



TOWN OF HINTON

POLICY TITLE: COMPLAINTS AGAINST PEACE OFFICERS

POLICY #: 084

EFFECTIVE DATE: APRIL 20, 2010

**ADOPTED BY
COUNCIL ON: APRIL 20, 2010**

POLICY STATEMENT

To meet the requirement of the Public Security Peace Officer Program administered by the Director of Public Security Division wherein a complaints process must be place for dealing with complaints against Peace Officers.

REASON FOR POLICY

- To protect the public interest and ensure that the peace officer while in his role produces effective and appropriate enforcement exercised in accordance with existing legislative and policy frameworks.
- To better understand the level of accountability accompanying the responsibility of overseeing Community Peace Officers and ensuring that law enforcement services are delivered in a fair, impartial and professional manner.

1. DEFINITIONS/STANDARDS

Director

The Public Security Peace Officer Program, as provided in the Peace Officer Act is administered by the Public Security Division under the Assistant Deputy *Minister/Director of Law Enforcement*.

Authorized Employers

A municipality or agency may only employ the services of a peace officer if they are designated as an authorized employer by the Director. All authorized employer and peace officer designations are validated and issued under the Director's signature.

Legislation

Legislation governing peace officers is found in the Peace Officer Act, the Peace Officer Regulation and the Peace officer (Ministerial) Regulation.

2. RESPONSIBILITIES

Authorized Employers

- Responsible and liable for the actions of their Community Peace Officers when the officers are on duty and acting within the scope of their appointment.

3. PROCEDURES

The process for handling complaints against Community Peace Officers is attached as Schedule "A" to this Policy # 084

SCHEDULE "A"

COMPLAINTS AGAINST PEACE OFFICERS

COMPLAINTS PROCESS

1. A written complaint is received by the authorized employer (Director of Community & Protective Services or designate).
2. The authorized employer must, within 30 days and in writing, acknowledge receipt of the complaint to the complainant.
3. Notify the peace officer involved of the complaint if appropriate (see section 21.6 below for details).
4. The authorized employer must advise Public Security Division of public complaints in accordance with Incident Report Form J3535.
5. Investigate the allegations of the complaint by interviewing the complainant, any witnesses, the peace officer(s) involved if they so consent, and any other person who may have knowledge relevant to the occurrence.
6. Review any relevant documents in existence pertaining to the occurrence including, but not limited to:
 - (a) Occurrence reports
 - (b) Dispatch logs
 - (c) Peace officer notebook(s)
 - (d) Court reports
 - (e) Legal documents
 - (f) In car video recordings
7. Notify the complainant, the peace officer involved if appropriate, and Director as to the status of the investigation at least once every 45 days.
8. Upon conclusion of the investigation the authorized employer must notify the complainant, the peace officer involved and the Director of the disposition of the complaint using wording found in Section 22 of the POMR, which reads as follows:
9. 'complaint is unfounded.' This means that on the basis of a thorough investigation no reasonable belief exists that the complaint has merit or basis.
10. 'complaint is unsubstantiated.' This means that on the basis of a thorough investigation there is insufficient evidence to determine the fact of the complaint and that it may or may not have occurred.
11. 'complaint is found to have merit in whole or in part.' This means that on the basis of a thorough investigation that:
 - (a) 'in whole' a reasonable belief exists that the peace officer has engaged in misconduct in regards to the entirety of the complaint or;
 - (b) 'in part' a reasonable belief exists that the peace officer has engaged in misconduct in regards to a portion(s) of the complaint, but not in the entirety.
12. 'complaint is frivolous, vexatious or made in bad faith.' This disposition will be used when an authorized employer chooses not to investigate a complaint as per

section 15(2) of the Act which allows no investigation to occur when the complaint is deemed to be frivolous, vexatious, or made in bad faith.

13. In the event a complaint is found to have merit in whole or in part the authorized employer must state what disciplinary action has been taken and it must be in accordance with the agency's disciplinary policy that has been filed with the Director.

Note: This means that the actual discipline action take (Verbal reprimand, suspension, dismissal, etc.) must be articulated. This is permitted under 40(1)(f) of the FOIP Act.

14. The conclusion letter issued to the complaint must contain the following closing paragraph which communicates to the complainant that appeals of the decision reached by the authorized employer must be addressed to the Director as required in Section 15 of the act.

PLEASE BE ADVISED YOU HAVE THE RIGHT TO APPEAL THESE FINDINGS TO THE DIRECTOR OF LAW ENFORCEMENT FOR THE PROVINCE OF ALBERTA PURSUANT TO SECTION 15(4) OF THE PEACE OFFICER ACT. AN APPEAL MUST BE IN WRITING AND INITIATED WITHIN 30 DAYS OF RECEIPT OF THIS DECISION AND ANY DECISION REACHED BY THE DIRECTOR OF LAW ENFORCEMENT ON APPEAL IS FINAL.

Correspondence to the Director must be sent to:

**Director of Law Enforcement
10th Floor, 10365 – 97th Street
Edmonton, Alberta T5J 3W7**

An example disposition letter is found in appendix Q.

