



OSHKOSH POLICE DEPARTMENT POLICY AND PROCEDURE

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Chief of Police: Chief Dean Smith <i>(Signature on File)</i>	Date Signed: 02/22/2019

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103.01 GENERAL POLICY

The Oshkosh Police Department, its employees and volunteers will be responsive to the needs and the concerns of the people it protects and serves. In order to accomplish this goal, the Department will courteously accept, impartially investigate, and promptly respond to a complaint received from a citizen and/or employee about Department policies, procedures, and/or actions of its employees or volunteers.

103.02 PURPOSE

- A. The purpose of this policy is to establish a procedure that will be followed in handling complaints against Oshkosh Police Department policies, procedures, and/or actions of its employees.
- B. Any time the Department determines that it is necessary to investigate events or circumstances that may lead to disciplinary actions, an internal affairs (IA) investigation shall be initiated. At the onset of any internal affairs investigation, the employee shall be presumed innocent and the examination of facts shall be conducted in accordance with the guidelines contained in this policy.
- C. All internal affairs investigations are to be conducted in a fair and impartial manner and will not only provide for corrective action when appropriate, but will also protect the Department and its employees from unwarranted criticism when those procedures or actions questioned are proper.

103.03 DEFINITIONS

- A. **Employee** - Any and all persons employed by the Oshkosh Police Department.
- B. **Factual Dispute** – Issues raised by the complainant relating to the validity of an arrest or the factual content of the report when there is no other alleged misconduct on the part of an officer, such as Unprofessional Conduct, Abuse of Force, Discrimination, Harassment, etc.
- C. **Formal Citizen Complaint Form** - Form used to record complaints from citizens against Department policies, procedures, and/or actions of Department employees. (See Appendix A 103)

- D. **Formal Complaint** – A complaint generated by a citizen or department employee alleging a violation of department and/or city policy, unprofessional conduct, or unlawful acts and the citizen wants an investigation into the matter with notification of the results. Generally, complaints are based upon alleged misconduct or violation of procedure.
- E. **Formal Employee Complaint Form** – Form used to record complaints from employees regarding Department policies, procedures, and/or actions of other Department employees. (See Appendix C 103)
- F. **Informal Complaint** – A complaint made by a citizen or department employee similar to a formal citizen complaint with the exception that the citizen or employee does not wish to pursue the matter and is only advising the department for informational purposes without expectation of response. These complaints will be reviewed by the IA Investigator and could be reclassified as an internally generated complaint if appropriate.
- G. **Internal Affairs Investigations** – Investigations into conduct whether on or off duty into possible violations of City of Oshkosh or Oshkosh Police Department policies, rules, and procedures.
- H. **Internally Generated Complaint** – Violations of laws, policies, procedures or rules of conduct, occurring either on or off duty, including all potential disciplinary matters. An investigation will occur if these matters are brought to the attention of a supervisor or as ordered by the Chief of Police or his/her designee. Internally generated complaints initiated by a supervisor shall not require a formal employee complaint form.
- I. **Supervisor** - Those officers of the Oshkosh Police Department holding the rank of Sergeant and above as well as designated civilian supervisors.

103.04 COMPLAINT TYPES AND PROCEDURES

A. Formal Complaints

1. The Oshkosh Police Department shall accept, record, and investigate all formal complaints made against employees regarding alleged violations of the city employee handbook, department rules of conduct, policies, directives, memorandums, and/or employees.

