

JACKSON POLICE DEPARTMENT

Number: 7.0

October 2019

INVESTIGATIONS OF COMPLAINTS AND ALLEGED MISCONDUCT

7.1 COMMUNITY RELATIONSHIP

- A. The confidence in the ability of the Police Department to fairly investigate incidents, determine facts and correct deficiencies in policy or in officer conduct is crucial to the Department's relationship with the community.

7.2 PRIMARY GOAL

- A. The Chief of Police has the responsibility under the Municipal Code to discipline employees whose conduct discredits or impairs the Department, or constitutes a violation of Department procedure or law. In so doing, the rights of employees and members of the public must be preserved while investigations are conducted in a fair and objective manner with the truth as the primary goal.

7.3 ACCOUNTABILITY

- A. Complaints are investigated to provide accountability to the public and protection for falsely accused employees, to reveal training needs, to facilitate re-evaluation, and to point out the need for new Departmental policies and procedures.

7.4 PROCEDURE

- A. The Jackson Police Department will openly accept complaints against its members and will fully investigate each such complaint.
- B. Disciplinary action may be taken against those members whose conduct is found to discredit the Department, impair its effective operation, or constitute a violation of Departmental policy and procedure, Town of Jackson policy and procedure or Federal, State, or Municipal Law.
- C. The Department will always weigh the totality of the circumstances while investigating an incident in an attempt to determine if the employee's alleged wrong doing may fall into one of the following categories: intentional wrong doing; malice; negligence; unethical or unprofessional; immoral; illegal; or simply a mistake due to human error. It is not the intent of the Department nor the intent of this policy to discipline its members for simple mistakes or human error alone, which may be more appropriately addressed through additional or remedial training.

7.5 EXONERATION

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- A. Additionally, when an officer is exonerated from allegations of wrong doing, the Department shall have the obligation to explain facts and circumstances, which can be disclosed to assist the complainant in understanding proper police practices and to clear the good name of the officer accused of misconduct.

7.6 FILING A COMPLAINT

- A. Any citizen who wishes to file a complaint concerning the conduct of a member of the Jackson Police Department shall be courteously and promptly informed of the manner in which this may be done.
 - 1. Generally, complainants will be referred to a Supervisor (Sergeant or Corporal) who will attempt to resolve complaints that fall within their scope of authority that are considered minor in nature, and can be resolved through mediation or redirection with the employee. However, any member of the Department, regardless of rank, may accept a complaint in the absence of a supervisor to provide better customer service to the complainant. No complainant shall be requested to lodge their complaint at a later time unless an emergency situation exists.
 - 2. Complaints may be received by telephone, letter, Email or in person. Members shall not attempt to dissuade any person from filing a formal complaint against any member of the Department.
 - 3. Complaints made by persons who wish to remain anonymous will be accepted but will be forwarded to the Operations Lieutenant or Chief of Police prior to the commencement of any active investigation into the matter to determine if adequate information was provided by the complainant to justify further investigation.
 - 4. In all cases, complainants will be encouraged to provide a written statement concerning the complaint, but it is not required to proceed with filing of a complaint.
 - 5. Complaints about officer conduct from persons not a party to a police action who have no direct involvement in the alleged incident will be accepted and investigated according to the merits of the complaint. In these cases, the identity of the complainant and witnesses, and the addresses and telephone numbers of each, will be requested. If requested, confidentiality of the complainant will be maintained to the extent consistent with the rights provided to the officer(s) who may be the subject of the complaint.
 - 6. Matters which experience and judgment dictate are minor in nature and capable of being resolved through employee counseling, training, or

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redirection may be handled and documented at the supervisory level (Sergeant or Corporal) and are considered a “supervisory review” and do not require a more formal investigation.

