WI State Statute 62.13.

- c. If employee misconduct results in dismissal, the employee shall be provided with the following information:
  - i. A statement citing the reason for the dismissal.
  - ii. The effective date of the dismissal.
  - iii. A statement of the fringe and retirement benefits after dismissal.
  - iv. A statement as to the content of the employee's employment record relating to the dismissal.

K. Appeal Procedures

Employees wishing to appeal the outcome of any internal investigation may do so according to established grievance procedures when applicable and/or via statutory procedures as specified in ss. 62.13.

L. Release of Information

- 1. During the course of an internal investigation the department will not identify any member under investigation.
- 2. On an annual basis, the Chief of Police shall provide a summary of internal affairs activities within the police department's Annual Report.

BY ORDER OF THE CHIEF OF POLICE

  
\_\_\_\_\_

ANNEX A

**MILTON POLICE DEPARTMENT  
ADMINISTRATIVE INVESTIGATION**

**INFORMING THE EMPLOYEE**

To: \_\_\_\_\_

Date: \_\_\_\_\_

1. The Chief of Police is presently investigating an incident(s) and/or complaint involving your conduct and performance.
2. This investigation could lead to disciplinary action, demotion, dismissal or criminal charges.
3. The nature of this investigation includes allegations of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. At your request, you may be represented by a representative of your choice who, at your discretion, may be present at all times during the interrogation.
5. You may be represented by a representative of your Association/Union who, at your discretion, may be present at all times during the interrogation.
6. You may be requested to submit a written report, detailing your knowledge of the incident(s) under investigation.

I hereby acknowledge that this form has been read to me. I understand that I can have a copy of this form upon my request.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Investigating Officer

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness

Time: \_\_\_\_\_

ANNEX B

**MILTON POLICE DEPARTMENT  
ADMINISTRATIVE INVESTIGATION  
INFORMING THE EMPLOYEE**

To: \_\_\_\_\_

Date: \_\_\_\_\_

1. The Chief of Police is presently investigating an incident(s) and/or complaint involving your conduct and performance.
2. This investigation could lead to disciplinary action, demotion, dismissal or criminal charges.
3. The nature of this investigation includes allegations of:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. At your request, you may be represented by a representative of your choice who, at your discretion, may be present at all times during the interrogation.
5. You may be represented by a representative of your Association/Union who, at your discretion, may be present at all times during the interrogation.
6. You may be requested to submit a written report, detailing your knowledge of the incident(s) under investigation.
7. This is an internal administrative investigation and the answers you give, or the fruits thereof, cannot be used against you in a criminal proceeding.
8. **YOU ARE HEREBY ORDERED TO ANSWER QUESTIONS AND SUBMIT TO ANY REQUIRED STATEMENTS OR REPORTS. REFUSAL TO RESPOND DURING THE INTERROGATION, OR ANY RESPONSE WHICH IS UNTRUTHFUL COULD RESULT IN DISCIPLINARY ACTION UP TO AND INCLUDING TERMINATION OF EMPLOYMENT.**

I hereby acknowledge that this form has been read to me. I understand that I can have a copy of this form upon my request.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Investigating Officer

Date: \_\_\_\_\_

Time: \_\_\_\_\_

\_\_\_\_\_  
Witness

Annex C

**Citizen Complaint Procedure and Forms**

Dear Citizen:

The public's trust, confidence, and support are vital to successful police service. The public is entitled to have ready access to the police administration that is sworn to serve them. This access will help foster public understanding and acceptance of police procedures, and aid in the detection or correction of improper or undesirable practices.

The City of Milton has adopted a policy that provides a fair, orderly, and uniformly applied process for receiving, investigating, and resolving complaints of alleged police misconduct.

Complaints against city of Milton Police Department employees may be filed by contacting a police department supervisor and giving all details regarding the incident. The complaint will be promptly forwarded to the Office of the Police Chief to review and assignment for investigation.

When the complaint investigation is completed, the Police Chief will review the case and determine a course of action. You will receive a written response to the giving the disposition of the investigation.

**YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A PEACE OFFICER FOR ANY IMPROPER POLICE CONDUCT. WISCONSIN LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NO ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE THE OFFICER BEHAVED IMPROPERLY. CITIZEN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST SEVEN YEARS, UNLESS REMOVAL OF THE COMPLAINT IS REQUIRED THROUGH A COURT ACTION.**

*I have read and understood the above statement*

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Complainant

### Citizen Complaint Affidavit

I \_\_\_\_\_, have filed a complaint against a police officer with the City of Milton. I have been provided the following:

1. A copy of City of Milton Police Department Policy.

I have been notified of the following:

1. The filing of a citizen's complaint is a serious matter and will be investigated.
2. In the event the City of Milton Police Department does not have the resources to investigate it may refer to the complaint to an outside police agency.
3. Unless extended for cause under the unique circumstances, the citizen complaint may be completed within 30 days of the date of this affidavit. If it is not completed a status report will be provided to the complainant.
4. That under Wisconsin State Law it is illegal to file a complaint against an officer that is knowingly false and that I may be charged if I have filed a complaint under false pretenses.

Date:

Signed:

## Citizen Complaint Acknowledgement Form

DATE:

ADDRESS:

Dear \_\_\_\_\_,

Please consider this correspondence an acknowledgement that we have received your Citizen's Complaint dated \_\_\_\_\_. We will process your complaint in accordance with our policy on Internal Investigation and Wisconsin State Statutes Stats. 66.312(3) & 946.66.

Please expect contact from a representative of our agency as we proceed with the investigation.

Sincerely,

Scott E. Marquardt  
Chief of Police

ANNEX D

**MILTON POLICE DEPARTMENT  
 CITIZEN COMPLAINT REPORT**

COMPLAINANT:		DATE:	TIME:
ADDRESS:		PHONE:	DOB:
EMPLOYEE(S) COMPLAINED AGAINST:			
Date/Time of Occurrence:		Location of Occurrence:	
Detail of Complaint:			
Signature of Complainant/Date:		Signature of Receiving Supervisor:	
Signature of Administration/Date:		Assigned Investigation Supervisor:	
Complaint Disposition:			
<input type="checkbox"/> Unfounded <input type="checkbox"/> Not Sustained <input type="checkbox"/> Sustained <input type="checkbox"/> Exonerated <input type="checkbox"/> Policy Failure		_____ Chief of Police  _____ Date	