City of Milwaukee

Fire and Police Commission

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Celebrating 125 years of service to the community
Fire and Police Commission - Established 1885

TO: Board of Commissioners

FROM: Michael G. Tobin

DATE: June 17, 2010

RE: Policy Training Rule XV, Section 5(e)

On June 3, 2010, the Board approved an amendment to Rule XV, Section 5(e) authorizing the Executive Director to refer an employee that is the subject of a citizen complaint to policy training. The Fire and Police Commission Citizen Complaint Intake Investigation Guidelines have been modified to reflect this amendment. The amendments are highlighted in the attached version.

We recommend approval of the amended guidelines.

MGT:cj

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FIRE AND POLICE COMMISSION
CITIZEN COMPLAINT INTAKE INVESTIGATION GUIDELINES

INTRODUCTION

The Milwaukee Fire and Police Commission (FPC) citizen complaint process is designed to address allegations of misconduct committed by department employees. The FPC has authority to independently discipline department employees up to and including termination from employment for acts of misconduct. This important responsibility is approached with careful and guided analysis. To fulfill its mission, the FPC uses administrative mechanisms to receive and evaluate complaints of employee misconduct. These mechanisms, known as the intake investigation screening processes, are administered by the staff on a regular basis. These mechanisms make the investigation process more efficient. The FPC exercises judgment about how to proceed by using these mechanisms when a complaint is received. These judgments are made many times daily by the staff. These guidelines establish principles to guide how, when, and by whom the judgments are made.

The principles are not mechanical rules. They recognize that while complaints may have patterns or similarities, no two are identical. They recognize that it is impractical, indeed impossible, to establish a "rule" for every circumstance. The principles expect human beings to make informed judgments that are rational, independent, consistent, and transparent. They acknowledge the value of swift and certain resolutions for both citizens and department employees. Finally, they acknowledge that the FPC has an obligation to use public resources wisely, which occasionally means making choices about priorities.

The principles described in these guidelines identify how the FPC interprets and exercises its discretionary authority during the intake investigation screening process. For some complaints, an FPC citizen board trial occurs after the intake investigation screening process. The principles that describe the procedures for a citizen board trial are identified separately from these guidelines.

DEFINITIONS

Aggrieved Person. An aggrieved person is a person who has been injured by, or witnesses, misconduct of a member of the Fire or Police Department.

Appeal. An appeal as used in these guidelines refers to the request by a complainant to have the FPC citizen board review a determination made by the Director during the intake investigation. An appeal should be requested within 30 days of the determination by the Director.

Complainant. A complainant is any person that files a complaint alleging misconduct by a Fire or Police Department employee.

Complaint. A complaint is a written statement filed by an aggrieved person that alleges inappropriate conduct by an employee of the Fire or Police Department. Complaints may be

initiated in writing, in person, by telephone, by mail, by fax, by email, through recognized community referral organizations, or through the FPC website. State law requires a complaint to be in writing and notarized before the FPC can accept jurisdiction, and the FPC staff assists complainants in this process once the complaint is initiated.

Critical Incident. A Critical Incident is an event that involves the use of deadly force or an event in which the actions of an employee result in death or serious bodily injury. The Director is notified immediately whenever an employee is involved in a Critical Incident. When a Critical Incident occurs, the FPC may conduct an independent investigation pursuant to established guidelines and/or monitor the investigation conducted by the Department and any outside agencies.

Department. The Department refers to the Milwaukee Fire Department and/or the Milwaukee Police Department.

Director. The Director means the appointed Executive Director of the FPC. Unless otherwise indicated, the term Director includes the Director's designees.

Dismissal. Dismissal is a determination to terminate formal action on a complaint.

Employee. An employee is a sworn or unsworn (civilian) member of the Fire or Police Department of the City of Milwaukee.

FPC Citizen Board. The seven citizens appointed by the Mayor and confirmed by the Milwaukee Common Council to perform the statutory functions of the Milwaukee Fire and Police Commission by serving part-time as Commissioners for a five-year term.

Intake Investigation. Intake investigation is the process by which FPC staff receive, record, evaluate, and categorize complaints about employee misconduct made by the public. An FPC investigator determines whether the initial complaint information meets the jurisdictional and other criteria required for filing a complaint by conducting a preliminary investigation that normally includes a telephone or in-person interview of the complainant and a review of the relevant police reports and dispatch information. The investigator evaluates the evidence, identifies and categorizes specific misconduct allegations, and reviews the complaint to determine whether it meets the minimum criteria for filing. The investigator also assists the complainant in meeting the minimum criteria for filing.

