

CITY OF MINNEAPOLIS

POLICE CONDUCT OVERSIGHT COMMISSION

Welcome Packet

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I. Welcome

This Orientation Manual was developed to facilitate a smooth transition and on-boarding process for new appointed commissioners. It provides a structured introduction to the complex enterprise that is civilian oversight of law enforcement. As you begin your journey as a new commissioner, here are some thoughts about governing and leadership that may be helpful to consider.

A. Expectations

The Police Conduct Oversight Commission is a newly created entity—we intend it to become an important institution in the community and play a significant role in the lives of residents. It will be here when you decide to leave the Commission. Start your public service with an idea about the legacy you want to leave behind some day.

- **Adhere to the Code of Ethics.** The City’s Code of Ethics was designed to ensure your actions live up to the high standards expected by the people of Minneapolis. Understanding ethical responsibilities is vital to the institution and your career as a commissioner.
- **Be part of the solution.** There is a common saying, “If you’re not part of the solution, you’re part of the problem.” Controversial, even inflammatory issues will crop-up during your tenure, and many will watch to see how you react. It is important to note that work of the Department and the Commission ties hand in hand. While the Department and the Commission may function differently, their missions and goals are aligned. But being effective requires that you don’t form opinions until you know all sides of an issue. Ask questions. Seek solutions. Oftentimes, the best answer may be: “I don’t know, but I will find out.”
- **Use staff—but don’t micromanage them.** The City has an experienced cadre of professional staff who can be a valuable resource to you. Commissioners bring the voice of the community into the government. The professional staff help translate public will into public policy. Treat them with respect. Don’t take them for granted. Many of the staff have served this community for several years and have a valuable historical perspective that can help fill in the gaps for new commissioners. Learn to lean on them and depend upon their insights and expertise.
- **Don’t burn bridges.** Remember that today’s adversary may be tomorrow’s ally, so learn how to disagree without being disagreeable. Don’t react emotionally or in anger to something someone has said. The things you say in these cases will come back to haunt you. People don’t have to like you, but if they respect you and know you are going to play it straight, you’ll be all right.
- **Follow your conscience.** Guard against the urge to commit to or support issues before you have fully researched them. Too often, political pressures force premature decisions—before all the facts have been gathered and a full analysis conducted. But it’s difficult, if not impossible, to form intelligent positions or to make good decisions without having the facts on all sides of an issue. In the end, the best advice is to do your homework, be prepared, and vote your conscience.

B. Training Outline

Commissioners must participate in training. Training is essential to your ability to carry out duties and responsibilities. Staff with the OPCR maintain a record of Commission training activities. All training subject to approval by the Minneapolis Department of Civil Rights.

1. Annual Training

2. New Board Member Training

- i. Minnesota Government Data Practices Act
- ii. Open Meeting Law
- iii. Minnesota Public Employer Labor Relations Association
- iv. Parliamentary Procedure
- v. Ethics & Conflict of Interest
- vi. Constitutional Law

3. Police Practices

- vii. Police Use of Force
- viii. Policy & Procedure Manual
- ix. Ride-Along (3 hour minimum)

4. Citizens' Academy

Learn directly from investigators, trainers, precinct commanders and officers about police procedures, what it is like to be an officer and how the Minneapolis Police Department is organized at the Citizens' Academy.

This 10-week course offered by the Training Unit of the Minneapolis Police Department is open to people who:

- Are 18 years of age;
- Live or work in Minneapolis; or are parents, partners, or spouses of employees of Minneapolis Police Department; and
- Pass a background check.

Topics include Use of Force, Investigations, K-9 Unit, 911 Operations, Emergency Response Unit and much more.

The Minneapolis Police Department seeks to serve people from a wide variety of backgrounds when selecting participants in its Citizen's Academy classes. Applicants are requested to complete an application and will be requested to have a background check completed through the Minneapolis Police Department.

Application:

www.minneapolismn.gov/www/groups/public/@mpd/documents/webcontent/convert_276049.pdf

C. Stipend requests

Minneapolis Ordinance Chapter 172.80 provides that each Commission member shall be paid fifty dollars (\$50.00) for each day when the member attends one (1) or more meetings, and shall be reimbursed for expenses incurred in the performance of duties in the same manner and amount as other city boards and commission members.

In order to receive this payment, you will need to submit a stipend request to OPCR staff for approval and processing.

1. Initializing compensation process

The City requires the following forms to be completed to process your stipend requests.

1. [COMPASS Vendor Enrollment Form \(pdf\)](#)
2. [W-9 Form \(pdf\)](#)
3. [City of Minneapolis Procurement and Conflict of Interest Policy \(pdf\)](#)

These forms are also available electronically through the City's website if you'd prefer to type them and email them as attachments to our staff: http://www.minneapolismn.gov/finance/procurement/procurement_compassvendor_index

Note: If you previously received a stipend for work with the City, you do not need to complete these documents as long as your vendor information hasn't changed since last doing business with the City.

2. Submitting stipend requests

Stipend Request Forms will be made available at all Commission meetings and events.

Please fill out the date(s) for which you are requesting compensation, as well as the purpose of the meeting(s), and return the form to OPCR staff before leaving the meeting to ensure prompt payment. Remember: if you attended more than one meeting on a specific date, you will only be compensated once for that day, per the ordinance.

II. Proposed Administrative Rules

City of Minneapolis
Police Conduct Oversight Commission
Administrative Rules

PROPOSED

Rule 1. Establishment

- A. **Source of authority.** The Minneapolis Police Conduct Oversight Commission, hereinafter referred to as the “Commission,” was established by Ordinance of the City of Minneapolis Chapter 172.80, adopted September 21, 2012.
- B. **Effective Date.** The effective date of the following rules is October 8, 2013.
- C. **Purpose.** The purpose of the following Rules of Procedure is to facilitate and guide the Commission in its goals of assuring that police services are delivered in a lawful and nondiscriminatory manner and providing the public with meaningful participatory oversight of police policy & procedure.
- D. **Interpretation.** These Rules shall be liberally construed to achieve the objectives of the Commission.
- E. **Application.** These Rules shall be employed by the Commission to govern the objectives outlined in the Police Conduct Oversight Ordinance § 172.80(f).
- F. **Severability.** If any provision of this set of Rules or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions of the rule or application of any other part of this regulation which can be given effect without application of the invalid provision. This this end, the provisions of all sections, subsections, or subdivisions herein and the various applications thereof are declared to be severable.

Rule 2. Scope of Authority

- A. **Meetings.** The Commission shall meet on the second Tuesday of each month at 6:00 PM in room 241 of Minneapolis City Hall – 350 S. 5th Street. Meetings will be for the purpose of conducting any business necessary to the operation of the Commission. The Commission may meet at such additional times and places deemed necessary on the call of the chair for a special meeting.
- B. **Duties.** The Commission shall complete the objectives outlined in the Police Conduct Oversight Ordinance § 172.20(f), including, but not limited to:
 - 1. Conduct a program of research and study for the purpose of ascertaining how the objectives of this chapter may be attained and sustained.
 - 2. Collect, review and audit summary data and compile aggregate statistics relating to complaints of police officer misconduct and present results of such analysis on a periodic basis to the public safety subcommittee of the city council, inclusive of identifying any patterns which may merit further examination by the police department, commission or city council.

3. Review police department policies and training procedures and make recommendations for change.
4. Facilitate, along with the police department, appropriate cultural awareness training for sworn officers as determined by the commission.
5. Contribute to the performance review of the chief of police.
6. Create and implement a community outreach program and coordinate outreach activities with the Minneapolis Commission on Civil Rights.
7. Submit periodic reports to the public safety subcommittee of the city council regarding the activities of the commission.
8. Establish, amend and repeal rules and procedures governing its own internal organization and operations in a manner and form consistent with this Code.
9. Form subcommittees to assist in fulfilling its duties and responsibilities.
10. Request from the mayor and city council the appointment of such staff as is necessary to carry out the duties of the commission.