- a. All formal citizen complaints shall be recorded on the department's Formal Citizen Complaint Form (Appendix A 103).
 - b. All formal employee complaints shall be recorded on the departments Formal Employee Complaint Form (Appendix C 103)
 - c. Citizens who do not wish to sign or complete the Formal Citizen Complaint Form or wish to make a formal complaint over the phone may still request a formal investigation into their complaint.
 - d. The Oshkosh Police Department will investigate anonymous formal complaints.
 - e. Any sworn supervisor may accept a formal complaint and shall document the complaint on the appropriate complaint form. Employees who are contacted by a citizen requesting to make a complaint shall direct the citizen to a sworn supervisor.
 - i. In the event that a complainant is obviously impaired the supervisor will obtain their contact information and advise them that they will be contacted at a later time to determine if they are no longer impaired and able to make a complaint.
2. Upon receipt of a formal complaint the supervisor shall initiate an entry in the Blue Team computer system and direct that complaint to the IA investigator. The original copy of the appropriate complaint form shall be routed to the IA investigator.
 3. Upon receiving the complaint, the IA Investigator shall
 - a. Notify the employee's supervisor, Bureau Captain, and Chief of Police of the complaint against the employee.
 - b. Notify the complainant in writing as soon as possible that the complaint has been received and is being investigated.

- c. Should the investigation of the complaint take longer than 45 days, the complainant shall be notified in writing of the status of the complaint and the reason for delay in completing the investigation.
 - d. The complainant will be informed that they will be advised in writing as to the outcome of the investigation and if they have additional questions to contact the IA Investigator.
 - e. The IA Investigator shall notify the employee that a complaint has been made against them in writing and send him/her a copy of the complaint form, unless doing so may jeopardize an investigation.
 - f. The IA Investigator shall notify the employee of the outcome of any complaints made against them.
4. Procedures for making formal citizen complaints shall be made available to the public through the department's website and posted in the lobby of the Safety Building.

B. Informal Complaints

1. If a supervisor receives an informal complaint and the investigating supervisor can satisfactorily resolve the matter without formal discipline he/she may do so.
2. If after reviewing the incident the supervisor determines the informal complaint is unfounded, there will be no entry into Blue Team.
3. The investigating supervisor shall record details of the informal complaint (unless the complaint is deemed unfounded) and any actions taken in Blue Team and submit the entry to the IA Investigator.
4. Informal complaints which rise to the level of an internally generated complaint as described in section C must follow the guidelines in Section C.
5. If a Blue Team Entry is made regarding an informal complaint, the employee involved shall be notified.

C. Internally Generated Complaints

1. Complaints that make allegations of corruption, brutality, misuse of force, breach of civil rights, and criminal misconduct must be documented and referred to the IA Investigator.
2. Allegations of this nature require immediate notification to the Chief of Police.
3. Non-citizen complaint allegations including but not limited to: tardiness, unauthorized absence, insubordination and unsatisfactory performance may be investigated by line supervisors. The investigation shall be entered in Blue Team and the IA Investigator notified.

103.05 SCOPE OF INTERNAL AFFAIRS RESPONSIBILITY

- A. Any investigation initiated by the Department to determine the possibility of or to establish the basis for disciplinary action, whether such investigation is initiated by a formal, informal or internally generated complaint, shall require investigation by the Internal Affairs (IA) Investigator or another assigned supervisor. IA investigations shall be conducted in accordance with guidelines herein provided.
- B. Unless otherwise designated by the Chief of Police, the Professional Standards Lieutenant shall be the IA investigator for the department.
- C. Authority of the Internal Affairs Investigator (IA) is an extension of the Office of the Chief of Police and the IA Investigator acts as the direct representative of the Chief of Police with authority commensurate to that responsibility regardless of rank. All employees of the Department shall respond to the requests or orders from the IA Investigator, just as they would respond to requests or orders from the Chief of Police.
 1. Special Investigators - Should an investigation require additional personnel, the Chief of Police may direct that other personnel be temporarily transferred to Internal Affairs. Such transfers shall be for that period of time necessary to successfully complete the investigation.
 2. Rights Reserved - The Chief of Police may direct any supervisor to conduct or review a special internal affairs investigation. This procedure may be implemented to investigate cases of extreme

sensitivity; cases that if standard procedures were followed, would provide a conflict of interest; or cases that are expected to require extensive time and resources for successful completion of an investigation.

D. Internal Affairs will conduct administrative investigations of allegations of misconduct. When the alleged misconduct is criminal, the Internal Affairs Investigator will monitor the progress and the outcome of the authorities' investigation into the criminal charge to determine if the alleged conduct involved is a violation of Department rules, regulations or published orders. Lack of evidence substantiating a criminal charge will not automatically preclude disciplinary actions arising out of a subsequent IA investigation into a possible violation of written Department guidelines.