7.7 FACT FINDING

- A. Any employee receiving a complaint shall, without delay, forward the complaint to the member’s immediate supervisor (Sergeant or Corporal) who may make preliminary inquiries into the allegation prior to the commencement of any formal investigation. This process is only for the purpose of asking pertinent questions concerning an incident in order to place sufficient facts before the Operations Lieutenant or the Chief of Police to permit a decision to be made on whether or not the opening of a more formal investigation is warranted. During this initial investigation, the Sergeant or Corporal shall determine if the complaint appears to merely warrant a “*supervisory review*” or if it rises to the level of a more formal investigation (*Administrative Review or Internal Affairs Investigation*).
- B. For those allegations which appear to rise to the level of requiring a more formal investigation (*Administrative Review or Internal Affairs Investigation*), the complainant shall be requested by the supervisor to complete and sign a Witness Statement Report Form but shall not be mandated to do so. The supervisor will assist in the completion of the form if required and will ensure that relevant facts are included in the statement. When appropriate, a supervisor may write a statement based on an interview with the complainant and add it as an addendum to the Witness Statement Report Form. Should the complainant decline to complete and sign the statement, the Supervisor shall note that fact and shall complete a report detailing the information given by the complainant in Memorandum Form that shall include a recommendation from the Supervisor that the complainant move forward for consideration for a more formal investigation (*Administrative Review or Internal Affairs Investigation*). The results of the fact-finding process should be forwarded to the Operations Lieutenant along with the Witness Statement Report Form or Supervisor’s Memo, any crime reports associated with the incident, and any Supervisor reports generated on the incident.
- C. The Operations Lieutenant shall review all of the documents provided by the supervisor and determine if in fact the complaint justifies a more formal investigation or not. If the Lieutenant does not believe a more formal investigation is necessary, the Lieutenant shall return the complaint to the Sergeant or Corporal to be handled as a “Supervisor Review.” However, if the

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Lieutenant agrees that a more formal investigation is appropriate, he shall in Memorandum Form, send an advisement to the Chief of Police summarizing the incident with a more formal recommendation for a more formal investigation to occur (Administrative Review or Internal Affairs Review).

- D. If the Chief of Police receives a recommendation from the Lieutenant suggesting a more formal investigation is required (Administrative Review or Internal Affairs Review), the Chief of Police shall review the documents and determine which type of investigation is most appropriate to conduct, an Administrative Review or Internal Affairs Review. If the Chief of Police believes the incident could result in suspension or termination, then the Chief of Police shall order that an Internal Affairs Investigation commence. Otherwise any lesser anticipated disciplinary action than suspension or termination shall warrant an Administrative Review to commence and shall be ordered by the Chief of Police

7.8 NON-NATIVE SPEAKER COMPLAINTS

- A. Persons who do not speak English and who wish to lodge a complaint about an employee will be afforded the aid of an interpreter.
- B. If an interpreter is not immediately available, the supervisor may opt to delay the interview until an interpreter can be present to assist in the interview and to review any statement to assure its validity.
- C. All further contacts with the complainant in relation to the incident should be made with the assistance of an interpreter.

7.9 LOG DOCUMENTATION

- A. Supervisors shall document the receipt of all citizen complaints in a log designated for such a purpose on the "I" drive under the Command Staff Folder.
- B. Informal or minor complaints addressed at the supervisory level shall also be included on the log along with the disposition of the complaint.
- C. The information in the log shall be used by the Chief of Police for evaluating the complaint process and as an early warning device.

7.10 COMPLAINTS INITIATED BY A MEMBER OF THE DEPARTMENT

- A. Any member of the Department who has reason to believe that another member has conducted themselves in a manner contrary to law, policy and procedure, the public interest, or to the effective operation of the Department, may discuss the matter with any supervisor within the Department and may submit an incident report in memorandum form and related materials as appropriate to that Supervisor.

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- B. The Supervisor receiving the complaint shall forward the complaint to the Operations Lieutenant for review, who in turn shall forward the complaint to the Chief of Police. Employees of the Department always have the opportunity to speak with the Human Resources Department regarding employment concerns.

7.11 PROCESSING COMPLAINTS

- A. The Chief of Police will review all complaints forwarded to him by the Operations Lieutenant, to determine how the complaint will be processed. There are three possible formats for processing a complaint in the following order:
 - 1. Supervisor Review.
 - 2. Administrative Review.
 - 3. Internal Affairs Review.
 - 4. See definitions listed below.
- B. Definitions:
 - 1. *Supervisor Review*: involves allegations of a very minor nature, but do not rise to the level of blatant policy violations or deviations from Department procedures. Most incidents of this type are typically due to a miscommunication between the officer and the complainant and would not lead to disciplinary action beyond oral counseling or an SSR.
 - 2. *Administrative Review*: involves allegations of minor policy or procedural infractions by members of the Department. *Administrative Reviews* focus on matters that supervisory experience and judgment indicate are subject to resolution at lower levels of discipline, correction, or retraining and are unlikely to lead to disciplinary action that could result in suspension or termination of an employee.
 - 3. *Internal Affairs Review*: will be conducted when there are allegations of more serious misconduct or illegal acts. Internal investigations are to be conducted when the allegation, if sustained, is likely to result in disciplinary action that could lead to suspension or termination.
 - 4. All internal affairs investigations and any documentation pertaining thereto shall be treated as confidential and stored in a location separate from an employee's personnel file.