Rule 3. Definitions.

Application. Unless plainly evident from the context that a different meaning is intended, the following terms are defined for Commission business:

Acting-Chair. A chair appointed by the Commission to temporarily fill vacancies by the chair and vice-chair.

Adequate and Timely. Such length of time as may fairly, properly, and reasonably be allowed or required, having regard to the nature of the act or duty, or of the subject matter, and to the attending circumstances.

Administrative Investigation. Investigation of a complaint that involves a formal statement by the target officer.

A-level Violation. A violation of the MPD Policy and Procedure Manual that can only result in a training or coaching if the officer is found to have committed the violation.

B-Level Violation. A violation of the MPD Policy and Procedure Manual that could result in oral or written reprimand or up to 40 hours of suspension.

Chair. A Commission member appointed by the Mayor and approved by the City Council.

Chemical Mace Incident. An incident where the primary complaint is the officer's use of a chemical agent (Mace).

Chief. The Chief of Police for the City of Minneapolis.

C-Level Violation. A violation of the MPD Policy and Procedure Manual that could result in written reprimand, up to 80 hours of suspension, or demotion.

Coaching Investigation. An investigation of an A-level complaint conducted by the target officer's supervisor that may lead to an oral reprimand (coaching session) or additional training.

Commission. The Police Conduct Oversight Commission.

Commission Website. The Commission website is maintained by Office of Police Conduct Review staff and located at:

<http://www.minneapolismn.gov/civilrights/conductcomm/index.htm>

Committee Clerk. A staff member of the Office of Police Conduct Review assigned to perform administrative functions for the Commission.

Complainant. The person(s) alleging misconduct by a sworn officer.

Complaint. Allegation(s) of misconduct by a sworn officer, signed by a complainant.

Confidential Data. Data which cannot be made public and is inaccessible to the individual subject of the data.

Crime Incident. An incident where the primary complaint stems from police response to a crime.

Day. Monday through Sunday.

Desk Service Incident. An incident where the primary complaint stems from police service via telephone or at a precinct.

Director. The director of the Minneapolis Department of Civil Rights.

Director, Office of Police Conduct Review. The civilian joint supervisor of the Office.

Discrimination. Disparate treatment of persons because of their race, color, creed, religion, ancestry, national origin, sex, gender identity, marital status, status with regard to public assistance, sexual orientation, disability, age, or sexual orientation.

Dismissal – Cleared by Exception. A joint supervisor dismissal of a complaint due to employee resignation, death, or other similar circumstances.

Dismissal for Failing to State a Claim. A joint supervisor dismissal of a complaint that does not contain allegations of misconduct.

Dismissal for Failure to Cooperate. A joint supervisor dismissal of a complaint when the complainant is unreachable, will not provide necessary evidence, or will not appear for formal interviews.

Dismissal for Lack of Jurisdiction. A joint supervisor dismissal of a complaint that is not about a Minneapolis police officer, is against an unidentifiable officer, or a complaint that was filed over 270 days after the incident.

Dismissal for No Basis. A joint supervisor dismissal of an allegation without sufficient evidence to either prove or disprove the complaint.

Dismissal for Reckoning Period Expiration. A joint supervisor dismissal of a complaint when the period of time in which the officer can be disciplined has expired.

D-Level Violation. A violation of the MPD Policy and Procedure Manual that could result in up to 720 hours of suspension, demotion, or termination.

Dog Shooting Incident. An incident where the primary complaint stems from police shooting of a dog.

Excessive Force. Force used by an officer that is not objectively reasonable in light of the facts and circumstances confronting the officer without regard to the officer's underlying intent or motivation as outlined in *Graham v. Connor*, 490 US 386 (1989).

Harassment. Inappropriate words, gestures, and other actions which are intended to annoy, alarm, or abuse another person.

Inappropriate Attitude. Demeanor that is disrespectful, hostile, or dismissive.

Inappropriate Language. Language that is unnecessarily confrontational or otherwise inappropriate. This may include both slurs based on a protected class and profanity.

Joint Supervisors. The director of the Office of Police Conduct Review and the commander of the Internal Affairs.

Legal Analyst. A staff member from the Office of Police Conduct Review that assists the Commission by providing and reviewing summary data, performance audits, and programs of research and study.

Mediation. A session where the complainant and target officer(s) attempt to resolve the complaint through discussion with a trained, neutral mediator.

Merit. A recommendation to the Chief by the Police Conduct Review Panel indicating that a preponderance of the evidence supports an allegation in a complaint.

No Merit. A recommendation to the Chief by the Police Conduct Review Panel that a preponderance of the evidence does not support an allegation in a complaint.

Office of Police Conduct Review (OPCR). A joint office comprised of civilian staff from the Department of Civil Rights and sworn staff from the Internal Affairs Unit of the Minneapolis Police Department charged with receiving and resolving complaints of police misconduct.

Officer. A sworn officer of the Minneapolis Police Department.

Onsite Incident. An incident where the primary complaint stems from a spontaneous interaction between a complainant and officer.

OPCR Civilian Unit. The OPCR unit comprised of civilians employed by the Minneapolis Department of Civil rights.

OPCR Sworn Unit. The OPCR unit staffed by sworn members of the Minneapolis Police Department and administrative support staff.

Police Conduct Review Panel. A panel comprised of appointed civilian representatives and sworn members of the Minneapolis Police Department (rank of lieutenant or higher) that reviews cases and issues recommendations to the Chief on the merits of allegations.

Police Protection. Services that are required to be performed sworn officers by both the Minneapolis Police Department Policy and Procedure Manual and law.

Policy and Procedure Manual. The manual created by the Minneapolis Police Department governing its operation.

Preliminary Investigation. Investigation of a complaint to determine if the complaint constitutes misconduct that does not involve participation by the target officer.

Primary Complaint. The incident that caused the complainant to file a complaint with the Office of Police Conduct Review. If this cannot be determined, the Primary Complaint shall be the highest level allegation in a complaint.

Private Data. Data that is not public and is accessible to the individual subject of that data.

Public Data. Data which is accessible to the public.

Stop and Frisk. A brief investigatory search conducted by a sworn officer that involves an over-the-clothes pat down to detected concealed weapons or contraband. An officer must be able to articulate specific facts that would indicate to a reasonable person that a crime is or has been committed and the suspect is in possession of an item that is of danger to the officer or others.

Stop and Frisk Incident. An incident where the primary complaint stems from a stop and frisk of the complainant.

Summary Data. Data made available for audit by the Commission. The data shall contain a description of the incident that is the subject of the complaint with all non-public information removed. The data shall contain the corresponding Policy and Procedure Manual violations when applicable and contain information for all relevant stages of the complaint's lifecycle.

Focus Officer. The officer that is the subject of the complaint.

Taser Use Incident. An incident where the primary complaint stems from the officer's use of a Conducted Energy Device (Taser).

Towing Incident. An incident where the primary complaint stems from the towing of a vehicle.

Traffic Stop Incident. An incident where the primary complaint stems from a traffic stop.

Vice-Chair. A Commission member appointed by the Mayor and approved by the City Council who serves as chair in the absence of the Chair.

Rule 4. Administration

- A. **Composition.** The Commission shall be composed of seven (7) members, four (4) of whom shall be appointed by the city council, and three (3) of whom shall be appointed by the mayor, subject to the approval of a majority of the city council. From the members, the mayor shall appoint a chair and a vice-chair of the Commission for terms of (2) years, subject to the approval of a majority of the city council.
- B. **Acting Chair.** In the absence of an appointed chair or vice-chair, the Commission shall, on a monthly basis, appoint an acting chair with a majority vote until the next month or the mayor appoints a chair and such chair is approved by the City Council, whichever occurs first.
- C. **Liability of Board Members.** No member of the Commission shall be liable to any person for damages or equitable relief by reason of any action taken or recommendation made by a board member or by the Commission, if the action taken was within the scope of the functions of the Commission and the Commission member was not in violation of

the law and the commission member acted in the reasonable belief that such member's action was warranted by the facts known to such member after reasonable effort to obtain the facts of the matter.