Complaints not requiring investigation by the authorized employer (Section 15(2) of the Act)

It is recognized that some complaints will be made under circumstances in which an investigation is not required. The legislation has included four circumstances under which an employer may choose not to investigate a complaint if the authorized employer is of the opinion that the complaint falls into one of the following noted categories:

1. Frivolous: a complaint intended merely to harass or embarrass.
2. Vexatious: a complaint that has no basis in fact or reason, with its purpose to bother embarrass or annoy the peace officer or authorized employer.
3. Bad Faith: filing the complaint with intentional dishonesty or with intent to mislead.
4. Public complaints received regarding quality of service relating to the interpretation or application of legislation, investigation outcome or action taken as a result of an investigation are not normally considered complaints against the conduct or actions of a peace officer. After a review, the authorized employer

may choose not to investigate these occurrences pursuant to section 15(2) (b) of the Act.

Reasons for not investigating complaints by reason of the above definitions must be explained in written format to the complainant and advise them of the ability to appeal to the Director.

All complaints disposed through this section must be reported to the Director on a monthly basis.

Informal resolution of complaints

Section 15(2) (b) of the act allows for an authorized employer to refuse to investigate or may discontinue the investigation of a complaint if, in the authorized employer's opinion and having regard to all of the circumstances, no investigation is necessary.

This section was primarily designed to capture complaints that are resolved 'informally' under the processes that the authorized employer has on file with the Public Security Division. This is intended to allow a diversion from the formal findings set out under Section 22 of the POMR in those circumstances where an investigation has begun or is about to begin and both the complainant and authorized employer agree to resolve the dispute informally via an approved internal procedure.

Authorized employers who choose to make use of the section must have an informal resolution process filed with the Director.

This section may also be used in those unforeseen circumstances where an investigation is not required based on an evaluation of the circumstances. This section does not alleviate the need for authorized employers to exercise effective management and due diligence in dismissing the complaint.

All complaints resolved in this manner, pursuant to the Act, must be reported to the Director within one month.

Appeals of authorized employer decision

Any decision reached by an authorized employer relating to a written complaint may be appealed to the Director by virtue of Section 15(4) of the POA. The purpose of having appeals reviewed by the Director is to provide an avenue of third party oversight for decisions made by authorized employers as they relate to peace officer. This program aspect is seen as valuable in strengthening public accountability and public trust in the program.

A complainant may appeal a decision of an authorized employer within 30 days, in writing, to the Director. The Director is then required by the act to conduct a review of the circumstances and after consideration may:

1. direct the authorized employer to take any action the Director considers appropriate, or
2. confirm, reverse or vary the authorized employer's disposition.

The decision of the Director under this review process is final and there are no avenues for appeal.

Any investigation of an appeal may follow the 'Investigation' process set out in Section 17 of this manual.

This legislation does not make any provisions allowing a peace officer to appeal a decision made by an authorized employer in respect of a public complaint. Those appeals must be handled via internal human relations practices established by the employer.

When appropriate to notify peace officer about complaints

Part 5 of the POMR makes references in sections 20 and 21 to notifying a peace officer of complaints made where the Director deems it appropriate. It is recognized that in the majority of cases it is always appropriate and necessary to inform a peace officer about a complaint made to facilitate the principles of due process and fairness. However, in circumstances where such notification may unduly have a negative impact on an internal investigation or place the complainant in an unfavourable position, the notification to the peace officer may be delayed for a period of time.

In the following general circumstances consideration must be given to delay informing the peace officer about a complaint when it may reasonably be suspected that:

1. The complainant may be placed in danger,
2. The complainant may face other inappropriate action by the peace officer should the peace officer be informed,
3. The notification may impede the gathering of evidence during an internal investigation conducted under Part 3 of the act,
4. A reasonable likelihood exists that the complaint may lead to charges under federal or provincial legislation and that notification of the peace officer could impede any resulting police or other investigative agency investigation, or
5. Any other situation identified by the authorized employer or Director in which it may be appropriate to delay informing the peace officer about the complaint.

In any case where the authorized employer is uncertain as to the appropriateness of informing a peace officer about a complaint the Public Security Division should be contacted.

'Section 16' Authorized Employer Initiated Investigations

Section 16 of the act places a responsibility on the authorized employer to ensure that peace officers acting under the employer's authorization conduct themselves in a manner that is consistent with their peace officer appointment, legislation, policies and guidelines. This provision is designed to ensure that legislative or policy violations identified through supervisory or other in-house processes are dealt with effectively.

In these circumstances an authorized employer is required to report to the Director within one month each occurrence so identified and the results of any investigation.

The standard complaints investigative procedure should be utilized for employer initiated investigations to ensure they are investigated in a responsible and consistent manner.

Involvement of the Director of Law Enforcement in public complaints or authorized employer initiated investigations

Through reporting requirements contained in the act and regulation, summarized in section 22 of this manual, the Director may become directly involved in a public complaint or authorized employer initiated investigation when the Director is of the opinion that the authorized employer:

1. Is not investigating a public complaint in a manner that is satisfactory to the Director.
2. Is not investigating a 'Section 16' matter in a manner that is satisfactory to the Director.
3. Has failed to investigate a public complaint.
4. Has failed to investigate a 'Section 16' matter.
5. That an occurrence has been reported that meets the requirements of Section 19(2) of the act.

