Personnel Complaints

1010.1 PURPOSE AND SCOPE

Best Practice | OCLEAC-2021 - 3.2018.7 (a) OCLEAC-2023 - 3.2018.7 (a) OCLEAC_2024 - 3.2018.7 (a)

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Delaware Police 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 or any other member, nor shall this policy apply to a criminal investigation.

1010.2 POLICY

Best Practice | MODIFIED | OCLEAC-2021 - 3.2018.7 (a) OCLEAC-2023 - 3.2018.7 (a) OCLEAC_2024 - 3.2018.7 (a)

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

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal 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.

1010.3 PERSONNEL COMPLAINTS

Best Practice | OCLEAC-2021 - 3.2018.7 (a) OCLEAC-2023 - 3.2018.7 (a) OCLEAC_2024 - 3.2018.7 (a)

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or of 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.

1010.3.1 COMPLAINT CLASSIFICATIONS

Best Practice | MODIFIED

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

Informal - A matter in which the Shift Supervisor is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.

Formal - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the Administrative Designee, depending on the seriousness and complexity of the investigation and assigned an Internal Affair (IA) number.

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1010.3.2 SOURCES OF COMPLAINTS

Best Practice

The following applies to the source of complaints:

(a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.

(b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.

(c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.

(d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.

(e) Tort claims and lawsuits may generate a personnel complaint.

1010.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

Best Practice

1010.4.1 ACCEPTANCE

Best Practice **OCLEAC-2021 - 3.2018.7 (b) OCLEAC-2023 - 3.2018.7 (b), 3.2018.7 (c) OCLEAC_2024 - 3.2018.7 (b), 3.2018.7 (c)**

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. 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.

1010.5 ADMINISTRATIVE INVESTIGATIONS

Best Practice

Allegations of misconduct will be administratively investigated as follows.

1010.5.1 SUPERVISOR RESPONSIBILITIES

Best Practice **MODIFIED** **OCLEAC-2021 - 3.2018.7 (c) OCLEAC-2023 - 3.2018.7 (c) OCLEAC_2024 - 3.2018.7 (c)**

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Chief of Police or the authorized designee may direct that another supervisor investigate any complaint.

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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:

(a) Responding to all complaints in a courteous and professional manner.

(b) 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.

(c) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Shift Supervisor and supervising Captain are notified via the chain of command as soon as practicable.

(d) Promptly contacting the Shift Supervisor for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.

(e) Forwarding unresolved personnel complaints to the Shift Supervisor, who will determine whether to contact the complainant or forward the complaint to the accused member's supervising Captain.

(f) Informing the complainant of the investigator’s name and the complaint number within three days after assignment.

(g) Investigating a complaint as follows:

  1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.

  2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.

(h) Ensuring that the procedural rights of the accused member are followed.

(i) Ensuring interviews of the complainant are generally conducted during reasonable hours.

1010.5.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Best Practice **MODIFIED** **OCLEAC-2021 - 3.2018.7 (c), 3.2018.7 (e) OCLEAC-2023 - 3.2018.7 (c), 3.2018.7 (e) OCLEAC_2024 - 3.2018.7 (c), 3.2018.7 (e)**

Whether conducted by a supervisor or an Administrative Designee, the following applies to employees:

(a) Interviews of an accused employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, he/she shall be compensated.

(b) Unless waived by the employee, interviews of an accused employee shall be at the Delaware Police Department or other reasonable and appropriate place.

(c) No more than two interviewers should ask questions of an accused employee.

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(d) Prior to any interview, an employee should be informed of the nature of the investigation.

(e) All interviews should be for a reasonable period and the employee's personal needs should be accommodated.

(f) No employee should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.

(g) 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.

1. An employee should be given an order to answer questions in an administrative investigation that might incriminate the employee in a criminal matter only after the employee has been given a *Garrity* advisement. Administrative investigators should consider the impact that compelling a statement from the employee may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).

2. No information or evidence administratively coerced from an employee may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.

(h) The interviewer should record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview shall be provided to the employee prior to any subsequent interview.

(i) All employees subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual’s statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.

(j) All employees shall provide complete and truthful responses to questions posed during interviews.

(k) No employee may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation.

1010.5.3 ADMINISTRATIVE INVESTIGATION FORMAT

Best Practice

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

Introduction - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

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Summary - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

Evidence - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

Conclusion - A recommendation regarding further action or disposition should be provided.

Exhibits - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

1010.5.4 DISPOSITIONS

Best Practice

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.

1010.5.5 COMPLETION OF INVESTIGATIONS

Best Practice **OCLEAC-2021 - 3.2018.7 (d) OCLEAC-2023 - 3.2018.7 (d) OCLEAC_2024 - 3.2018.7 (d)**

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation.

1010.5.6 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

Best Practice

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

1010.6 ADMINISTRATIVE SEARCHES

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Assigned lockers, storage spaces and other areas, including desks, offices and assigned 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.

1010.7 ADMINISTRATIVE LEAVE

Best Practice

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 the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

(a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.

(b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.

(c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

1010.8 CRIMINAL INVESTIGATION

Best Practice **OCLEAC-2021 - 3.2018.7 (e) OCLEAC-2023 - 3.2018.7 (e) OCLEAC_2024 - 3.2018.7 (e)**

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

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 Delaware Police 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.

1010.9 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Best Practice

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the chain of command. Each level of command should review and include their

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comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

1010.9.1 CAPTAIN RESPONSIBILITIES

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Upon receipt of any completed personnel investigation, the Captain of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Captain may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Chief of Police, the Captain may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Chief of Police, the Captain shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

1010.9.2 CHIEF OF POLICE RESPONSIBILITIES

Best Practice **MODIFIED**

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Captain for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any that should be imposed. In the event disciplinary action is proposed, the Chief of Police shall follow the disciplinary guidelines provided in the accused member's collective bargaining agreement.

1010.9.3 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

Best Practice

The Chief of Police or the authorized designee should ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint.

1010.10 PRE-DISCIPLINE EMPLOYEE RESPONSE

Best Practice **MODIFIED** **OCLEAC-2021 - 3.2018.7 (e) OCLEAC-2023 - 3.2018.7 (e) OCLEAC_2024 - 3.2018.7 (e)**

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall follow the guidelines set forth in the employee's collective bargaining agreement.

1010.11 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

Best Practice

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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 file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

1010.12 POST-DISCIPLINE APPEAL RIGHTS

Best Practice **OCLEAC-2021 - 3.2018.7 (e) OCLEAC-2023 - 3.2018.7 (e) OCLEAC_2024 - 3.2018.7 (e)**

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by any collective bargaining agreement and/or personnel rules.

1010.13 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

Best Practice

At-will and probationary employees and members other than non-probationary employees may be disciplined and/or released from employment without adherence to any of the procedures set out in this policy, and without notice or cause at any time. These individuals are not entitled to any rights under this policy. However, any of these individuals released for misconduct should be afforded an opportunity solely to clear their names through a liberty interest hearing, which shall be limited to a single appearance before the Chief of Police or the authorized designee.

Any probationary period may be extended at the discretion of the Chief of Police in cases where the individual has been absent for more than a week or when additional time to review the individual is considered to be appropriate (see also the Temporary Modified-Duty Assignments Policy).

1010.14 RETENTION OF PERSONNEL INVESTIGATION FILES

State

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.

1010.15 STATE REPORTING REQUIREMENT FOR SUSPENSIONS

State

The Chief of Police or the authorized designee shall notify the Director of Public Safety in writing of an officer’s suspension and the cause of the suspension (ORC § 737.12).

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