- D. **Amendment of Rules.** Amendments or additions to Commission rules may be proposed in a manner and form consistent with the Police Conduct Oversight Ordinance at any regular or special meeting of the Commission. Amendments or additions to operational rules shall provide for notice and comment proceedings in accordance with law. Amendments or additions must be adopted by a majority vote.
- E. **Training.** Commission members shall complete all minimum training requirements outlined in the Police Conduct Oversight Ordinance § 172.80(c).

Rule 5. Duties of the Chair.

- A. **Agenda.** The chair or the chair's designee from the Office of Police Conduct Review shall create the agenda prior to the meeting and provide it to the Office of Police Conduct Review for notice purposes. Committee members shall individually communicate with the chair to request items be added to the agenda. The agenda shall be submitted to the Office of Police Conduct Review for distribution. The agenda shall be approved as the first item of business at each regular meeting.
- B. **Special Meetings.** The chair shall call for special meetings when necessary.
- C. **Communication.** The chair shall communicate with all members of the Commission and staff from the Office of Police Conduct Review. The Chair shall meet monthly with the Director of the Office of Police Conduct Review to discuss the activities of the Commission.

Rule 6. Schedule and Notice of Meetings.

- A. **Regular Meeting.** The Commission shall meet the second Tuesday of each month at 6:00 PM in Minneapolis City Hall – Room 241. The meeting shall be for the purposes of fulfilling the duties outlined in Rule 2(B).
- B. **Notice of regular meetings.** A schedule of the regular meetings shall be made available to the public on the Commission's website.
- C. **Special Meetings.** Special meetings may occur provided the Commission can provide the public with at least three days of notice of the meeting time and location.
- D. **Notice of Special Meetings.** Notice of the special meeting shall be posted on the Commission website. If the Commission receives a written request of notice of special meetings from a member of the public, the request shall expire in six (6) months. A refilling notice shall be sent before the expiration of the request.

Rule 7. Compliance with the Minnesota Open Meeting Law.

- A. **Application.** Any gathering of a quorum of members of the Commission at which the members discuss, decide, or receive information as a group related to the official business of the Commission is subject to the Minnesota Open Meeting Law, Minnesota Statute § 13(D).
- B. **Quorum.** A quorum of the Commission shall be four (4) members.

- C. **Discussion by a Quorum.** No discussion of Commission business by a quorum of Commission members shall occur outside of scheduled meetings. An email series that includes responses by a quorum of members may constitute discussion for the purposes of this rule. Phone calls or text messages between a quorum of members of the Commission may constitute discussion for the purposes of this rule.
- D. **Closed meetings.** If the Commission discusses private data as defined by Minnesota law, the meeting must be closed. The chair shall state on the record the specific statutory grounds permitting the meeting to be closed and describe the subject to be discussed. During the closed portion of the meeting, only the subject matter that caused the meeting to be closed shall be discussed. The closed meeting shall be recorded, transcribed, and maintained for two (2) years.
- E. **Public Access.** At any open meeting, the public must have access to at least one copy of any printed materials, excluding data classified as not public, relating to the agenda items of the meeting. This includes information prepared or distributed by or at the direction of the Office of Police Conduct Review or its employees and which are distributed at the meeting to all members of the Commission or available in the meeting room to all members.
- F. **Vote Recording.** Votes of all members of the Authority on any action taken in an open meeting must be recorded in the meeting minutes, and the minutes shall be made public on the Commission website.
- G. **Minutes.** Minutes shall be kept for all Commission meetings. Minutes shall be kept in accord with Robert's Rules of Order. The Office of Police Conduct Review shall designate an employee to keep minutes of the meetings. The minutes shall be approved at the next regular meeting and posted on the Commission's website.

Rule 8. Subcommittees

- A. **Purpose.** The Commission may form standing and temporary subcommittees to assist in fulfilling the duties of the Commission.
- B. **Composition.** Subcommittees shall be composed of no more than three (3) members.
- C. **Creation.** The creation of a subcommittee may be proposed by a Commission member during a regular meeting. The Commission member must define the duties and role of the subcommittee in writing to be presented to the Commission. The Commission shall be created upon a majority vote of the Commission.
- D. **Scope.** Subcommittees shall not have decision-making powers but make recommendations to the Commission as a whole for action. Subcommittees may not take actions without approval of the Commission as a whole.
- E. **Dissolution.** If a standing subcommittee has completed its duties or is no longer necessary, a member of the subcommittee may propose its dissolution at a regular meeting. The Commission as a whole must approve its dissolution. Temporary subcommittees may dissolve when the assigned task is completed.

Rule 9. Audit and Policy Recommendation Procedures

- A. **Summary Data Selection.** At each regular meeting, the Office of Police Conduct Review shall make available a set of complaints for audit. The Commission shall select three (3) items from the set for review.

- B. **Summary Data Review.** Summary data shall be prepared for inspection by staff from the Office of Police Conduct Review. That case summary data shall be published on the Commission's website for review.
- C. **Summary Data Discussion.** At each meeting, Commission members shall discuss the summary data from cases selected for audit to identify any patterns or subjects which may merit further examination by the police department, Commission or city council. The Commission may request from the Office of Police Conduct Review the submission of additional data for review but shall not undertake research itself.
- D. **Policy and Procedure Discussion.** Commission members may request review and discussion of specific sections of the MPD Policy and Procedure Manual as a result of discussion of data. The Office of Police Conduct Review shall provide copies of the sections of the Manual to the Commission and any appropriate research.
- E. **Training Procedures Discussion.** The Commission may request specific training materials from the MPD for discussion as a result of discussion of data.
- F. **Program of Research.** The Commission, after identifying issues from summary data, MPD policies and procedures, MPD trainings, and discussion, shall request research from the Office of Police Conduct Review on the issue which may include performance audits. The Commission shall define what should be researched in detail. The Commission shall receive in full the results of the program of research when completed.
- G. **Policy Recommendations.** After conducting case audits, reviewing summary data or performance audits and reviewing the program of research conducted by the Office of Police Conduct Review, the Commission shall make recommendations regarding the improvement of policies, procedures, and training to the Minneapolis Police Department.

Rule 10. Community Outreach Program

- A. **Liaison to the Minneapolis Commission on Civil Rights.** The Commission shall appoint at least one (1) and no more than three (3) members as liaisons to the Minneapolis Commission on Civil Rights by a majority vote. Liaisons shall not have decision-making powers but make recommendations to the Commission as a whole for action. Liaisons may not take actions without approval of the Commission as a whole.
- B. **Development of the Coordinated Outreach Program.** The appointed member(s) shall communicate with an appointee from the Minneapolis Commission on Civil Rights to develop a coordinated outreach program.
- C. **Adoption of Coordinated Outreach Plan.** The Commission member shall create a summary of the program to present to the Commission. The Commission shall adopt the program by a majority vote or recommend that the member revise the program with the appointee from the Minneapolis Commission on Civil Rights.
- D. **Additional Outreach Activities.** Commission members may propose additional outreach activities at meetings. Proposals shall be adopted by a majority vote of the Commission.

Rule 11. Reporting to the Public Safety Subcommittee of the City Council

- A. The Commission shall provide the Office of Police Conduct Review with an updated list of activities each quarter. This list shall be used by the chair or the chair's designee from

the Office of Police Conduct Review to draft the report to the Public Safety Subcommittee.