Mediation. Mediation is the process in which both the complainant and employee agree to mediate a complaint with the assistance of a neutral, trained mediator to achieve a resolution of the events that are the subject of the complaint.

Minor Misconduct Complaint. A minor misconduct complaint is one that, if true, would not likely result in a formal disciplinary action against the named employee. The FPC may consider a minor misconduct complaint for purposes of discipline or other corrective action if the circumstances warrant it.

Misconduct. Misconduct is conduct by an employee of the Fire or Police Department which violates law, department rules, regulations, policies, or procedures, or other standards of conduct required of City employees.

Policy Training. **Policy Training is a non-disciplinary procedure that is not subject to administrative appeal. A department employee participates in mandated training on specified policies or procedures.**

Screening. Screening is the process by which the FPC evaluates complaints and decides how to proceed during the intake investigation. Screening occurs when the FPC investigator evaluates incoming complaints, assists complainants with the filing process, and makes recommendations on how to handle the matter. It requires the application of sound judgment and the careful exercise of discretion. Screening decisions are made during the intake investigation process in accordance with FPC established guidelines. During the screening process, complainants are assisted by FPC staff to obtain the necessary information to meet the minimum filing criteria required by law. Once a complaint has been accepted and an intake investigation confirms that the filing criteria are met, the Director makes a second screening decision: how to proceed with the investigation. This screening decision is also made in accordance with established guidelines.

COMPLAINT CATEGORIES

The FPC classifies complaint allegations into five general categories during the intake investigation screening process. These categories assist the FPC in tracking, analyzing, and monitoring individual complaints as well as auditing of the overall complaint system. It also assists in identifying patterns or trends so that existing policies or procedures can be reviewed. Each category may contain allegations of more serious conduct or minor misconduct depending upon the circumstances of the incident. The complaint categories are:

Unauthorized Use of Force. An allegation that an employee used excessive physical force or more force than was needed under the circumstances.

Discourtesy. Unnecessary, unprofessional, rude, profane, derogatory, inappropriate or belligerent language, actions, or behavior by an employee.

Disparate Treatment. Language, conduct, or behavior that is inappropriate, demeaning, or derogatory concerning a person's race, religion, nationality, physical appearance, gender, or sexual orientation.

Department Procedures. An unauthorized or inappropriate deviation from established department policies or procedures.

Department Services. An inappropriate, unnecessarily slow, or insufficient response to an incident, call for service, or request for intervention of the department employee.

INTAKE INVESTIGATION ACTIONS ON COMPLAINTS

When the FPC receives a complaint, a file is opened, an intake investigation is conducted, and the Director decides whether to take some authorized action. The Director may take certain actions, up to and including dismissal of the complaint under the described circumstances, during the intake investigation. Any complainant may appeal a dismissal determination made during the intake investigation to the FPC citizen board within 30 days.

The Director and FPC staff members take special care to consider all complaints with an open and uncritical mind. The available courses of action during the intake investigation include:

1. Refer the complaint or selected allegations to the FPC citizen board for trial; or

2. Refer the complaint for mediation; or

3. Refer the complaint for action using the procedures of Rapid Resolution Complaint Inquiry (RRCI), Dual Complaint Inquiry (DCI), or Review of Completed Investigation (RCI); or

4. **Refer the complaint for policy training; or**

~~5. Dismiss the complaint or selected allegations for authorized reasons and forward the information in the complaint to the Department for appropriate policy, personnel, training, or other actions; or~~

5. Dismiss the complaint or selected allegations for reasons authorized by these guidelines; or

6. Take other actions consistent with law and policy to carry out the intent of state law, city ordinances, and policies relating to the mission of the FPC.

INTAKE INVESTIGATION SCREENING DECISIONS

The Director's intake investigation screening decisions are based in part on a careful evaluation of the evidence gathered during the intake investigation and an assessment of the ability to successfully investigate and sustain a disciplinary action.