1. Discovery of Criminal Misconduct - If the investigation concerns misconduct that might also result in criminal charges against the employee, the investigator shall halt the investigation and notify the Chief of Police. The Chief of Police will determine whether the IA investigation will continue or be suspended until the outcome of a criminal investigation is determined.

E. Internal affairs will also be involved in other reviews that are not directly generated by an outside source, but rather are initiated within the Department as a quality control measure or in defense of a civil proceeding.

1. Civil Investigation (CI) - Internal affairs may conduct a civil investigation with the assistance of the City Attorney's office to prepare a defense to any suit filed against the City as a result of acts of omission or commission by a Department employee. Copies of such investigations shall be available to any employee named as a defendant in the suit.
2. Shooting Incidents (SI) - Internal affairs will conduct an administrative investigation into all cases of a Department employee discharging a firearm or being shot, whether on or off duty. Discharging a weapon for legal sporting purposes, authorized firearms training, and authorized dispatch of injured wildlife is exempt from investigation.
3. Use of Force Leading to Serious Injury or death

- a. When an employee's actions lead to serious injury, IA shall be notified and conduct an internal investigation. The actual scene of these incidents will be investigated by departmental personnel not involved in the incident itself or an outside agency. The Chief of Police or his/her designee shall determine who will conduct the investigation. See Policy 169 – Officer Involved Critical Incident or Death.
- b. When the officer designated as the IA Investigator for the department is involved in the occurrence of an incident subject to an IA investigation, the Chief of Police, or his designee shall designate another supervisor to fill the role of IA investigator for the duration of the investigation of the incident.

4. Harassment - The IA Investigator or Supervisor upon receiving a complaint of harassment shall report to the Chief of Police, who will report to the Human Resources Department for the City of Oshkosh per Policy 117 - Harassment. For additional guidance, please refer to the City of Oshkosh Harassment Policy adopted by the Common Council and published in the Employee Handbook.

F. Referral for Supervisory Review - Upon receipt of complaints of minor misconduct, the Internal Affairs Investigator may refer those complaints to the employee's supervisor for investigation and follow-through.

103.06 PROCEDURE - INVESTIGATING COMPLAINTS

Two types of investigations may take place, internal affairs or criminal. In instances where an internal affairs and criminal investigation are being conducted simultaneously the investigations will be conducted independently of each other. The Chief of Police will designate an investigator for any criminal investigations.

A. Internal Affairs Investigations – Investigations into conduct whether on or off duty into possible violations of City of Oshkosh or Oshkosh Police Department policies, rules, and procedures.

1. Any employee who is the subject of an internal affairs investigation shall be notified in writing of the allegation and their right to representation during any interview.

2. If the IA Investigator wishes to compel an employee to answer questions related to the performance of their official duties, the investigator shall read the employee the Oshkosh Police Department Investigatory Interview Warning advising the employee of their rights established by Wisconsin Statute 164.02 and United States Supreme Court Ruling *Garrity v. New Jersey*, 385 U.S. 493 (1967).
3. During an interview for internal affairs purposes, no Miranda rights are required. Any statements provided after the Oshkosh Police Department Investigatory Interview Warning is provided cannot be used in a criminal proceeding.
4. Information obtained through criminal investigations may be used in internal affairs investigations.
5. Internal affairs investigatory interviews may be audio recorded. If the interview is being recorded the employee being interviewed shall be notified of the recording prior to the start of the interview.

B. Criminal Investigations – Investigation into conduct when criminal prosecution is possible and statements made by the employee are to be used in a criminal proceeding. The interviewer shall:

1. When interviewing an employee regarding a criminal investigation the investigator shall:
 - a. If applicable advise the employee of their Miranda rights.
 - b. Advise the employee that if he/she invokes their right not to answer questions, no adverse administrative action will be taken based upon the exercising of this right. (*Garner vs. Broderick*, 392 U.S. 273 (1968)).
2. If the employee decides to answer questions at this point, the responses may be used in both criminal and disciplinary proceedings.