Rule 12. Requests to the City Attorney's Office

- A. **Submitting Requests.** Requests for legal opinions from the City Attorney's Office shall be made through motion or the Chair.

Rule 13. Public Invitation

- A. A public invitation for comments may occur at the end of regular meetings.
- B. Public comments shall be limited to a two-minute presentation, or as determined by the chair.

III. Example of Case Summary Data

OFFICE OF POLICE CONDUCT REVIEW

Case Summary Data [New Case Number]

October 7, 2013

OVERVIEW

A brief description of the incident and outcome. Complainant encountered Officer #1 during a traffic stop. Officer #1 believed the complainant to be intoxicated. Officer #1 proceeded to arrest Complainant. Complainant was injured during the struggle. Complainant filed a complaint with the OPCR. OPCR investigated and determined that the complaint had no basis to proceed.

THE COMPLAINT

A list of the allegations.

1. Excessive Force: Complainant alleges that Officer #1 struck the Complainant three times with his service weapon causing a broken nose and bruising in the face.
2. Inappropriate Language: Complainant alleges that the officer used profanity during the interaction, stating "..."

COMPLAINT PROCESSING

A description of the actions of the joint supervisors to begin resolving the case.

OPCR Joint supervisors determined that the allegations rose above an A-level violation. They determined the case needed a preliminary investigation.

EVIDENCE [Could include mediation or coaching information]

A description of the investigation, including a sequence of events.

In the course of investigating this complaint, the following steps were taken.

1. Complainant was interviewed
2. Dispatch records were obtained
3. Police reports were obtained
4. Audio records of dispatch were obtained
5. Hospital records for Complainant were obtained
6. Witness 1 was interviewed.
7. Squad camera recording was obtained.

INVESTIGATIVE SUMMARY

A brief summary of the outcome of the investigation, including the investigator's recommended sequence of events.

Based on the investigation, the investigator provides this sequence of events:

1. Complainant was stopped after Officer 1 determined his headlight was malfunctioning.
2. Officer #1 approached the vehicle and observed a strong odor of alcohol emanating from the vehicle.
3. Complainant's eyes were bloodshot and watery, and Complainant's speech was slurred.
4. Officer #1 asked the Complainant to step out of the vehicle.
5. As Complainant was exiting the vehicle, he tripped and fell to the ground.
6. Complainant's face struck the pavement.
7. Officer #1 handcuffed the Complainant and called for an ambulance.
8. Complainant was taken to Hennepin County Medical Center.
9. After Complainant was released, he was taken to Hennepin County Jail for processing.

The squad recording captured the entire incident as it unfolded. Complainant's recollection of the events was incorrect, and no struggle took place.

OUTCOME

Based on the evidence provided in the squad recording, the joint supervisors determined that the complaint had no basis and dismissed it with no further action necessary.

IV. Police Conduct Oversight Ordinance

CHAPTER 172. - POLICE CONDUCT OVERSIGHT

172.10. - Police conduct oversight system established.

172.20. - Scope of authority, office of police conduct review.

172.30. - Complaint filing, preliminary review and investigation.

172.35. - Reserved.

172.40. - Review panel procedure.

172.50. - Request for reconsideration by complainant.

172.60. - Review panel civilian appointments.

172.70. - Disciplinary decision by chief.

172.80. - Police conduct oversight commission.

172.85. - Confidentiality.

172.90. - Requirement of cooperation by the Minneapolis Police Department and all other city employees and officials.

172.95—172.190. - Reserved.

172.10. - Police conduct oversight system established.

For the purposes of (1) assuring that police services are delivered in a lawful and nondiscriminatory manner, (2) providing to the public meaningful participatory oversight of the police and their interactions with the citizenry and (3) investigating complaints of misconduct on the part of officers of the Minneapolis Police Department and making recommendations regarding the merits of such complaints to the chief of police, there is hereby created an office of police conduct review and a police conduct oversight commission, with duties and authority as described in this chapter. (90-Or-043, § 1, 1-26-90; 90-Or-188, § 1, 7-27-90; 2003-Or-028, § 1, 3-21-03); 2012-Or-061, § 2, 9-21-12)

172.20. - Scope of authority, office of police conduct review.

The office of police conduct review shall consist of a civilian unit under the authority of the director of civil rights and an internal affairs unit under the authority of the chief of police. The office shall receive complaints that allege misconduct by an individual police officer or officers involving any of the following:

- (1) Use of excessive force.
- (2) Inappropriate language or attitude.
- (3) Harassment.
- (4) Discrimination in the provision of police services or other discriminatory conduct on the basis of race, color, creed, religion, ancestry, national origin, sex, disability or age or sexual orientation.

- (5) Theft.
- (6) Failure to provide adequate or timely police protection.
- (7) Retaliation.
- (8) Any violation of the Minneapolis Police Department's policy and procedure manual.
- (9) Criminal misconduct. (90-Or-043, § 1, 1-26-90; 2003-Or-028, § 2, 3-21-03; 2006-Or-064, § 1, 6-16-06; 2006-Or-114, § 1, 10-20-06; 2012-Or-061, § 3, 9-21-12)

172.30. - Complaint filing, preliminary review and investigation.

(a) *Complaint filing.* Any person who has personal knowledge of alleged misconduct on the part of a Minneapolis police officer may file a complaint with the office of police conduct review by submitting said complaint by means of any readily available method approved by the office. The office shall endeavor to facilitate the complaint filing process by providing multiple and accessible avenues for the filing of complaints. Absent extenuating circumstances deemed sufficient to warrant untimely filing, no person may file a complaint if more than two hundred seventy (270) days have elapsed since the alleged misconduct.

(b) *Complaint review.* All complaints shall be jointly and collaboratively assessed and preliminarily reviewed by supervisory staff of the office from both the civilian unit and the internal affairs unit. A complaint may be declined with no further action required pursuant to the authority and discretion of the office if, on its face, it fails to allege a violation within the purview and jurisdiction of the office. A complaint may also be referred to another more appropriate governmental agency or, in the case of allegations which rise only to a potential "A" level infraction under the police department's adopted discipline matrix, may be referred to a program of mandatory mediation instituted by the office of police conduct review or directly to the officer's supervisor for coaching. Such complaints may also, pursuant to the authority and discretion of the office, be referred for formal investigation pursuant to subsection (c).

(c) *Complaint investigation.* All other qualifying complaints shall be formally investigated by the office through assignment to an investigator or investigators from the civilian unit and/or the internal affairs unit. The office shall endeavor to complete any reviews and investigations as promptly and efficiently as possible, given the staffing and workload of the office. Any complaint alleging criminal misconduct by an officer shall be investigated by the internal affairs unit. Complaints not alleging criminal misconduct may be assigned to the civilian unit at the formal request of a complainant. The investigative report shall be in a format designated by the office and all final reports shall be reviewed and approved by supervisory staff of the office from both the civilian unit and the internal affairs unit. The investigative report shall not include any recommendation or conclusion regarding the merits of the complaint.

(d) *Procedural discretion and decision making.* Any procedural issue related to the duties and authority of the office for which supervisory staff from the civilian unit and the internal affairs unit is unable to reach agreement upon shall be referred to the director of civil rights and the chief of police, who shall jointly determine the matter. In the event the director and the chief are unable to resolve the issue, a designee of the mayor may mediate, and if necessary resolve, the issue.

(e) *Mediation.* Upon the joint direction of supervisory staff of the office of police conduct review from both the civilian unit and the internal affairs unit, a complaint may be referred to

mandatory mediation upon preliminary review of the complaint or at any other time in the course of investigation when deemed to be appropriate. The mediation shall proceed according to procedures adopted and instituted by the office of police conduct review. Mediators shall be neutral trained mediators unaffiliated with the office of police conduct review, the police conduct oversight commission, the civil rights department or any other department of the City of Minneapolis.