The Director makes screening decisions based on evidence obtained during the investigation, which may include information provided by others, usually the complainant, witnesses, and the employee. The evidence may be inconsistent, contradictory, biased, or otherwise of questionable reliability. Evaluating the evidence and knowing whether to investigate further and refer to the FPC citizen board for a trial is an art, not a science.

<u>EVIDENTIARY GUIDANCE</u>. The Director and the investigator will evaluate the evidence using standard evidentiary principles in addition to the following guidance:

1. The investigation may properly assess a witness's credibility. It is presumed that complainants, employees, and other witnesses are truthful, but the presumption may be

overcome by contradictory evidence or evidence of bias, self-interest, or past untruthfulness.

2. The investigation may properly assess a witness's reliability. This includes the witness's ability to observe, remember, and report an incident. It may also include factors such as whether the witness was in a position to observe the incident or was under the influence of an intoxicant at the time of the incident.

3. The investigation may properly assess the internal logic and probability of a witness's statement for the effect it has on the witness's credibility and reliability. It is not bound to accept as true statements that are highly improbable or illogical on their face.

4. The investigation may consider a witness's past history of making demonstrably inaccurate statements for the effect it has on the witness's credibility. It may also consider an employee's complaint or disciplinary history.

5. The investigation will give greater weight to information that is corroborated by independent witnesses or by physical evidence.

INVESTIGATION INTERVIEWS

Interviews of department members are conducted in accordance with applicable collective bargaining agreements, department standard operating procedures, and state law.

Interviews of Police Department members are conducted in accordance with MPD SOP 3/450.50 Fire and Police Commission Investigations. The form FPC-21 Informing the Member Report will be used. When a member is not the target of an investigation but refuses to make a statement a Compelled Statement Form FPC 58 will be utilized.

REFERRING COMPLAINTS FOR FPC CITIZEN BOARD TRIAL

After carefully evaluating the evidence in accordance with these guidelines, the Director may refer the complaint to the FPC citizen board for trial if the Director determines that:

1. It is more likely than not that an act of misconduct was committed; or

2. An act of misconduct may have been committed and it is likely that additional investigation, including trial, would make a factual finding possible; and

3. **The complaint does not qualify for Mediation, Rapid Resolution Complaint Inquiry (RRCI), Dual Complaint Inquiry (DCI), Review of Completed Investigation (RCI) procedures, or Policy Training.**

REFERRING COMPLAINTS FOR MEDIATION

The FPC offers mediation as an alternative to the traditional complaint process. Not everyone who has a complaint against an employee wants to see the employee disciplined. Some believe that taking an adversarial approach is not constructive or ultimately helpful to anyone. Some complainants simply want to understand why an employee took a particular action, or to explain their own actions and perceptions, or to discuss how the incident affected them. Mediation allows complainants an opportunity to address and resolve their concerns, and for both parties to learn from the open discussion and contribute to better community relations.

The FPC mediation program is a non-adversarial alternative to the regular complaint-handling process; therefore, if the citizen and employee agree to mediation, there will be no FPC citizen board trial and no disciplinary action if the mediation is successful. When deciding whether to offer mediation as an alternative, the Director will consider whether mediation is likely to:

1. Result in greater complainant satisfaction; or

2. Improve citizen understanding of department procedures and actions; or

3. Result in improved employee conduct; or

4. Contribute to increased community relations.

Normally a complaint will not be referred to mediation if the case involves an allegation of criminal conduct against an employee, use of force involving bodily injury, or if the employee is a witness against the complainant in a criminal or traffic prosecution. If the involved employee(s) and complainant agree to mediation, it is referred to a mediator to conduct the mediation. Upon completion of the mediation, the complaint is dismissed.

PROCEDURE

1. Complaint is received by an FPC investigator, and a complaint number is assigned.

2. The FPC investigator conducts an initial review and forwards to the Director.

3. The Director makes the determination to refer the complaint to the mediation resolution process.

4. Complainant and employee(s) are contacted and confirm they are willing to participate in the mediation process.

5. Complaint is scheduled for mediation conducted by mediator.

6. Mediation session is conducted at a neutral location.

7. Complainant and employee(s) acknowledge resolution of the complaint, or the mediator certifies that the employee participates in the mediation session.