C. Complaints received 60 or more days following an incident.

1. These complaints will be reviewed for merit, and may be processed through a formal investigation should there appear to be merit to the complaint.

2. Complaints not investigated will be discussed with the employee and a note to file will be placed in the employee's working file.

D. Factual disputes and disputes over the validity of an arrest decision.

1. A supervisor shall review the incident report.
2. If the determination is made that the dispute is based solely on the factual content of the report or of an arrest decision, the complainant should be advised to;
 - a. Submit a written attachment to the incident report documenting their recollection of the incident. A supplement to the report shall be complete with the complainant's written attachment included, and/or;
 - b. Contest the matter in the court of jurisdiction.
3. The supervisor shall document the factual dispute by making an informal complaint entry in Blue Team.

E. Paid Administrative Leave

1. Officers involved in an officer involved shooting, officer involved death, or officer involved serious injury may be placed on paid administrative leave or modified assignment by the Chief of Police or designee while an IA investigation is conducted.
2. Employees who are the subject of an IA investigation may be placed on paid administrative leave or modified assignment pending the outcome of the investigation at the discretion of the Chief of Police or designee.

103.07 EMPLOYEE'S RIGHTS AND RESPONSIBILITIES

- A. All Department supervisors are responsible for ensuring that complaints are processed in accordance with the City Employee Handbook and Department rules and regulations.
- B. No employee shall interfere, in any manner, with an investigation conducted by Internal Affairs.

- C. Officer(s) named in a formal citizen complaint shall not have any further contact with the complainant or witnesses without first consulting with a supervisor.
- D. Confidentiality of internal affairs investigations.
 - 1. Without expressed authorization from the Chief of Police, Department employees shall not share, discuss, or reproduce any information relevant to an internal affairs investigation with any person except the internal affairs investigator, employee's legal counsel, or designated representative during the period of investigation.
- E. Representation of Employees.
 - 1. Employees involved in an internal affairs investigation are entitled to the following;
 - a. The employee will be informed of their right to representation and to have the representative present during all interviews.
 - b. The investigator will not proceed with the interview unless employee refuses representation.
 - c. The employee has the right to legal counsel in the case of a criminal investigation.
 - i. The attorney or representative may ask questions.
 - ii. The attorney or representative may not interfere with the interview or turn it into an adversarial proceeding.
- F. Employee's right to concede to the facts of an internal affairs investigation.
 - 1. The employee must be advised of the complaint, and that some form of discipline will result if the allegation is sustained, up to and including termination.
 - 2. With the approval of the Chief of Police or designee an employee may waive a complete internal affairs investigation.

G. Submission to Tests, Procedures

1. During the course of an IA investigation an employee who is the subject of the investigation may be required to submit to the following:
 - a. Medical or laboratory examinations;
 - b. Photographs;
 - c. Audio or video recordings;
 - d. Participate in a line-up;
 - e. Submit financial disclosure statements; and/or
 - f. Instruments for the detection of deception.
2. Requirements of employees to submit to one of the above requirements will be covered at the expense of the department and only if directly related to an ongoing IA investigation.

H. Reporting of Police Contacts

1. Employees who are arrested, cited or come under investigation for any criminal offense or ordinance violation in this or any other jurisdiction shall report this fact to a sworn supervisor as soon as practicable.
2. Supervisors will ensure all information received related to these events is reported to the appropriate bureau captain.
3. If an employee or any of his immediate family becomes involved in a situation requiring police attention, the employee shall summon another officer to handle the matter unless it constitutes an emergency.

103.08 ADMINISTRATIVE MEETING

- A. For all cases in which formal discipline is recommended, the Chief of Police or designee shall schedule an administrative meeting.
- B. An administrative meeting is provided to the employee prior to imposition of discipline so that they may offer any information in mitigation or explanation of the behavior for which disciplinary action may be imposed.
- C. Notice of Administrative Meeting

1. The Chief of Police shall schedule an administrative meeting prior to the final determination of appropriate discipline to be administered.
2. The employee shall be provided a minimum notice of 48 hours, excluding weekends and holidays.
3. The employee shall attend the administrative meeting as scheduled or submit a written request to waive the meeting. Approval of this request shall rest with the Chief of Police.

