

| HERMANTOWN POLICE DEPARTMENT<br>GENERAL ORDER |                                                                                                                              |               |
|-----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|---------------|
| Policy – Resolution 2023-020                  |                                                                                                                              | Procedure     |
| Date Adopted: 10-05-2004                      | Title: Citizen Complaint Policy<br>and Procedures Regarding<br>Officer Misconduct for the<br>Hermantown Police<br>Department | Section:      |
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1. **PURPOSE.**

The Purpose of this Policy is to provide all Hermantown Police Department (“Department”) employees, and the public, the procedures for reporting, accepting, processing, and investigating allegations of officer misconduct or citizen complaints. This Policy defines provisions applicable only to the receipt, processing of complaints, and the disposition of allegations of administrative misconduct. This Policy does not apply to a criminal investigation.

2. **POLICY**

The Department’s public image is determined, in part, by a professional response to allegations of misconduct against its employees. The establishment of procedures for the acceptance of complaints is crucial to demonstrate and protect the Department’s integrity. The Department shall accept, and fairly, and impartially investigate, all complaints or allegations of misconduct to determine their validity. The Department shall timely impose any disciplinary or non-disciplinary corrective actions that may be warranted in a timely and consistent manner. All complaints against the Department and/or employee conduct shall be accepted and documented regardless of whether the filed complaint is in writing, verbally in person, by mail, by telephone, by facsimile or electronically, or anonymously.

The Chief Law Enforcement Officer shall be responsible for the investigation of all allegations of serious misconduct and serious use of force incidents pursuant to Department policies and procedures. The Chief will have the authority to utilize resources outside the department to conduct investigations including retaining outside investigators.

3. **DEFINITION OF TERMS.** For the purpose of these Citizen complaint policies and procedures, the terms set forth below have the following meanings:

- 3.1. Administrative Investigation means an internal investigation conducted in response to a complaint with the goal of determining whether an employee engaged in misconduct.
- 3.2. Chief Law Enforcement Officer means the Chief of Police of the Hermantown Police Department as from time to time appointed by the City Council. Within this Policy, the Chief Law Enforcement Officer will be referred to as CLEO.
- 3.3. City Administrator means the City Administrator of the City of Hermantown as appointed from time to time or if there is not City Administrator then employed by the City, such person as the City Council shall designate to perform the duties of the City Administrator under these policies and procedures.
- 3.4. Complainant means any person who files a complaint regarding the conduct of any Department employee, or the Department’s policies, procedures, or actions.

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- 3.5. Complaint means an allegation by a person regarding the Department’s services, policy or procedure, officer misconduct, claims for damages which allege officer misconduct, and any allegation of possible misconduct of a Department officer.
- 3.6. Complaint Control Number A sequential number used to identify and track citizen complaint investigations.
- 3.7. Department means the Hermantown Police Department.
- 3.8. Discipline means any of the following or combination thereof:
- 3.8.1. Oral Reprimand
  - 3.8.2. Written Reprimand
  - 3.8.3. Suspension
  - 3.8.4. Demotion
  - 3.8.5. Discharge
- 3.9. Exonerated means a preponderance of the evidence established either that:
- 3.9.1. the Department member named in the complaint was not involved in the alleged misconduct; or
  - 3.9.2. the act(s) that provided the basis for the complaint occurred; however, the investigation revealed that such act(s) were justified, lawful or proper.
- 3.10. External Complaint means a complaint that originates from outside the department.
- 3.11. Internal Complaint means a complaint that originates from within the Department. Such complaints may be initiated by other Department employees or from supervisors who observed, or were informed by other employees, of possible policy violations.
- 3.12. Internal Affairs Division (IAD) means the designated Bureau with primary responsibility for conducting investigations of Administrative or Citizen Complaints of Misconduct.
- 3.13. Law Enforcement Officer means an individual who holds a peace officer license in the State of Minnesota. Within this Policy, a law enforcement officer will be referred to as CLEO.