(f) *Firewall.* Information from investigations shall be shared only with staff assigned to the office of police conduct review and police conduct oversight commission, unless otherwise specifically authorized by law. (90-Or-043, § 1, 1-26-90; 2003-Or-028, § 3, 3-21-03; 2003-Or-112, § 1, 9-12-03; 2004-Or-068, § 1, 6-18-04; 2009-Or-029, § 1, 3-27-09; 2010-Or-022, § 1, 4-16-10; 2012-Or-061, § 4, 9-21-12)

172.35. - Reserved.

Editor's note—

Ord. No. 2003-Or-028, § 4, adopted March 21, 2003, repealed § 172.35, which pertained to compensation—Limitation. See the Code Comparative Table.

172.40. - Review panel procedure.

All final and approved investigative reports shall be forwarded to a review panel for the purpose of making recommendations regarding the merits of the complaint to the chief of police.

- (1) Each review panel shall be comprised of four (4) panelists. Two (2) of the panelists shall be sworn officers of the police department holding the rank of lieutenant or higher assigned by the chief of police or the chief's designee and two (2) panelists shall be civilians assigned by the director of civil rights or the director's designee.
- (2) The panels shall be scheduled on an as-needed or regular basis by the office of police conduct review. Each panel shall appoint a chair, although the office of police conduct review shall designate whether the chair of each panel shall be a civilian or officer member on a rotating and equal basis.
- (3) The panel shall review and discuss the investigative report but shall take no testimony or argument from witnesses or parties unless a request from the panel is specifically approved by the office of police conduct review.
- (4) The panel shall issue its recommendation within three (3) business days of the panel review, which shall be returned to the office of police conduct review and promptly forwarded to the chief of police. The recommendation shall be in a format approved by the office of police conduct review, shall be signed by all panelists, and shall include a recommendation as to whether each allegation is supported or not supported along with reference to the investigative evidence which supports the recommendation. Alternatively, the panel may return the investigative report with a request for additional information, which shall be identified with particularity.
- (5) The recommendation shall include the votes of each panelist, and in the event the panel is evenly divided on any recommendation, such division shall be noted.

- (6) The standard of proof necessary to recommend that an allegation be sustained is preponderance of the evidence. Preponderance of the evidence means that the greater weight of the evidence supports the decision.
- (7) The office of police conduct review shall provide written notice to the officer of the review panel's recommendation. The office shall provide written notice to the complainant of any allegation not sustained in the review panel's recommendation. (90-Or-043, § 1, 1-26-90; 2003-Or-028, § 5, 3-21-03; 2012-Or-061, § 5, 9-21-12)

172.50. - Request for reconsideration by complainant.

(a) Within fifteen (15) days of receipt of notification of the review panel's decision recommending that a complaint not be sustained, a complainant may submit a written request for reconsideration to the office of police conduct review.

(b) Any request for reconsideration shall be jointly and collaboratively reviewed by supervisory staff of the office of police conduct review from both the civilian unit and the internal affairs unit. If the review determines that the request for reconsideration alleges newly discovered and relevant evidence or information not previously available to the complainant, the complaint may be remanded for additional investigation by office staff and reconsideration by the designated review panel. The review panel may sustain, reject or modify its prior recommendation regarding the complaint. Alternatively, the complaint and new evidence or information may be forwarded directly to the chief of police pursuant to section 172.70

(c) The office of police conduct review shall provide written notification to the officer of the request for reconsideration and its outcome. (90-Or-043, § 1, 1-26-90; 2003-Or-028, § 6, 3-21-03; 2012-Or-061, § 6, 9-21-12)

172.60. - Review panel civilian appointments.

(a) *Composition.* The pool of civilian review panelists shall be comprised of a minimum of seven (7) members, four (4) of whom shall be appointed by the city council, and three (3) of whom shall be appointed by the mayor, subject to the approval of a majority of the city council. If more than seven (7) members are appointed to comprise the pool of civilian review panelists, the city council shall appoint the eighth member, the mayor the ninth member, subject to approval by a majority of the city council, and alternating thereafter. All civilian review panel members shall be appointed in conformance with the open appointments as outlined in Minneapolis Code of Ordinances Title 2, Chapter 14.180, except as provided in this section. In order to stagger the expiration of terms, the original appointments of civilian panelists shall be for terms of two (2), three (3) or four (4) years, as determined by the city clerk. Thereafter, appointments shall be for four (4) years.

(b) *Qualifications.* All members shall be residents of the city. Individuals currently or previously employed by the Minneapolis Police Department are ineligible to serve as members of the pool. The office of police conduct review may establish additional required qualifications.

(c) *Minimum training requirements.*

- (1) All members must participate in an annual training session as arranged by the Minneapolis Department of Civil Rights.
- (2) All new members must complete training in the following subject areas as arranged by the Minneapolis Department of Civil Rights: police use of force,

Minnesota Government Data Practices Act, Open Meeting law, the Minnesota Public Employee Labor Relations Act, ethics and conflict of interest.

- (3) Within two (2) years of appointment, all new members must complete the portions of the Citizen's Academy as determined by the Minneapolis Department of Civil Rights. Members will be compensated fifty dollars (\$50.00) for each Citizen's Academy session attended.

(d) *Removal.* Any member of the review panel pool may be removed, by vote of a majority of the city council and approval of the mayor, for incompetence, neglect of duty, misconduct or malfeasance, or failure to participate in and complete minimum training requirements. Any vacancy occasioned by resignation, death, or removal of a member shall be filled for the balance of the unexpired term by appointment by the mayor subject to approval of the city council.

(e) *Compensation—Limitation.* Each civilian member shall be paid fifty dollars (\$50.00) for each day when the member attends one (1) or more meetings or panel reviews, and shall be reimbursed for expenses incurred in the performance of duties in the same manner and amount as other city boards and commission members. The total amount of per diem, payment for file review, and reimbursable expenses payable under this section shall not exceed the total annual budget allocation for such costs. (90-Or-043, § 1, 1-26-90; 2003-Or-028, §§ 7, 8, 3-21-03; 2012-Or-061, § 7, 9-21-12)

172.70. - Disciplinary decision by chief.

Upon conclusion of the panel review process, the office of police conduct review shall forward the investigatory file and panel recommendation to the chief of police for the chief's determination, which shall be made within forty-five (45) days of receipt. The chief, upon making his or her determination, shall return the determination and file to the office of police conduct review. For any allegation which the review panel recommends to be supported by a majority vote for which the chief determines that no discipline shall be imposed, the chief shall notify the review panel and the office of the reasons for such determination. (90-Or-043, § 1, 1-26-90; 2012-Or-061, § 8, 9-21-12)

172.80. - Police conduct oversight commission.

(a) *Composition.* The police conduct oversight commission shall be comprised of seven (7) members, four (4) of whom shall be appointed by the city council, and three (3) of whom shall be appointed by the mayor, subject to the approval of a majority of the city council. All commissioners shall be appointed in conformance with the open appointments as outlined in Minneapolis Code of Ordinances Title 2, Chapter 14.180. In order to stagger the expiration of terms, the original appointments of commissioners shall be for terms of one (1) or two (2) years, as determined by the city clerk. Thereafter, appointments shall be for two (2) years. From the members, a chairperson and vice-chairperson of the commission shall be appointed by the mayor, for terms of two (2) years, subject to the approval of a majority of the city council. In order to stagger the terms of the chairperson and vice-chairperson, the initial appointment of the vice-chairperson shall be for one (1) year. The vice-chairperson shall only have chairperson duties in the absence of the chairperson. In the absence of a chairperson or vice-chairperson, the chairperson or vice-chairperson may designate an acting chairperson to serve until the next board meeting or until a chairperson is duly appointed. If the chairperson or vice-chairperson are unable for any reason to designate an acting chairperson, the commission shall appoint an acting chairperson to serve until the next board meeting or until a chairperson is duly appointed. The acting chairperson shall have full authority to conduct actions of the chairperson. All members shall continue to serve until their successors have been appointed. A majority of the members shall constitute a quorum.