103.09 CASE DISPOSITION

- A. Upon completion of the investigation, the IA Investigator shall forward the case finding to the Chief of Police. The case finding shall be classified as follows:
1. Sustained - The allegation is supported by sufficient proof.
 2. Partially Sustained – Some elements of the allegation are supported by sufficient proof.
 3. Not Sustained - The evidence is not sufficient to prove or disprove the allegation.
 4. Unfounded - The allegation is false or otherwise not based on valid facts.
 5. Exonerated - The incident that occurred or was complained against was lawful and proper.
 6. Misconduct not based on the original complaint - The evidence supports the action for violations of policy, procedure, or law discovered during the investigation of the complaint that may be sustained, not sustained, unfounded or exonerated.
 7. Factual Dispute – There is no misconduct on the part of the employee. The complainant’s concerns are strictly related to the factual content of the report or to the validity of an arrest decision.

- B. The Chief of Police shall review the report and, in writing, either concur or not concur with the findings and the recommendations of the IA Investigator.
 - 1. If the Chief of Police concurs, he/she shall decide the appropriate disposition of a case.
 - 2. If the Chief of Police does not concur, he/she shall return the report to the investigator with his/her reasons for non-concurrence, and direct what further action should be taken in the case.
- C. Upon final disposition of the case, the IA Investigator shall notify, in writing, the complainant and the accused of the Department's findings.
- D. Upon completion of the investigation and the employee is not exonerated; the Chief of Police or his/her designee shall administer appropriate and final discipline that can range from training to dismissal from the Department.
- E. If the disciplined employee wishes to contest the Chief's action, he/she has the option of following the grievance procedure.
 - 1. For sworn officers this procedure is set forth in the current labor agreement between the collective bargaining unit and the City of Oshkosh.
 - 2. In a case of suspension, demotion, and/or dismissal, if the employee is a sworn officer, the officer may appeal the action to the Police and Fire Commission.
 - 3. Non-sworn employees will follow procedures in the City Employee Handbook.

103.10 COMPLAINTS AGAINST THE CHIEF OF POLICE

If a supervisor receives a formal citizen complaint against the Chief of Police, the supervisor will forward that complaint to the Assistant Chief of Police who in turn will forward the complaint to the City Manager for his or her review.

103.11 COMPLAINT TIME LINES

- A. Investigation of formal complaints shall be complete within 45 days of being filed, unless the Chief of Police orders the investigation be completed sooner.
- B. Exceptions to the 45 day restriction will be limited to those occasions when the employees, witnesses or complainants are unavailable due to illness, vacation or other similar circumstances, or when the complexity of the complaint requires more extensive investigation than is allowed under the 45 day time limitation.
- C. In the event the investigator is unable to complete the investigation within the prescribed time limits, the investigator shall request an extension in writing outlining why the request is needed.
- D. When a supervisor is assigned to complete an IA investigation, he or she shall within five days, contact the complainant to identify themselves as the investigating supervisor and to determine if they have any further information related to the complaint.
- E. Internal affairs investigations are deemed completed when the Investigative Report and Investigative Findings Report have been completed and routed to the command staff by the IA Investigator.

103.12 ANNUAL STATISTICAL SUMMARY

The Internal Affairs Investigator shall compile annual statistical summaries of Internal Affairs investigations and conduct an annual review to determine any patterns, tendencies, etc. that may need to be addressed. This report shall be provided to the Chief of Police and published each year in the Oshkosh Police Department's Annual Report. This report shall be accessible on the department's website.

103.13 INTERNAL AFFAIRS RECORDS

The IA investigator shall assign all IA investigations an IA number and document the investigations in the IA Pro computer system. A file of all formal IA investigations will all be kept in a secured location in the Office of the Professional Standards Lieutenant.