8. Complaint is dismissed.

REFERRING COMPLAINTS FOR RAPID RESOLUTION COMPLAINT INQUIRY (RRCI)

A Rapid Resolution Complaint Inquiry involves complaints of a general nature filed with the FPC and then forwarded to the Department for quick resolution. The individual contacting the FPC is questioning the actions of an employee of the Fire or Police Department concerning a matter that does not, on its face, appear to be a violation of a department rule or may in some instances be a minor rule violation.

A Rapid Resolution Complaint Inquiry can include, but is not limited to, inquiries into the quality of service provided by a public safety employee, including any question concerning the behavior or action taken by the employee. It can also include the propriety of an employee's actions, such as whether the actions or behavior followed proper department policy, procedure, rules, or law. It may also include any questions about general department policy or procedure that can be better answered by the Department directly.

The rapid resolution process is initiated when a complaint is filed by an individual. After reviewing the complaint, the Director will determine if a resolution could be expedited by involving the Department directly. The employee's district or bureau Captain at MPD or the Assistant Chief at MFD is contacted. The Captain or the Assistant Chief will either contact the complainant themselves, or delegate the matter to the appropriate supervisor in order to provide a "rapid resolution." This process allows a supervisor to find out quickly what happened and resolve any questions or concerns directly with the individual.

The FPC takes special care in making sure that the complainant understands the process and is comfortable in speaking with a department supervisor. Most people agree to have the opportunity to speak directly to a supervisor; if a person is uncomfortable doing so, the FPC will independently investigate the complaint.

The Captain or the Assistant Chief contacts the Director once the complaint inquiry has been resolved. After receiving an explanation of the outcome, the Director then follows up with the complainant. If for any reason the complainant is not satisfied with the contact by the Department supervisor, or if they still have questions, the complainant has 30 days in which to contact the FPC with their concerns.

PROCEDURE

1. Complaint is received by an FPC investigator and a complaint number is assigned.

2. FPC investigator conducts initial review and forwards to the Director.

3. Director makes determination to proceed as a Rapid Resolution Complaint Inquiry.

4. Complainant is contacted to explain the Rapid Resolution Complaint Inquiry process and confirm that they are willing to speak to a supervisor from the Police or Fire Department.

5. Captain (MPD) or the Assistant Chief (MFD) is contacted with Rapid Resolution Complaint Inquiry information.

6. Captain or Assistant Chief forwards Rapid Resolution Complaint Inquiry to appropriate supervisor.

7. MPD or MFD supervisor contacts complainant.

8. Department supervisor, Captain or Assistant Chief responds to the FPC via phone or email indicating the outcome and/or resolution of the contact with the complainant.

9. A resolution closing letter is sent to the complainant acknowledging information regarding the contact with the Department together with instructions to contact the FPC within 30 days if not satisfied or if there are further questions or concerns.

10. After 30 days, if no further contact is received from the complainant, the complaint is dismissed and the Captain or Assistant Chief is notified.

REFERRING COMPLAINTS FOR DUAL COMPLAINT INVESTIGATION (DCI)

Occasionally a person will file a complaint with both the FPC and the Department concerning the same incident. When this occurs, the FPC works with the Department to determine how to proceed with the investigation. This is called a Dual Complaint Investigation (DCI).

In a Dual Complaint Investigation, an initial review is made to determine if the matter could best be handled as a Rapid Resolution Complaint Inquiry (RRCI). If the complaint does not qualify as a RRCI, the Director and the Chief of the respective department will review and concur on the manner in which to proceed with the investigation. In some instances, the FPC will conduct the entire investigation. In other instances, the FPC will monitor an investigation conducted by the Department and issue its own determination. In addition, some DCIs are best handled as a Review of Completed Fire or Police Department Investigation (RCI).

A person who has filed a complaint that is classified as a DCI is advised of the manner by which the case is proceeding. In every DCI, regardless of the method of investigation, the Director monitors or audits the investigation and independently reviews the results for potential referral to the FPC citizen board. If for any reason the individual is not satisfied with the determination, or if they still have questions, the individual has 30 days in which to contact the FPC with their concerns.

PROCEDURE

1. A person files a complaint with the FPC and the Department concerning the same incident, and a complaint number is assigned.

2. The FPC investigator conducts an initial review and forwards to the Director.

3. The Director and Chief of the Department agree on the investigation procedure to be used:

a. Rapid Resolution Complaint Inquiry (RRCI); or

b. Review of Completed Investigation (RCI); or

c. Department investigation; or

d. FPC investigation.