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- 3.14. Infraction means violation of any Department policy and procedure defining transgressions that are not major violations.
- 3.15. Major Violation means:
- 3.15.1. any criminal offense;
  - 3.15.2. the use of unnecessary or excessive force;
  - 3.15.3. abuse of authority;
  - 3.15.4. conduct which violates a person's civil rights;
  - 3.15.5. abusive or insulting language or conduct which is derogatory of a person's race, religion, sex, national origin, or sexual preference; and
  - 3.15.6. intimidation of or recrimination toward a complainant or witness involved in any complaint proceeding.
- 3.16. Member means all peace officers and civilian Department employees whether full-time, part-time, or temporary.
- 3.17. Misconduct means:
- 3.17.1. a violation of the Department's policy or procedure governing conduct of Department members; and
  - 3.17.2. conduct by a peace officer that would be a violation of POST Standards of Conduct set forth in Minn. Rules 6700.1600.
- 3.18. Not Sustained means the investigation failed to disclose sufficient evidence to prove or disprove the allegation(s) made in the complaint.
- 3.19. Policies and Procedures mean the administrative rules adopted by the Department regulating the conduct of Department members.
- 3.20. Policy Failure means that the complaint revealed a policy failure. The allegation is factual, and the CLEO(s) followed proper Department procedure, however, that procedure has proven to be deficient.
- 3.21. Receiving Authority means the entity who receives and is required to investigate the complaint when the subject of the complaint is the CLEO.

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- 3.22. Respondent means an individual who is the subject of a complaint investigation.
- 3.23. Rules of Conduct means the Rules of Conduct for the Department.
- 3.24. Supervisor means those holding the rank of Sergeant, Commander, and Chief.
- 3.25. Sustained means a preponderance of the evidence obtained in the investigation clearly establishes that the accused member's actions constituted misconduct.
- 3.26. Unfounded means there is no factual basis for the allegation or the act(s) alleged did not occur.

#### 4. **PROCEDURES**

##### 4.1. **Acceptance and Filing of Complaints.**

- 4.1.1. Complaint forms will be made available through Department personnel, at the Department and on the Department's webpage.
- 4.1.2. Complaints may be received either in person, over the telephone, in writing, or via the internet. A complainant may remain anonymous. The complainant should be advised that remaining anonymous may affect the investigation of the complaint.
- 4.1.3. A complainant may be accompanied by an attorney or other representative at the time a complaint is filed or at any other stage of the process.
- 4.1.4. Department employees will provide assistance to individuals who express the desire to lodge complaints against any employee of the Department.
- 4.1.5. The complainant will be advised of the procedures for submitting a complaint and provided with a copy of their submitted complaint.
- 4.1.6. The complainant will be asked to verify by signature that the complaint is complete and accurate. If the complainant elects not to sign the complaint, that fact will be documented and the complaint processed according to Department procedure.
- 4.1.7. The CLEO will forward a copy of the written complaint to the respondent only after it is determined that the complaint does not allege a criminal violation and the notification will not impede a criminal investigation.
- 4.1.8. The CLEO or Receiving Authority may delegate the duties and responsibilities required of the CLEO by this Policy to an appropriate designee(s).

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4.1.9. Any complaint made against the CLEO shall be made to the City Administrator.

4.1.10. The City Administrator must refer investigations of alleged misconduct against the CLEO to an outside law enforcement agency or criminal justice agency that does not have a conflict of interest.

4.1.11. Upon receipt of a complaint, it shall be forwarded to the CLEO and Patrol Commander. The Patrol Commander will log the complaint and assign a tracking number.

#### **4.2. Investigation of a Complaint.**

4.2.1. All investigations shall, to the extent reasonably possible, determine whether the officer's conduct was justified. No investigation being conducted by the CLEO shall be closed simply because a subject or complainant is unavailable, unwilling, or unable to cooperate, including a refusal to provide medical records or proof of injury.

4.2.2. The CLEO will make an initial determination as to whether the facts alleged require an administrative investigation. If the CLEO decides that an investigation is not required, the disposition of the complaint must be cleared as "unfounded", "not sustained", or "exonerated." The complainant and the respondent will be notified of this decision and the basis for determination. If the complainant supplies additional information within thirty (30) days of that initial determination, the CLEO may reverse the initial determination and order an administrative investigation.