(b) *Qualifications.* All members shall be residents of the city. Residents currently or previously employed by the Minneapolis Police Department are ineligible to serve as members of the commission. The office of police conduct review may establish additional required qualifications.

(c) *Minimum training requirements.*

- (1) All members must participate in an annual training session as arranged by the Minneapolis Department of Civil Rights.
- (2) All new members must complete training in the following subject areas as arranged by the Minneapolis Department of Civil Rights: police use of force, Minnesota Government Data Practices Act, Open Meeting law, the Minnesota Public Employee Labor Relations Act, ethics and conflict of interest.
- (3) Within two (2) years of appointment, all new members must complete the portions of the Citizen's Academy as determined by the Minneapolis Department of Civil Rights. Members will be compensated fifty dollars (\$50.00) for each Citizen's Academy session attended.

(d) *Removal.* Any member of the commission may be removed, by vote of a majority of the city council and approval of the mayor, for incompetence, neglect of duty, misconduct or malfeasance, or failure to participate in and complete minimum training requirements. Any vacancy occasioned by resignation, death, or removal of a member shall be filled for the balance of the unexpired term by appointment by the mayor subject to approval of the city council.

(e) *Compensation—Limitation.* Each member shall be paid fifty dollars (\$50.00) for each day when the member attends one (1) or more meetings, and shall be reimbursed for expenses incurred in the performance of duties in the same manner and amount as other city boards and commission members. The total amount of per diem and reimbursable expenses payable under this section shall not exceed the total annual budget allocation for such costs.

(f) *Authority.* The commission shall meet once every month at a regularly scheduled time and place for the purpose of conducting any business necessary to the operation of the commission. The commission may meet at such additional times and places deemed necessary by its members, or on the call of the chairperson. The commission may:

- (1) Conduct a program of research and study for the purpose of ascertaining how the objectives of this chapter may be attained and sustained.
- (2) Collect, review and audit summary data and compile aggregate statistics relating to complaints of police officer misconduct and present results of such analysis on a periodic basis to the public safety subcommittee of the city council, inclusive of identifying any patterns which may merit further examination by the police department, commission or city council.
- (3) Review police department policies and training procedures and make recommendations for change.
- (4) Facilitate, along with the police department, appropriate cultural awareness training for sworn officers as determined by the commission.
- (5) Contribute to the performance review of the chief of police.

- (6) Create and implement a community outreach program and coordinate outreach activities with the Minneapolis Commission on Civil Rights.
- (7) Submit periodic reports to the public safety subcommittee of the city council regarding the activities of the commission.
- (8) Establish, amend and repeal rules and procedures governing its own internal organization and operations in a manner and form consistent with this Code.
- (9) Form subcommittees to assist in fulfilling its duties and responsibilities.
- (10) Request from the mayor and city council the appointment of such staff as is necessary to carry out the duties of the commission. (90-Or-043, § 1, 1-26-90; 2003-Or-028, § 9, 3-21-03; 2012-Or-061, § 9, 9-21-12)

172.85. - Confidentiality.

The members, staff, and contractors of the office of police conduct review and the police conduct oversight commission shall comply with all of the provisions of the Minnesota Government Data Practices Act, Chapter 13 of Minnesota Statutes. All members and contractors, paid and volunteer, shall sign a contract agreeing to comply with the provisions of the Minnesota Government Data Practices Act, currently Chapter 13 of Minnesota Statutes. In return, the city will afford to such member or contractor the same legal protection that any other agent or employee of the city receives who performs duties within the scope of employment. (2006-Or-114, § 2, 10-20-06; 2012-Or-061, § 10, 9-21-12)

172.90. - Requirement of cooperation by the Minneapolis Police Department and all other city employees and officials.

The Minneapolis Police Department and all other City of Minneapolis employees and officials shall, except as expressly prohibited by law, respond promptly to any and all reasonable requests for information and for access to data and records for the purpose of enabling the office of police conduct review and the police conduct oversight commission to carry out their responsibilities under this chapter. The failure by any official or employee of the Minneapolis Police Department or by any other City of Minneapolis employee or official to comply with such requests for information or access shall be deemed an act of misconduct. (90-Or-043, § 1, 1-26-90; 2003-Or-028, § 10, 3-21-03; 2012-Or-061, § 11, 9-21-12)

172.95—172.190. - Reserved.

Editor's note—

Ord. No. 2012-Or-061, §§ 12—23, repealed §§ 172.95 through 172.190, which pertained to Civilian Police Review Authority. See also the Code Comparative Table.

FOOTNOTE(S):

⁽⁸²⁾ ***Editor's note—*** Ord. No. 2012-Or-061, § 1, adopted September 21, 2012, amended the title of Ch. 172 from "Civilian Police Review Authority" to "Police Conduct Oversight."

V. NACOLE Code of Ethics

The National Association for Civilian Oversight Of Law Enforcement (NACOLE)

<http://nacole.org/resources/nacole-code-of-ethics-2/>

Preamble

Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and to the ethical and professional standards described herein.

The standards in the Code are intended to be of general application. It is recognized, however, that the practice of civilian oversight varies among jurisdictions and agencies, and additional standards may be necessary. The spirit of these ethical and professional standards should guide the civilian oversight practitioner in adapting to individual circumstances, and in promoting public trust, integrity and transparency.

Personal Integrity

Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among your stakeholders, and to set an example for others. Avoid conflicts of interest. Conduct yourself in a fair and impartial manner and recuse yourself or personnel within your agency when significant conflict of interest arises. Do not accept gifts, gratuities or favors that could compromise your impartiality and independence.

Independent and Thorough Oversight

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.

Transparency and Confidentiality

Conduct oversight activities openly and transparently providing regular reports and analysis of your activities, and explanations of your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.

Respectful and Unbiased Treatment

Treat all individuals with dignity and respect, and without preference or discrimination including but not limited to the following protected classes: age, ethnicity, culture, race, disability, gender, religion, sexual orientation, socioeconomic status or political beliefs.

Outreach and Relationships with Stakeholders

Disseminate information and conduct outreach activity in the communities that you serve. Pursue open, candid, and non-defensive dialog with your stakeholders. Educate and learn from the community.

Agency Self-examination and Commitment to Policy Review

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities they serve. Gauge

your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

Professional Excellence

Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the law enforcement agency you oversee. Keep informed of current legal, professional and social issues that affect the community, the law enforcement agency, and your oversight agency.

Primary Obligation to the Community

At all times, place your obligation to the community, duty to uphold the law and to the goals and objectives of your agency above your personal self-interest.

VI. Social Media Policy

Full Updated Policy

<http://www.ci.minneapolis.mn.us/www/groups/public/@communications/documents/webcontent/wcms1q-066530.pdf>

User Conditions Excerpt

Employees are advised of the following:

- City policies, rules, regulations and standards of conduct apply to employees who participate in social networking while conducting City business. Use of official City of Minneapolis e-mail addresses while communicating as a City employee will constitute conducting City business.
- Employees shall not represent that they are speaking or acting on behalf of the City of Minneapolis, or that they are representing or presenting the interests of the City of Minneapolis, unless they have been authorized to do so.
- When an employee comments publicly about any issue in which they are engaged in their capacity as a City of Minneapolis employee, the employee shall not engage in conduct prohibited by the City of Minneapolis Respect in the Workplace Policy.
- Employees may not use the City's social media sites to engage in campaigning for any candidate or any other purpose prohibited by law.
- Employees shall comply with the City's Solicitation For Charitable Purposes Policy, the City's
- Electronic Communications Policy and the City's ethics ordinance when using the City's social media sites.
- Employees shall not use the City's social media sites to advertise products or services or conduct any activity meant to foster personal gain, financial or otherwise, including outside business or commercial activities.
- Employees shall not use the City's social media sites to copy or transmit any documents, images, software or other information protected by a copyright owned by someone or an entity other than the City of Minneapolis, without proper authorization from the copyright owner.
 - Copyright protection applies to any document, image, software or information unless it is specifically marked as public, not copyrighted, or freeware. In the absence of any specific copyright markings, material or information should be assumed to be copyright-protected.
 - It is the employee's responsibility to obtain proper authorization from the copyright owner prior to using the electronic communications system to copy or transmit copyrighted material.

