

POLICE AND FIRE COMMISSION CITIZEN COMPLAINT INTAKE INVESTIGATION GUIDELINES

The Kenosha Police and Fire Commission (PFC) citizen complaint procedure is designed to address allegations of Misconduct committed by Department Employees, including its Chief. The PFC 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 PFC may use administrative mechanisms to receive and evaluate Complaints of Employee Misconduct. These mechanisms make the investigation process more efficient. The PFC exercises judgment about how to proceed by using these mechanisms when a Complaint is received. 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 PFC has an obligation to use public resources wisely, which occasionally means making choices about priorities.

The principles described in these guidelines identify how the PFC interprets and exercises its discretionary authority during the intake investigation screening process. For some Complaints, a hearing before the PFC occurs after the intake investigation screening process. The principles that describe the procedures for a hearing are identified separately from these guidelines.

DEFINITIONS

Aggrieved Person. An Aggrieved Person is a person who has been injured by, or witnesses Misconduct of an Employee.

Complainant. A Complainant is any person that files a Complaint alleging Misconduct by an Employee.

Complaint. A Complaint is a written statement filed by an Aggrieved Person that alleges inappropriate conduct by an Employee. State law requires a Complaint to be in writing and notarized before the PFC can accept jurisdiction. PFC Bylaws require that a 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.

Department. The Department refers to the Kenosha Fire Department (“KFD”) and/or the Kenosha Police Department (“KPD”).

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

Employee. An Employee is a firefighter of the Fire Department of the City of Kenosha, a police officer of the Police Department of the City of Kenosha or a Chief of either of such Departments.

Investigator. The Investigator means the person designated by PFC to investigate a Complaint.

PFC. The five (5) citizens appointed by the Mayor and confirmed by the Kenosha Common Council to perform the statutory functions of the Kenosha Police and Fire Commission by serving part-time as Commissioners for a five-year term, all pursuant to Section 1.06B of the Ordinances of the City of Kenosha and Section 62.13, Wis.Stats.

Misconduct. Misconduct is conduct by an Employee which violates law, department rules, regulations, policies, procedures, or other standards of conduct required of Employees.

INTAKE INVESTIGATION ACTIONS ON COMPLAINTS

When the PFC receives a Complaint, a file is opened, a copy of the Complaint is provided to the Employee charged in the Complaint, and the Complaint is referred to the PFC for consideration in open or closed session. The PFC shall then either (1) Dismiss the Complaint pursuant to the Grounds for Dismissing Complaints, hereinafter set forth; (2) Refer the Complaint for Rapid Resolution Complaint Inquiry, hereinafter set forth; (3) Review a completed Department investigation; or (4) Refer the Complaint to the Investigator for investigation.

INVESTIGATION

The Investigator's report shall include a careful evaluation of the evidence gathered during the investigation and an assessment of the ability to successfully sustain a disciplinary action based upon information provided by others, usually the Complainant, witnesses, and the Employee.

EVIDENTIARY GUIDANCE. 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 or other controlled substance 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 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 Employees are conducted in accordance with applicable collective bargaining agreements, department standard operating procedures, and state law.

REFERRING COMPLAINTS FOR PFC BOARD HEARING

After carefully evaluating the report of the Investigator prepared in accordance with these guidelines, the PFC may set the matter for hearing pursuant to Article VI of the PFC Bylaws if PFC 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 hearing, would make a factual finding possible; and
3. The Complaint does not qualify for Rapid Resolution Complaint Inquiry (RRCI) or Review of Completed Investigation (RCI) procedures.

REFERRING COMPLAINTS FOR RAPID RESOLUTION COMPLAINT INQUIRY (RRCI)

A Rapid Resolution Complaint Inquiry involves Complaints of a general nature filed with the PFC and then forwarded to the Department for quick resolution. The Complainant 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 an 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 a Complainant. After reviewing the Complaint, the PFC will determine if a resolution could be expedited by involving the Department directly. The Employee's Captain at KPD or the Assistant Chief at KFD is contacted. The Captain or the Assistant Chief will either contact the Complainant, 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 Complainant.

The Captain or the Assistant Chief contacts the PFC once the complaint inquiry has been resolved. After receiving an explanation of the outcome, the PFC, through its designated representative, shall follow up with the Complainant.