4.2.3. If the CLEO determines an administrative investigation is required, the complaint will be reviewed by the Patrol Commander and classified in its proper category for assignment. An appropriate designee will then be assigned to investigate the complaint.

4.2.4. The investigation may be assigned to an external agency, that has no discernible conflict of interest, where there is potential for criminal charges resulting from the investigation, or in any other situation where the CLEO or Receiving Authority believes an external investigation is appropriate.

4.2.5. All investigations shall be conducted by a supervisor who did not authorize, witness, or participate in the incident. The investigator must inform the complainant of his or her name, business phone number and the status of the complaint as soon as possible after being assigned the investigation.

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- 4.2.6. The investigator must thoroughly investigate all allegations contained in the complaint and any other potential misconduct discovered in the course of the investigation. If the investigation reveals potential misconduct by another Department member, the investigator must report that fact to the CLEO or, in the case of a complaint against the CLEO, the City Administrator.
- 4.2.7. The supervisor will not close an investigation because the complaint is withdrawn, the alleged victim is unwilling or unable to provide medical records or proof of injury, or the complainant will not provide additional medical statements or written statements.
- 4.2.8. The supervisor will consider whether any rule, policy, or procedure of the Department was violated.
- 4.2.9. All Department members must cooperate with the investigation. When the respondent is a licensed peace officer, the investigation will comply with the requirements of the Police Officer Discipline Procedures Act, Minn. Stat. § 626.89.

**4.3. Complaint Categories.**

- 4.3.1. The following chart depicts the types of complaints, which are defined by the seriousness of the allegation, along with whom the complaint is generally investigated and reviewed by:

| TYPES          | DESCRIPTION                                                                                                                                                                                                                                                                  | EXAMPLES                                                                                                                                                                                                                                                                                                                                                                                                                            | GENERALLY HANDLED BY                                                                                                                                                                                |
|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CLASS 1</b> | Allegations that have the potential to damage the reputation of the Department or its personnel, and generally include, but not limited to, allegations of serious misconduct, serious violations of Standards of Conduct and other written directives, or criminal conduct. | <ul style="list-style-type: none"> <li>Excessive and/or improper use of force</li> <li>Brutality</li> <li>False Arrest</li> <li>Unlawful search and/or seizure</li> <li>Corruption</li> <li>Dishonesty and untruthfulness</li> <li>Gross Insubordination</li> <li>Violation of Civil Rights</li> <li>Bias-based profiling</li> <li>Sexual Harassment</li> <li>Workplace Violence</li> <li>Violation of Criminal Statutes</li> </ul> | <p>The CLEO</p> <p>Formal and documented with written statements and tape/video recorded interviews</p> <p>CRIMINAL INVESTIGATION DIVISION AND/OR OUTSIDE AGENCY INCLUDING PRIVATE INVESTIGATOR</p> |
| <b>CLASS 2</b> | Allegations that generally include, but are not limited to, allegations of a non-serious nature and violations of                                                                                                                                                            | <ul style="list-style-type: none"> <li>Violation of policies, procedures or rules, other than those which constitute a Class 1 Allegation</li> <li>Inappropriate conduct and/or</li> </ul>                                                                                                                                                                                                                                          | <p>CLEO AND/OR INTERNAL AFFAIRS UNIT</p>                                                                                                                                                            |

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|         | Standards of Conduct and other written directives of a non-serious nature.                                                                                                  | behavior of a less-serious nature, such as rudeness, discourtesy, and offensive language<br>• Violation of personnel rules                                                                                                                                        | Formal and documented with written statements                                       |
| CLASS 3 | Minor complaints by a citizen desiring to make an informal complaint against an employee, generally involving an employee's conduct and/or behavior.                        | When a citizen complains about the behavior of an employee, such as rudeness or demeanor, but does not wish to file an official formal complaint.                                                                                                                 | FIRST-LINE SUPERVISOR<br><br>Informal and documented as Informational Purposes Only |
| CLASS 4 | Minor complaints by a citizen who contacts the Department questioning or informally complaining about a policy, procedure, or tactic used by the Department or an employee. | When a citizen questions or complaints about the <i>procedures or tactics</i> used by the Department or employee, such as on-scene command presence, or why handcuffs were used when detaining a subject, but does not wish to file an official formal complaint. | FIRST-LINE SUPERVISOR<br><br>Informal and documented as Informational Purposes Only |