VII. Confidentiality & Ethical Behavior Agreement

Confidentiality

The staff, contractors and volunteers of the Minneapolis Department of Civil Rights shall comply with all of the provisions of the Minnesota Government Data Practices Act, Chapter 13 of Minnesota Statutes. All staff, contractors and volunteers of the Department shall sign an agreement to comply with the provisions of the Minnesota Government Data Practices Act. In return, the city will afford to such staff, contractors and volunteers the same legal protection that any other agent or employee of the city receives who performs duties within the scope of employment.

Ethic: Section 15.170 of the Minneapolis Code of Ordinances (Ethics Code) provides as follows:

(a) A local official or employee shall not use or disclose any information gained in the course of or by reason of his or her official position in any way that violates his or her fiduciary duty to the city or the Minnesota Government Data Practices Act.

(b) A local official or employee shall not use or disclose privileged, nonpublic, confidential, private, or proprietary information gained in the course of his or her official duties in any way that could result in financial gain for the local official or employee, or for the spouse, domestic partner, or dependent of the local official or employee, or for a person in a committed relationship with the local official or employee, or for any associated business of the local official or employee, or his or her spouse, domestic partner, dependent, or person with whom he or she has a committed relationship.

Acknowledgement

As a staff member, contractor, or volunteer of the Minneapolis Department of Civil Rights, I acknowledge that I must comply with applicable privacy and confidentiality provisions of the Minnesota Government Data Practices Act with regard to information and data to which I gain access to through my status as a board member, staff member, intern, or contractor. In light of this acknowledgement, I understand that the City of Minneapolis will afford me the same legal protection that any other agent or employee of the city receives who performs duties within the scope of employment. I further understand that there may be criminal, civil or administrative penalties associated with violations of the Minnesota Government Data Practices Act or the Code of Ethics of the City of Minneapolis.

Note: To receive a new copy of your signed Confidentiality agreement, please contact our office at 612-673-5500.

VIII. Open Meeting Act

The Minnesota Open Meeting Law is contained in Minn. Stat. Chapter 13D, and has been in effect since 1957. The purposes of the law were summarized by the Minnesota Court of Appeals in *Itasca Board of Commissioners v. Olson*, 372 N.W.2d 804 (Minn. App. 1985), as follows:

1. To prohibit action being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning board decisions or to detect improper influences;
2. To assure the public's right to be informed; and
3. To afford the public opportunity to present its views to the board.

In addition, the court in *Olson* stated the statute was enacted for the public benefit and should be liberally construed. This liberal construction includes a presumption of openness subject to rare and carefully restrained exceptions.

A. Definition of "Meeting"

The Open Meeting Law, nor its provision, provide a definition explaining what constitutes a meeting. However, the Minnesota Supreme Court in *Moberg v. Independent School District No. 281*, 336 N.W.2d 510 (Minn. 1983) stated:

"... 'meetings' subject to the requirements of the Open Meeting Law are those gatherings of a quorum or more members of the governing body, or a quorum of a committee, subcommittee, board, department or commission thereof, at which members discuss, decide, or receive information as a group on issues relating to the official business of that governing body. Although 'chance or social gatherings' are exempt from the requirements of the statute, **a quorum may not, as a group, discuss or receive information on official business in any setting under the guise of a private social gathering.** The statute does not apply to letters or telephone conversations between fewer than a quorum." (Emphasis added.)

Thus, it would appear that as long as fewer members than a quorum of the City Council, or any of its committees, is involved, there is no violation of the Open Meeting Law. However, the following additional comments by the Court in *Moberg* must be kept in mind:

"Appellants correctly point out that this rule may be circumvented by serial face-to-face or telephone conversations between board members to marshal their votes on an issue before it is initially raised at a public hearing. It does not follow that two or three-person conversations should be prohibited, however, because officials who are determined to act furtively will hold such discussions anyway, or might simply use an outsider as an intermediary. There is a way to illegally circumvent any rule the court might fashion, and therefore it is important that the rule not be so restrictive as to lose the public benefit of personal discussion between public officials while gaining little assurance of openness. **Of course, serial meetings in groups of less than a quorum for the purposes of avoiding public hearings or fashioning agreement on an issue may also be found to be a violation of a statute depending on the facts of the individual case.**" (Emphasis added.)

Considering the Court's warning, it is still possible for a meeting of fewer than a quorum to be in violation of the Open Meeting Law, if under the facts of the situation, it is clear that the intent was to circumvent the Open Meeting Law. Although Minnesota courts have not considered issues presented by the use of technology, including e-mail, instant messaging, texting and chat rooms, there have been reported cases in other jurisdictions where the use of electronic communications have been deemed to violate similar open meeting laws. See, *Beck v. Sheldon*, 593 S.E.2d 195, Va. 20040. Elected policymakers should consider the broad public purpose of the open meeting law and the foregoing cautions in their use of electronic communication.

B. Application of the Open Meeting Law to the Commission

The Open Meeting Law applies not only to the City Council, but also to “any committee, subcommittee, board, department, or commission of the governing body of the city or other public bodies.”

C. Requirements for Public Notice of Meetings

Prior to 1987, a notice requirement was implied by the courts under the rationale that “a meeting of which the public is unaware is not ... a [public] meeting.”¹ The timeliness and mode of giving public notice was left to “the reasonable discretion of the governing body.”

In 1987, however, the Legislature described what kind of notice must be given for regular meetings, special meetings, and emergency meetings:

1. **Regular Meetings.** The public body is required to keep a schedule of its regular meetings on file at its office. If there is a deviation from this regular schedule of meetings as to time or place, then notice must be provided similar to what is required for a special meeting.
2. **Special Meetings.** The public body is required to post written notice of the date, time, place, and purpose of a special meeting on its principal bulletin board. The notice also shall be mailed or otherwise delivered to each person who has filed with the public body a written request for such notice. This notice shall be posted and mailed or delivered at least three days before the date of the special meeting. An option to publish the notice is provided.
3. **Emergency Meetings.** An emergency meeting is a special meeting called because of circumstances that, in the judgment of the public body, require immediate consideration. The public body is required to make a good faith effort to provide notice of the emergency meetings to news media when written request for such notice has been filed. This notice should be provided as soon as reasonably practicable after notice has been given to the members of the public body. The notice should include the subject of the meeting. Posted or published notice of an emergency meeting is not required.

These notice requirements also apply to closed meetings. The Legislature also provided that if a meeting is recessed or continued and the time and place of the meeting is established before the meeting is concluded, and the new time and place is recorded in the minutes, no further notice is necessary. If any person receives actual notice of a meeting of a public body at least 24 hours before the meeting, all notice requirements of the Open Meeting Law are deemed to be satisfied with respect to that person regardless of the method of receiving notice.

The particular subject matter before the public body may, by another law or rule, place additional notice requirements on that particular meeting.

D. Employment-Related Proceedings

The separate existence and histories of the Open Meeting Law and the Minnesota Government Data Practices Act have created a fertile area for ambiguity regarding how courts interpret the two laws. Problems arise when data which is classified “not public” is discussed at an “open” meeting. The State Legislature has attempted to clarify this problem; however, this area is particularly susceptible to litigation. The Mayor and City Council are strongly advised to consult the City Attorney before such issues arise.

