



Policy Number: 1004 – Personnel Complaints
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Approved By: Brandon Gatlin, Interim Chief of Police

1004.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Montana State University Billings Police Department (Department). This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor, nor shall this policy apply to a criminal investigation.

1004.2 POLICY

The Department takes seriously all complaints regarding the service provided by the Department and the conduct of its officers.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state, and local law, along with municipal and county rules, and the requirements of any collective bargaining agreements.

It is also the policy of this Department to ensure that the community can report misconduct without concern for reprisal or retaliation.

1004.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of Department policy or federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate Department policy or federal, state or local law, policy or rule, may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

1004.3.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

Informal - A matter in which the Patrol Sergeant, with the concurrence of the command staff, is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused officer.

Formal - A matter in which a supervisor, with the concurrence of the command staff, determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member, or referred to a mutual aid, partnering agency for investigation, depending on the seriousness and complexity of the investigation.

Incomplete - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor, with the concurrence of the command staff, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

1004.3.2 SOURCES OF COMPLAINTS

The following applies to source of complaints:

1. Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
2. Any Department member becoming aware of alleged misconduct shall immediately notify a supervisor.
3. Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
4. Anonymous and third party complaints should be accepted and investigated to the extent that sufficient information is provided.
5. Tort claims and lawsuits may generate a personnel complaint.

1004.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1004.4.1 COMPLAINT FORMS

Personnel complaint forms will be maintained at the Department and be accessible through the Department website. Forms may also be made available at other University locations.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

1004.4.2 ACCEPTANCE

All complaints will be accepted by any Department member and promptly given to an appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

1004.5 DOCUMENTATION

Supervisors shall ensure that all formal and informal complaints are documented on a complaint form that complies with the Department's complaint narrative format. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Department should audit the log and send an audit report to the Chief of Police, or their designee.

1004.6 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be investigated using procedures determined by the Chief of Police and the University's Human Resources Department.

1004.6.1 SUPERVISOR RESPONSIBILITIES

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include, but are not limited to:

1. Ensuring that upon receiving or initiating any formal complaint, the allegations are documented in writing, unless the integrity of the investigation could be jeopardized by reducing the complaint to writing, or where the confidentiality of a complainant is at issue. In such cases, a supervisor shall orally report the matter to the Chief of Police, who will initiate appropriate action.
2. Responding to all complaints in a courteous and professional manner.
3. Resolving those personnel complaints that can be resolved immediately.
 - a. Follow-up contact with the complainant should be made within 24 hours of the Department receiving the complaint.
 - b. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Assistant Chief of Police.
4. Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Chief of Police is notified via the chain of command as soon as practicable.

1004.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

The following applies to employees who are the subject of an administrative investigation:

- a. Interviews of an accused employee shall be conducted during reasonable hours, and preferably, when the employee is scheduled to work. If the employee is off duty, s/he shall be compensated, or the employee's schedule will be adjusted, to account for the time spent.

- b. Prior to any interview, an employee should be informed of the nature of the investigation.
- c. All interviews should be for a reasonable period and the employee's personal needs should be accommodated.
- d. No employee should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
- e. A member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a *Garrity* advisement and after the investigator has consulted with the prosecuting agency.
- f. All employees subjected to interviews that could result in discipline have the right to have an uninvolved representative, including a union representative, present during the interview.
- g. All employees shall provide complete and truthful responses to questions posed during interviews.
- h. No employee may be compelled to submit to a lie detector examination, nor shall any refusal to submit to such examination be mentioned in any investigation (§ 39-2-304, MCA).

1004.6.3 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve Department members. Complaints that are determined to be frivolous will fall within the classification of unfounded.

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

If an investigation discloses misconduct, or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

1004.6.4 COMPLAINTS ALLEGING RACIAL PROFILING

The Chief of Police, or their designee, is responsible for reviewing all written complaints of racial profiling. The Chief of Police, or their, shall ensure that the complainant is

notified that the complaint was received and notified of the results of the review as required by § 44-2-117, MCA.

1004.6.5 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

1004.7 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

1004.8 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police, or their designee, may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

1. May be required to relinquish any Department badge, identification, assigned weapons and any other Department equipment.
2. Shall be required to continue to comply with all policies and lawful orders of a supervisor.
3. May be temporarily reassigned, or placed on paid leave, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

1004.9 CRIMINAL INVESTIGATION

The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

Where a member is accused of potential criminal conduct, a separate supervisor or investigator, from within the Department or a member of a mutual aid or partnering agency, shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

A member accused of criminal conduct shall be provided with all rights afforded to a civilian. The member should not be administratively ordered to provide any information in the criminal investigation.

The Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

1004.10 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation, or notice of retirement, prior to the imposition of discipline, it shall be noted in the investigative file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending criminal investigation or imposition of discipline.

1004.11 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule.

1004.12 NOTICE TO MONTANA PEACE OFFICER STANDARDS AND TRAINING (POST) COUNCIL

The Chief of Police, or their designee, shall notify the Montana POST Council whenever any officer resigns or is terminated because of any disciplinary action. The notification shall be made within 10 days of the resignation or termination (§ 7-32-303, MCA).