4.3.1.1. **Serious Misconduct.** Serious misconduct is understood by the Department to mean suspected criminal misconduct and the following misconduct:

- 4.3.1.1.1. All civil suits alleging any misconduct by an officer while acting in an official capacity;
- 4.3.1.1.2. All civil suits against an officer for off-duty conduct (while not acting in an official capacity) alleging physical violence, threats of physical violence, racial bias, dishonesty, or fraud;
- 4.3.1.1.3. All criminal arrests or filing of criminal charges against an officer;
- 4.3.1.1.4. All allegations of unlawful discrimination (e.g., on the basis of race, ethnicity, gender, religion, national origin, sexual orientation, or disability), including improper ethnic remarks and gender bias, but excluding employment discrimination;
- 4.3.1.1.5. All allegations of an unlawful search and seizure;
- 4.3.1.1.6. All allegations of false arrests or filing of false charges;
- 4.3.1.1.7. Any act of retaliation or retribution against an officer or person;

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- 4.3.1.1.8. Any act of retaliation or retribution against a person for filing a complaint against a member;
- 4.3.1.1.9. All allegations of excessive use of force or improper threat of force (including strikes, blows, kicks, or other similar uses of force against a compliant subject or administered with a punitive purpose);
- 4.3.1.1.10. Any failure to complete use of force reports required by Department policies and procedures;
- 4.3.1.1.11. The providing of false or incomplete information during the course of a Department investigation, or in any report, log, or similar document;
- 4.3.1.1.12. All incidents in which: (1) a person is charged by an officer with assault on an officer or resisting arrest or disorderly conduct, and (2) the County Attorney's Office notifies the Department that it is dismissing the charge based upon officer credibility, or a judge dismissed the charge based upon officer credibility; and/or
- 4.3.1.1.13. All incidents in which Department has received written notification from the Attorney General in a criminal case that there has been: (1) an order suppressing evidence because of any constitutional violation involving potential misconduct by an officer, or (2) any other judicial finding of officer misconduct made in the course of a judicial proceeding, or any request by a federal judge, local judge, or magistrate that a misconduct investigation be initiated pursuant to some information developed during a judicial proceeding before a judge or magistrate. Department shall request that all such entities provide them with written notification whenever it has been determined that any of the above had occurred.

#### **4.4. Investigative Interviews and Procedures of Officers.**

- 4.4.1. Prior to being interviewed, the officer against whom a complaint has been made shall be advised of the nature of the complaint.
- 4.4.2. All interviews will be conducted while the officer is on duty, unless the seriousness of the investigation or other justifiable reason is such that an immediate interview is required.



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- 4.4.3. During interviews there will be designated one primary interviewer.
- 4.4.4. The complete interview shall be electronically recorded.
- 4.4.5. The officer shall be provided with the name, rank, and command of all persons present during questioning.
- 4.4.6. Subject to approval of the CLEO, officers will be administered the applicable Warnings prior to interview:
  - 4.4.6.1. **Garrity Warnings:** For compelled statements if the inquiry is administrative.
  - 4.4.6.2. **Miranda Warnings:** Where the inquiry is criminal and the officer is under arrest or in custody.
- 4.4.7. Officers may have a union representation during the internal review.
  - 4.4.7.1. Officers, under internal (administrative) review, may have present a union representative with them during any administrative internal investigative interrogation so long as the representative is not involved in any manner (*i.e. a witness or subject of the complaint*) with the incident under investigation, or a conflict of interest does not exist.
  - 4.4.7.2. The representative's role is primarily that of an observer and shall not be permitted to interrupt the interview except for the purpose of advising and/or conferring with the officer who is concerned about a contractual right.
  - 4.4.7.3. In criminal investigations the employee has the right to talk to legal counsel or to have one present during questioning.
- 4.4.8. **Examinations and Searches**
  - 4.4.8.1. The Department may direct that the officer undergo an intoximeter, blood, urine, psychological, polygraph, medical examination, or any other exam not prohibited by law, if it is believed that such an examination is pertinent to the investigation, so long as they do not violate law, or any CBA.
  - 4.4.8.2. An on-duty supervisor may direct an officer to submit to a breath, blood, or urine test when there is reasonable suspicion that alcohol and/or drug usage is suspected as the factor directly related to allegations of

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misconduct, and is required to submit to such tests as the result of either being involved in a traffic accident with a department vehicle or involved in a discharge or a firearm on or off-duty.