4. The Director monitors the investigation and advises complainant of the procedure being used.

5. The Director reviews the investigation for referral to the FPC citizen board or Department for further action.

6. A determination letter is sent to the complainant acknowledging information regarding the determination or referral for further action, together with instructions to contact the FPC within 30 days if not satisfied or if there are further questions or concerns.

7. After 30 days, if no further contact is received from the complainant, the complaint is either dismissed or referred for further action in accordance with the determination letter.

REVIEW OF COMPLETED FIRE OR POLICE DEPARTMENT INVESTIGATION (RCI)

A complaint can be filed directly with the Department rather than with the FPC. When a complaint is filed directly with the Department, the receiving department will conduct its own investigation. When the investigation is completed, the Department notifies the complainant of its findings. If the complainant is not satisfied with the findings, they may request the FPC to review the completed investigation that the Department conducted. This is called a Review of Completed Investigation (RCI). The RCI procedures are a supplement to the regular monitoring and auditing of complaints filed with each department that is routinely conducted by the FPC.

When a person files a complaint with the FPC stating their dissatisfaction with a completed investigation conducted by the Department, the FPC reviews the investigation. The Director determines if the investigation was thorough, complete, and appropriate under the circumstances. The Director may concur with the Department's investigation or may conduct further investigation. If further investigation is needed, it may be conducted by the Department or the FPC. The Director then determines whether the complaint is referred to the Department or the FPC citizen board for further action. The complainant is notified of this process and of the determination. If for any reason the complainant is not satisfied with the determination, or if they still have questions, the complainant has 30 days in which to contact the FPC with their concerns.

PROCEDURE

1. A person files a complaint with the FPC stating their dissatisfaction with an investigation completed by the Department, and a complaint number is assigned.

2. The FPC investigator reviews the investigation conducted by the Department and forwards the review to the Director.

3. The Director determines if further investigation will be conducted by the Department or FPC.

4. If further investigation is conducted, the Director reviews and refers for further action by the Department or FPC citizen board.

5. A determination letter is sent to the complainant acknowledging information regarding the determination or referral for further action, together with instructions to contact the FPC within 30 days if not satisfied or if there are further questions or concerns.

6. After 30 days, if no further contact is received from the complainant, the complaint is either dismissed or referred for further action in accordance with the determination letter.

REFERRING COMPLAINTS FOR POLICY TRAINING

The Director determines that the complaint alleges minor misconduct. The employee would benefit by participating in a specified policy training program to correct prior behavior and prevent similar incidents from recurring in the future. The complaint is dismissed upon completion of policy training.

PROCEDURE

1. **A person files a complaint with the FPC and a complaint number is assigned.**

2. **The FPC investigator reviews the investigation and forwards the review to the Director.**

3. **The Director makes the determination to proceed as Policy Training.**

4. **Assistant Chief of Professional Standards Bureau (MPD) or Assistant Chief (MFD) is contacted with Policy Training information.**

5. **Assistant Chief of Professional Standards Bureau (MPD) or Assistant Chief (MFD) refers to the appropriate supervisor to conduct Policy Training.**

6. **Assistant Chief of Professional Standards Bureau (MPD) or Assistant Chief (MFD) responds to the FPC in writing upon completion of Policy Training.**

7. **Complainant is notified of complaint disposition.**

8. **The Director notifies Citizen Board of disposition. Complaint is dismissed.**

GROUNDS FOR DISMISSING COMPLAINTS

After carefully evaluating the evidence in accordance with these guidelines, the complaint or selected allegations of the complaint may be dismissed during the intake investigation screening process if it is determined that:

1. *The complaint relates solely to the legitimacy of a criminal arrest or traffic citation.* This applies to complaints that are subject to a judicial review which will explicitly or implicitly require a finding or ruling on the specific conduct that is the subject of the complaint. Generally the FPC will defer to the court on the legal issues and merits of the charges. The FPC may re-open a dismissed complaint if the judge, one of the attorneys, or the complainant renews the misconduct allegation after the judicial proceedings are finished and the allegation is supported by objective evidence.