7.12 SUSPENSION OR REASSIGNMENT

- A. At the discretion of the Chief of Police, members may be placed on suspension with pay or reassigned to administrative duties during the conduct of any internal affairs review.
- B. This action is solely administrative and does not constitute disciplinary action.

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7.13 PROCEDURE FOR ADMINISTRATIVE REVIEW

- A. Members assigned to conduct an Administrative Review shall analyze the complaint and make such inquiries as may be required. Upon completion, the Supervisor can either take non-disciplinary action to resolve the complaint or may make a recommendation to the Chief of Police for disciplinary action.
- B. If, during the course of an Administrative Review, an investigator develops a reasonable suspicion that the matter is more serious than originally determined or could lead to disciplinary action more stringent than counseling or an oral reprimand, the investigator shall cease the investigation and notify the Chief of Police. The Chief of Police may cause the investigation to continue, reclassify the matter to an Internal Affairs Investigation, or reassign the investigation to an assisting agency.

7.14 PROCEDURE FOR INTERNAL INVESTIGATION

- A. At the point when an allegation is determined to merit an internal investigation, the Chief of Police shall cause the accused member to be notified in writing of the investigation and to be provided with a copy of the complaint, provided that the allegations are not criminal in nature and that such notification would not hinder the investigation.
- B. When the matter under investigation could result in disciplinary action against the accused member, the investigator shall advise said member of the following:
 - 1. The accused member may suggest witnesses and evidence which would tend to exculpate the accused member or mitigate the investigation.
 - 2. A tape recording will be made of the interview and a copy will be made available to the accused member.
 - 3. Failure to cooperate with the investigation may, in and of itself, result in disciplinary action.
- C. Department members will answer completely and truthfully all questions asked during an internal investigation and will cooperate fully in the internal investigation process. All interviews will be conducted under conditions conducive to obtaining an accurate account of the incident under investigation. Investigators will exercise due regard for the physical and emotional needs of the member being interviewed.
- D. No employee shall be deprived of any rights afforded by the Constitution of the United States, the laws of the State of Wyoming, or the Personnel Rules of the Town of Jackson.

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7.15 ALLEGATIONS OF CRIMINAL ACTIVITY

- A. Allegations of criminal activity against any member of the Department will be handled at the discretion of the Chief of Police. Internal investigations may be conducted concurrent to the criminal investigation or may be commenced upon the completion of any criminal investigation.
- B. The separate and distinct nature of criminal and internal investigations is intended to protect the officer's rights and to prevent the compromise of a criminal investigation by information or evidence developed during the course of an internal investigation for administrative purposes, during which the member must truthfully answer all questions and cooperate in the investigation at the risk of administrative discipline.

7.16 ADVISEMENT OF RIGHTS

- A. If an incident or event contains possible criminal violations in addition to potential policy violations, the two investigations must be conducted separately. Information gleaned from a policy investigation cannot be shared with criminal investigators without a waiver from the employee. However, information gleaned in the criminal investigation can be shared with the policy investigators.
- B. For a criminal investigation, the case law pertaining to *Miranda* advisements apply and shall be followed when questioning the employee regarding the potential criminal violation.
- C. For a criminal matter also being investigated as a Departmental policy violation, prior to the questioning of any Department employee regarding the potential policy violation, the investigator will read into the record an advisement of the employee's *Garrity* rights. The *Garrity* decision affirmed the protection of an employee's Constitutional rights, and the advisement informs the employee that the failure to truthfully answer questions will expose the employee to separate disciplinary action.
- D. Refer to the *Garrity Advisement* in appendix.

7.17 INVESTIGATIVE REPORT

- A. All information developed during an investigation is to be treated by the investigator with the strictest confidence. Upon completion of the investigation, the investigator shall submit a complete written report.
- B. The completed report will be submitted to the Operation's Lieutenant, who will then forward it to the Chief of Police with his/her recommendations.

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7.18 DISCIPLINARY PROCEDURE

- A. Based upon the results of the investigation, disciplinary actions may be instituted by the Department. Such actions will be carried out according to the procedures found in the Personnel Rules of the Town of Jackson.

7.19 CONFIDENTIALITY OF RECORDS

- A. All administrative inquiry and internal investigation reports, together with any logs of such files, will be confidential materials and are not public record. Such files will be maintained in a secure place and will be accessible to the Chief of Police and the Town Attorney. No administrative inquiry or internal investigation file will be surrendered unless advised by the Town Attorney.
- B. All internal affairs investigations and any documentation pertaining thereto shall be treated as confidential and stored in a location separate from an employee's personnel file.