4.4.8.3. Desks, lockers, storage space, rooms, offices, equipment, information systems, work areas, and vehicles are the property of the City of Hermantown and are subject to inspection. They may also be searched to retrieve City of Hermantown owned property, or to discover evidence of work-related misconduct, if there is reason to suspect, such evidence is contained therein.

4.4.8.4. Private property can be stored in areas mentioned above; however, employees will not expect privacy in those areas. Only those employees who are acting in their official capacity may be authorized to search or inspect areas assigned to other employees.

#### 4.5. **Investigative Report.**

4.5.1. The investigator will prepare a report that contains all relevant information organized into the following three (3) sections:

4.5.1.1. **Allegations:** An itemized summary of the acts of misconduct alleged in the complaint. Reference will be made to those rules, procedures, orders, statutes, or constitutional provisions that would be violated if the allegations are taken as true.

4.5.1.2. **Investigation:** A chronological summary of the investigation including all pertinent facts obtained through interviews with the complainant, accused Department member(s), and all available witnesses. Written statements, descriptions and analysis of any physical evidence, and all other relevant information will be included.

4.5.1.3. **Conclusions:** The investigator's findings and conclusions as to whether any misconduct occurred and the underlying reasons for the findings and conclusions.

4.5.2. Documentation of the name and badge number of all officers involved in, or on the scene during, the incident, and a canvass of the scene to identify civilian witnesses;

4.5.3. Thorough and complete interviews of all witnesses, subject to the Department's Garrity protocol, and an effort to resolve material inconsistencies between witness statements;

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4.5.4. Photographs of the subject(s) and officer(s) injuries or alleged injuries; and

4.5.5. Documentation of any medical care provided.

4.5.6. The investigation will be completed within thirty (30) days of the filing of the complaint unless the CLEO or Receiving Authority determines there is good cause to grant an extension. The complainant and respondent will be informed of any extension.

**4.6. Employee Responsibility to Report Misconduct.**

4.6.1. An employee will report any instances of employee misconduct as soon as practicable following receipt of information regarding the misconduct.

4.6.2. In applicable circumstances, employees are to prevent the deterioration or destruction of any evidence that would support or refute the allegation of misconduct.

**4.7. Confidentiality of Complaints.**

4.7.1. All employees who have knowledge that a complaint has been submitted, or will likely occur, are prohibited from discussing material issues related to the matter.

4.7.2. Exemptions include employees subject to the investigation when consulting with union or legal representation, in accordance with supervisory directives, testifying at an official hearing regarding the matter, or otherwise authorized by law, policy, or regulation.

**4.8. Additional Investigation, Review and Disposition.**

4.8.1. Upon completion of the investigation, the investigator will submit the report, case file and all investigative notes to the CLEO or Receiving Authority. The CLEO or Receiving Authority may require additional investigation or make one of the following decisions:

4.8.1.1. Unfounded

4.8.1.2. Exonerated

4.8.1.3. Not Sustained

4.8.1.4. Sustained

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#### 4.8.1.5. Policy Failure