2. *Filing delay.* It is desirable that complaints be filed soon after the incident. Memories are fresher, witnesses are easier to locate, and physical evidence may still be recoverable. If misconduct was committed, it is in the best interests of the Department, the public, and the employee(s) to take disciplinary or corrective action as soon as possible. If misconduct was not committed, employees are entitled to swift exoneration. The FPC may waive the time requirement at any time for good cause. "Good cause" for a filing delay may include a defense attorney's advice to the complainant to wait until criminal charges are resolved. Good cause may also include a language barrier, a physical or mental disability, confusion about how to file a complaint, a reasonable fear of retaliation, or a reasonable delay in the complainant's discovery of the misconduct.

    a. Except for good cause, complaints of minor misconduct involving discourtesy, disparate treatment, department procedures, or department services should be filed within 60 days of the incident.

    b. Except for good cause, complaints of serious misconduct including, for example, excessive force that causes substantial physical injury, egregious acts of disparate treatment, or major rule violations should be filed within 6 months of the incident.

    c. There is no specific deadline for complaints alleging serious criminal conduct or corruption. Such complaints will be evaluated on their merits with due consideration for the quantity and quality of available evidence.

3. *The complaint is trivial, frivolous, or not made in good faith.*

    a. A complaint may be dismissed if it is determined that the allegations are intentionally and materially false.

    b. "Trivial" or "frivolous" complaints allege minor technical violations of procedural rules which have negligible adverse effects on the public or the credibility of the Department. They are so trivial as to fall below the threshold for a minor complaint.

    c. A complaint is not "in good faith" if it is intentionally and materially inaccurate, misstated, or exaggerated. A complaint will not be dismissed solely because it is not made in good faith, but the complainant's apparent bad faith may be considered for its effect on the credibility of the entire complaint.

4. *Grossly illogical or improbable.* Complaints that are grossly illogical or improbable may be dismissed during the intake investigation.

   Care and compassion is exercised with a complainant who may have a mental illness. The presence of a mental illness does not necessarily make a person less able to perceive, to recall, or to report. A complaint may be valid even if a complainant has difficulty communicating the essential facts. The FPC assumes that a person with a developmental disability, a neurological disorder, or a physical impairment that makes it difficult to communicate is as credible and reliable as any other person.

5. *Third-party complaints.* The FPC normally requires that a person have a reasonably direct relationship to an incident in order to proceed with a complaint. Complainants are considered to have a direct relationship if they were directly affected by the alleged misconduct, witnessed the alleged misconduct, or have special, professional, or organizational knowledge about the alleged misconduct, e.g., a lawyer, a judge, or an FPC employee.

   The purpose for requiring a reasonably direct relationship is to help the FPC respond effectively to complaints from persons who have the greatest interest in the outcome and who have the most reliable information about an incident. It is not intended to screen out otherwise reliable complaints that deserve investigation. Subject to the exceptions described below, third-party complaints may be dismissed. Third-party sources are persons who heard about an incident from someone else but did not witness the incident and do not have direct, special, professional, or organizational knowledge of the facts.

   Third-party complaints will not be dismissed if there is a reasonable explanation why a person with standing has not filed a complaint, e.g., the person who was directly affected is a minor child, is elderly, disabled or deceased, cannot communicate easily in English, is not a citizen, is wanted on criminal charges, or has been threatened.

6. *Complaints about repeatedly reviewed categories of department activity.* The FPC occasionally receives allegations about some categories of department action that in the past have been repeatedly reviewed, investigated, and subsequently dismissed by the FPC. The discretion to summarily resolve a category of complaints should be exercised carefully with due regard to the nature and seriousness of the complaints.

7. *History of unfounded complaints.* Occasionally, a single individual repeatedly files non-meritorious, unfounded, or duplicative complaints, diverting time, attention, and resources from other complaints. The Director may authorize that repeated complaints from specifically-named individuals receive special handling. Special handling may mean that designated persons are required to file their complaints in person or that they not be interviewed as part of the intake investigation. The discretion to specially handle complaints from named individuals is exercised with great care and only with a supporting record. This procedure may be used if a person:

a. Has a history of filing unverifiable, non-credible, or non-meritorious complaints and was cautioned that the filing of similar complaints in the future may result in special handling or other specified actions; or

b. Previously filed a demonstrably false complaint.