PROCEDURE

1. Complaint is received by PFC.
2. PFC makes determination to proceed as a Rapid Resolution Complaint Inquiry.
3. Captain (KPD) or the Assistant Chief (KFD) is contacted with Rapid Resolution Complaint Inquiry information.
4. Captain or Assistant Chief forwards Rapid Resolution Complaint Inquiry to appropriate supervisor.
5. KPD or KFD supervisor contacts Complainant to explain the Rapid Resolution Complaint Inquiry.
6. Department supervisor, Captain or Assistant Chief responds to the PFC via letter or email indicating the outcome and/or resolution of the contact with the Complainant.
7. A resolution closing letter is sent to the Complainant with instructions to contact the PFC within 30 days if not satisfied or if there are further questions or concerns.
8. After 30 days, if no further contact is received from the Complainant, the Complaint is dismissed and the Captain or Assistant Chief is notified.

REVIEW OF COMPLETED FIRE OR POLICE DEPARTMENT INVESTIGATION (RCI)

A Complaint can be filed directly with the Department rather than with the PFC. 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, the Complaint may request the PFC to review the completed investigation that the Department conducted. This is called a Review of Completed Investigation (RCI).

When a Complainant files a Complaint with the PFC stating the Complainant's dissatisfaction with a completed investigation conducted by the Department, the PFC reviews the investigation. The PFC determines if the investigation was thorough, complete, and appropriate under the circumstances. The PFC 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 an Investigator appointed by the PFC. The PFC then determines whether the Complaint is referred to the Department or the PFC for further action. The Complainant is notified of this process and of the determination.

PROCEDURE

1. A Complainant files a Complaint with the PFC stating the Complainant's dissatisfaction with an investigation completed by the Department.
2. The PFC, or if the PFC assigns the matter to an Investigator, then the Investigator reviews the investigation conducted by the Department. If the review is by an assigned Investigator, the review is forwarded to the PFC.
3. The PFC determines if further investigation will be conducted by the Department or PFC.
4. If further investigation is conducted, the PFC reviews and refers for further action by the Department or PFC Investigator.
5. A determination letter is sent to the Complainant informing the Complainant of the determination or referral for further action.
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.

GROUND 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, civil or administrative matter.* This applies to allegations of Complaints that are subject to review as part of a criminal charge, traffic or ordinance citation, civil claim or proceeding, or other matter subject to court or administrative review by a licensing or other agency which will explicitly or implicitly require a finding or ruling on the specific conduct that is the subject of the Complaint.

Generally the PFC will defer to the court or administrative law judge on the legal issues and merits of the allegations of the Complaint. The PFC 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 prompt exoneration. A Complaint may be dismissed if it is determined that the Complaint was not filed within a reasonable time after the incident based upon all relevant circumstances.
3. *The Complaint is intentionally and materially false, inaccurate, misstated, exaggerated, trivial or frivolous.*
 - a. A Complaint may be dismissed if it is determined that the allegations are intentionally and materially false, inaccurate, misstated, exaggerated, trivial or frivolous.
 - 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.
4. *Grossly illogical or improbable.* Complaints that are grossly illogical or improbable may be dismissed.

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 PFC 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 PFC 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 or a judge.

The purpose for requiring a reasonably direct relationship is to help the PFC respond effectively to the 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 PFC occasionally receives allegations about some categories of Department action that in the past have been repeatedly reviewed, investigated, and subsequently dismissed by the PFC. 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 PFC 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 Complainant:
 - a. Has a history of filing unverifiable, non-credible, or non-meritorious Complaints; or
 - b. Previously filed a demonstrably false Complaint.

8. *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 PFC need not take any further action on the Complaint.
9. *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.
10. *The Employee is no longer employed by the Department.* The PFC lacks jurisdiction to discipline persons no longer an Employee. 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.
11. *The identity of the Employee cannot be determined.* A Complaint may be dismissed if 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 a 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.
12. *The Complaint was previously adjudicated by the PFC.* Complaints or allegations that were previously reviewed and decided by the PFC 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.
13. *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 PFC or Department for information, action, or response to the Complainant.
14. *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.
15. *Complaints seeking reimbursement or money damages.* The PFC 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.
16. *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 PFC hearing, would reach a different conclusion.