- 4.8.2. The CLEO or Receiving Authority may postpone making a decision until any related criminal charges are resolved. The complainant and respondent are informed of this decision.
- 4.8.3. If the decision is “unfounded,” “exonerated,” “not sustained” or “policy failure” the CLEO or Receiving Authority will immediately notify the complainant and the respondent of the decision.
- 4.8.4. If the complaint is “sustained” the CLEO or Receiving Authority will:
  - 4.8.4.1. Issue findings of fact including a summary of the acts constituting misconduct and the specific statutes, policies, regulations and procedures violated;
  - 4.8.4.2. Take appropriate remedial and/or disciplinary action; and
  - 4.8.4.3. Advise the complainant of any public information regarding the disposition.
- 4.8.5. Prior to the implementation of remedial and/or disciplinary action the respondent is provided with a copy of the findings of fact. The CLEO, Receiving Authority and/or designee will review the findings of fact with the respondent and explain the reasons for the remedial and/or disciplinary action.
- 4.8.6. The investigation may be re-opened by the CLEO or Receiving Authority at any time if substantial new evidence is discovered concerning the complaint.
- 4.8.7. When a “sustained” disposition is final, the respondent may appeal the disposition pursuant to the rules and law governing the accused member’s employment.
- 4.8.8. The Patrol Commander shall have the following additional responsibilities:
  - 4.8.8.1. Maintain a complaint log;
  - 4.8.8.2. Maintain a central file for complaints in a secured area, and in conformity with records retention requirements of law; (personnel files located in City Hall)
  - 4.8.8.3. Conduct a regular audit of complaints to ascertain the need for changes in training or policy;

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4.8.8.4. Regular review to identify trends involving all complaints of use of force, officer misconduct, and/or abuse of authority;

4.8.8.5. Track complaints against individual employees to assist in employee risk analysis and Early Intervention Program (EIP); and

4.8.8.6. Provide the Police Chief, managers, and/or supervisors with quarterly summaries of complaints and final dispositions against officers.

#### 4.9. **Maintenance and Disclosure of Data.**

4.9.1. Disclosure to the public, complainant and respondent of data collected, created or received by the Department in connection with this Policy and procedure is governed by the provisions of the Minnesota Government Data Practices Act. Retention of data collected or maintained in connection with this Policy is retained in accordance with the Department’s “Record Retention Schedule.”

4.9.2. All data collected, created or received by the Department in connection with this Policy and procedure is maintained in accordance with the Department’s “Record Retention Schedule.”

4.9.3. The placement of the disposition report or other data in an employee’s personnel file is governed by the Department’s personnel policy.

4.9.4. Access to data collected, created, or received in connection with this Policy and procedure may only be authorized by the CLEO or the Department’s Data Practices “Responsible Authority,” and as provided by Chapter 13, the “Minnesota Government Data Practices Act,” or valid court order.

#### 4.10. **POST Board Reporting Requirements.**

4.10.1. Under Minn. Rule 6700.1610, a licensed peace officer will self-report to the POST Board any violations of the Standards of Conduct for peace officers listed in Minn. Rule 6700.1600.

4.10.2. Any person with knowledge of peace officer misconduct constituting grounds for action under Minn. Stat. Chapter 214, or Minn. Rules 6700.1600, may report the violation to the POST Board.

4.10.3. Minnesota Stat. 626.8457 Subd. 3 requires CLEOs to submit individual peace officer public and private data related to allegations of misconduct to the POST Board in “real time” via the POST Board Misconduct Reporting System.

| HERMANTOWN POLICE DEPARTMENT<br>GENERAL ORDER |                                                                                                                              |                |
|-----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|----------------|
| Policy – Resolution 2023-020                  |                                                                                                                              | Procedure      |
| Date Adopted: 10-05-2004                      | Title: Citizen Complaint Policy<br>and Procedures Regarding<br>Officer Misconduct for the<br>Hermantown Police<br>Department | Section:       |
| Revision Date: 02-21-2023                     |                                                                                                                              | Page: 14 of 14 |

4.10.4. The CLEO will update data within thirty (30) days of final disposition of a complaint or investigation.

4.10.5. Law enforcement agencies and political subdivisions are prohibited from entering into a confidentiality agreement that would prevent disclosure of the data identified in Minn. Stat. § 626.8457, Subd. 3, paragraph (b) to the POST Board. Any such confidentiality agreement is void as to the requirements of this section.

## 5. **TRAINING.**

5.1. The Department will continue to provide training to all officers on the citizen complaint process and the appropriate responses in handling citizen complaints, as developed and administered by the Investigative Commander.