8. *Significant imbalance between workload and resources.* If the workload at the FPC significantly exceeds available resources and the current screening criteria are insufficient to re-balance the caseload with existing resources, the Director may authorize in writing special criteria to focus available resources on the most serious and most provable allegations.

   The Director will notify the Common Council and the FPC citizen board in writing of the nature and scope of the workload problem, the actions taken to control the workload, and recommendations for a solution. This procedure is an extraordinary remedy to be invoked only if the FPC faces a significant long-term shortage of staff or other resources which cannot be corrected by other internal measures.

9. *The complainant withdraws the complaint.* A complaint may be dismissed if the complainant requests that it be withdrawn or explicitly agrees that his or her concern has been resolved and that the FPC need not take any further action on the complaint.

10. *The complainant fails to complete the necessary complaint steps.* The complaint may be dismissed if the complainant cannot be located, does not respond to requests for information, or fails to complete other necessary steps in the complaint process. In these cases, the FPC will demonstrate a good faith effort to communicate with the complainant. The FPC staff takes care to locate and communicate with complainants and makes significant efforts to assist them throughout the process.

11. *The employee is no longer employed by the Department.* The FPC lacks jurisdiction to discipline persons it no longer employs. A complaint may be dismissed if the employee resigns, retires, or will no longer be employed by the Department by the time the investigation and discipline process can be completed. However, in cases of serious misconduct by former employees, the FPC may:

    a. Conduct an investigation and place the findings in the employee's personnel file; or

    b. Review the actions of the employee's supervisors; or

    c. Review the Department's policies and training curriculum.

    The FPC may forward complaints of less serious misconduct to the Department for information.

12. *The identity of the employee cannot be determined.* Occasionally a complaint is received in which there is no reasonable means of identifying the employee who is alleged to have committed misconduct. Depending on the nature of the complaint, dismissal may be

prudent and proper to conserve limited public resources. A complaint may be dismissed if, after an exhaustive and good faith effort, the investigation cannot identify the involved employee and also concludes that it would be unlikely that a continued investigation would be able to identify the employee. Even if the complaint is dismissed, it may be forwarded to the Department for information

13. *The complaint was previously adjudicated by the FPC.* Complaints or allegations that were previously reviewed and decided by the FPC may be dismissed. This circumstance may arise if a second person files a complaint about an incident that was previously resolved. It might also arise if the same complainant files a second complaint about a matter that was previously decided.

14. O*ther jurisdiction.* Complaints over which the FPC has no jurisdiction will be dismissed, including complaints against persons who were not employed or supervised by the FPC at the time the alleged misconduct was committed. If possible, the FPC will refer the complainant to the proper department or agency.

15. *Complaints about a department policy generally, not related to the actions of a specific employee during a specific incident.* A complaint that a department policy violates the law or is simply a poor policy may be dismissed provided that it does not include an allegation of employee misconduct in a specific incident. It may also be dismissed and referred to the FPC citizen board or Department for information, action, or response to the complainant.

16. *Complaints alleging conduct that clearly does not violate a law, rule, policy, or procedure.* A complaint may be dismissed during the intake investigation if the facts are undisputed and it is clear that the alleged conduct does not violate a law, rule, policy, or procedure.

17. *Complaints seeking reimbursement or money damages.* The FPC cannot award money damages. A complaint may be dismissed if its only claim is to seek a monetary award or reimbursement for damages and does not include an allegation of employee misconduct.

18. *Dismissal based on the evidence.* After evaluating the evidence in accordance with these guidelines, the complaint may be dismissed if it is determined that:

    a. It is more likely than not that no misconduct was committed; and

    b. It is unlikely that additional investigation, including FPC citizen board trial, would reach a different conclusion.

MONITORING COMPLAINTS

Gathering information, analyzing data, monitoring processes, and auditing complaint investigations to ensure a fair and consistent process is important. The FPC conducts the monitoring and auditing of complaints on a regular basis, regardless of whether the complaint was originally initiated with the FPC or with the Fire or Police Departments. The ability to capture trends or patterns, together with identifying the critical elements of a particular investigation is an important function of the FPC in providing proper oversight. This monitoring function uses data collected from the intake investigation screening process to evaluate the quality of investigations and recommend improvements to existing procedures. The FPC uses its monitoring authority in addition to its authority to discipline employees as tools to accomplish the mission of providing a transparent and effective citizen complaint investigation process.

(6/17/10)