In these circumstances, the department will interact with the authorized employer to provide guidance and advice on how to properly exercise their responsibilities. Should the need exist, the Director may investigate and dispose of the matter through an investigation conducted by Public Security Division staff.

If the Director, or designate, investigates a public complaint or 'Section 16' matter, the Public Security Division must notify the complainant and the peace officer who is the subject of the investigation and the peace officer's authorized employer in writing

- At least once every 45 days as to the status of the investigation until the complaint or matter is disposed of, and
- At the disposition of the complaint or matter.

As it pertains to complaints, the final disposition letter will be of a format detailed in Section 22 of the POMR. As the Director is not the employer of peace officers in this program, the ability to impose discipline is unavailable. In all cases where the Director finds a matter to have merit in whole or in part, a recommendation to the authorized employer will be made to impose discipline in accordance with policy filed with the Director.

Should the authorized employer not take disciplinary action in accordance with their own internal policy they may be considered in violation of Section 6 of the act. In those

circumstances, remedies available to the Director as detailed in the act may be considered.

PROGRAM REPORTING RESPONSIBILITIES

There are a number of legislative reporting components designed to strengthen program integrity and provide for a volume of information about authorities exercised by those who carry peace officer appointments. Information collected can be used to determine trends or patterns and in turn be used to build a solid business case for change should issues be identified. Some examples that may potentially lead to updates to the program are as follows: deployment/use problems with a particular weapon; identified training deficiencies; legal precedents or decisions; and systematic safety issues. Additionally, these reporting requirements may be able to identify potential risks with trends in behavior for individual peace officers, particularly in situations where they are employed by more than one authorized employer.

This section summarizes all reporting requirements that apply to a peace officer or authorized employer.

REPORTS TO THE DIRECTOR OF LAW ENFORCEMENT MAY BE FAXED TO (780) 427 – 5916, attention Public Security Peace Officer Program Manager, or in non-time sensitive matters by mail to:

Manager
Public Security Peace Officer Program
10th Floor, 10365 – 97 Street
Edmonton, Alberta T5J 3W7

EMPLOYER REPORTING REQUIREMENTS:

<p>TIME IN WHICH INCIDENT MUST BE REPORTED</p>	<p>INCIDENT TYPE</p>
<p>Report to the Director as soon As the authorized employer becomes aware (shown on Incident reporting form found In Appendix K).</p>	<ul style="list-style-type: none"> • The use of a firearm in circumstances in which it was discharged in response to a perceived threat. • Any incident with a peace officer involving serious injury or the death of any person. This does not include circumstances where the peace officer provided traffic control for the police at a fatal or serious motor vehicle collision. • Any allegation that a peace officer used excessive force as identified through an internal reporting process or complaint. • Any incident involving a peace officer where a weapon was used by somebody else other than animal related duties or training. • Any matter of a serious or sensitive situation related to the actions of a peace officer. If an authorized employer is uncertain if a situation is sensitive or serious the public security program manager may b contacted. If unsure the authorized employer should report the matter. • Incidents in which a peace officer has violated the employer’s code of conduct. • If the employer suspends or terminates employment or engagements for services of a peace officer. A brief explanation of the rationale for this action must be included. • If a peace officer ceases their employment with the employer. • Any event in which the peace officer has reported a charge or arrest to the authorized employer for an offence under the Criminal Code, Controlled Drugs an Substances Act or any other enactment of Canada.

	<ul style="list-style-type: none"> • Any event in which the peace officer has reported a charge or arrest to the authorized employer for an offence under a provincial statute of Alberta, if the authorized employer considers the matter serious. The Public Security Division suggests that arrests or charges under the following be considered as serious: <ul style="list-style-type: none"> ○ Child, Youth and Family Enhancement Act ○ Gaming and Liquor Act ○ Suspension/cancellation of a driver's license under the Traffic Safety Act if the peace officer is involved in traffic enforcement as part of their duties. ○ Careless driving charges/arrests under Section 115 of the Traffic Safety Act if the peace officer is involved in traffic enforcement as part of their duties. ○ Maintenance Enforcement Act
<p>Authorized employer report to the Director within 24 hours (on Incident reporting form found in Appendix K).</p>	<ul style="list-style-type: none"> • Used a firearm not related to duties under the Animal Protection Act, Dangerous Dogs Act, Stray Animals Act, or Wildlife Act. • Used a firearm other than in a training situation. • Any use of firearms or weapons that resulted in a 'training accident'.
<p>Authorized employer report to the Director within two business days (on incident reporting form found in Appendix K).</p>	<ul style="list-style-type: none"> • Each use against a person of baton, OC spray, conducted energy weapon or tear gas except as related to duties under the Animal Protection Act, Dangerous Dogs Act, Stray Animals Act, or Wildlife Act.