E. Requirement for Recording Votes

Pursuant to the Open Meeting Law, the votes of the members of the public body (City Council) taken on any action in a meeting which is subject to the requirements of the law must be recorded in the

¹ See *Sullivan v. Credit River Township*, 299 Minn. 170, 174 (1974).

body's journal, and the journal itself must be kept open to public inspection during normal business hours.

F. Requirement to Provide Written Materials to the Public

Pursuant to the Open Meeting Law, at least one copy of any printed materials related to agenda items which are prepared or distributed by or at the direction of the public body or its employees in a meeting which is subject to the requirements of the law must be made available in the meeting room for inspection by the public while the body considers that subject matter.

G. Meetings which Must or May Be Closed

In certain circumstances the Open Meeting Law requires closure of meetings. In other circumstances closed meetings are permitted.

1. A meeting must be closed if data is being discussed that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults.
2. A meeting must be closed if the data being discussed is active law enforcement investigative data.
3. A meeting must be closed if data is being discussed which is internal affairs data related to allegations of law enforcement personnel misconduct.
4. A meeting must be closed if educational, health, medical, welfare or mental health data which is not public data by law is being discussed.
5. A public body shall close one or more meetings for preliminary consideration of allegations or charges against an individual subject to its authority. If the members conclude that discipline of any nature may be warranted as a result of those specific charges or allegations, further meetings or hearings relating to those specific charges or allegations held after that conclusion is reached must be open. A meeting also must be open at the request of the individual who is the subject of the meeting.
6. A governing body of a public employer can decide by a majority vote at a public meeting to hold a closed meeting to consider strategy for labor negotiations. Such closed meetings must be tape recorded and the tape preserved for two years after the contract is signed and shall be made available to the public after all labor contracts are signed by the governing body for the current budget period.
7. A public body may close a meeting to evaluate the performance of an individual who is subject to its authority. The public body shall identify the individual to be evaluated prior to closing a meeting. At its next open meeting, the public body shall summarize its conclusions regarding the evaluation. A meeting must be open at the request of the individual who is the subject of the meeting.

H. Enforcement of the Open Meeting Law

Civil penalties

The Open Meeting Law subjects any person who intentionally violates its provisions to personal liability in the form of a civil penalty in an amount not to exceed \$300 for each occurrence. Such penalty may not be paid by the public body.

Enforcement

The Open Meeting Law provides that any person may commence a civil action to enforce the law. In addition to other remedies, the court may award reasonable costs, disbursements, and reasonable attorney fees of up to \$13,000 to any party in an action under the Open Meeting Law. The court may award costs and attorney fees to a defendant only if the court finds that the action under this section

was frivolous and without merit. A public body may pay any costs, disbursements, or attorney fees incurred by or awarded against any of its members in an action under the law. No monetary penalties or attorney fees may be awarded against a member of a public body unless the court finds that there was a specific intent to violate the Open Meeting Law.

Forfeiture of office

On a finding by a court of a third intentional violation of the failure to have a meeting open to the public by the same person, unrelated to previous violations, that person forfeits office and may not serve on that government body or in any other capacity with that governing body for a period of time equal to the term of office the person was then serving.

IX. Government Records & Minnesota Government Data Practices Act

The accomplishments of government—and the accessibility and accountability of the government to the people—are documented and preserved in the form of public records. Public records guard the rights of citizens, define their responsibilities as members of the community, and chronicle local history. The data and information created or received, maintained, and used by the City of Minneapolis—like its finances, personnel, and material goods—are assets which enable the enterprise to fulfill its legal and administrative responsibilities.

The National Association of Government Archivists and Records Administration (NAGARA) emphasized this point, saying: “A government’s records are important resources to both the government that creates them and to the citizens it serves. Records contain the information that keeps government functioning. They document the origin, evolution, and operation of its programs. They reveal how government operated, how it responded to needs, and how it served its citizens.”²

A. Government Records – Defined

If there is one true common denominator in the work of government, it is the creation, maintenance, and use of recorded data and information. Every action, decision, policy, and program of government results in the creation of records. This fact is reflected in the very broad legal definition provided by state law: government records includes “all cards, correspondence, discs, maps, memoranda, microfilms, papers, photographs, recordings, reports, tapes, writings, optical disks, and other data, information, or documentary material, regardless of physical form or characteristics, storage media or conditions of use, made or received by an officer or agency of the state or an officer or agency of a county, city, town, school district, municipal subdivision or corporation or other public authority or political entity within the state pursuant to state law or in connection with the transaction of public business by an officer or agency.”³

In short, government records are those which document official transactions and contribute to the understanding of municipal operations and decision-making processes—regardless of whether those records are in a printed, paper-based form, digitized format, or born-digital documents.

B. Records Management Program Required

State law requires local government units to establish and maintain an active, continuing program for the economical and efficient management of government records. This includes preparing, implementing, and maintaining an inventory of all records and records series and a schedule that provides for the retention and disposal of each series or type of record.⁴

It is the City’s declared policy that all records, data, and information that conform to this statutory definition of government records which are created, maintained, and used by the City Government or its departments, divisions, or agencies are the property of the City of Minneapolis and must be managed in compliance with the City’s Records Management Program.⁵ Under the City Charter, the City Clerk is charged with the custody of the City’s official

² NAGARA – Program Reporting Guidelines, 1989.

³ Minn. Stat. § 15.17 and § 138.17, subd. 1.

⁴ Minn. Stat. § 138.17, subd. 7.

⁵ The City Council adopted the Minneapolis Records Management Program as an enterprise policy on May 4, 2000.

records⁶, and is the corporate officer responsible for enforcing the City's Records Management Program.

The City Clerk's Office has established the City General Retention Schedule, which is the retention schedule for common records used by most City departments. Additionally, the Clerk's Office has consulted with departments on the creation of specific retention schedules for records series or types of records that are not covered by the City General Retention Schedule, or which require more attention and special handling due to unique business requirements. All retention schedules and disposition plans are approved by the City Attorney and the State Records Disposition Panel. All department heads are responsible for assuring the applicable retention schedules are implemented and applied to data and records that are created, received, used, and maintained by their departments.

C. Some Data are not Government Records

Although the basic presumption, under state law, is that government data constitutes a "record" does include some exemptions. For example, data and information which do not become part of an official transaction are not classified as government records; nor are extra copies of documents kept strictly for reference or stock of publications and processed documents; nor are bonds, coupons, or other obligations or evidences of indebtedness, when the destruction or other disposition for the same have been provided or are governed by other laws.

⁶ Minneapolis City Charter, Chapter 3 § 5.

Minnesota Government Data Practices Act

Access to records that contain government data is generally governed by Minnesota Statutes, Chapter 13, known as the Minnesota Government Data Practices Act. This Act establishes a presumption that government data are public and, therefore, are accessible by the public for both inspection and copying unless there is a federal or state law or a temporary classification that provides certain data are not public.⁷

Data Classifications and Accessibility Provisions

The Data Practices Act defines three essential data classifications: public, private, and confidential.

- Public data means data which are accessible to the public. This is the presumed status of government data unless a specific exception (or exemption) is established in law. Public data must be made available for inspection at no charge immediately, if possible, or as soon as possible. If a request is made for copies of public data, then a reasonable fee may be assessed to cover the actual costs of searching for, retrieving, compiling, and making the copies of requested public data. Where public and not-public data are intermixed, no charge can be made for separating the not-public data from the public data. If copies of public data cannot be provided at the time a request is made, then the copies must be supplied within a reasonable timeframe.
- Private data includes two types of government data: first, private data on individuals and, second, private data that is not on or about individuals but is nonetheless non-public under a specific legal exemption. Private data is not open to the public—it is sometimes referred to as “not-public” data, except that the law does allow such data to be made accessible to the individual subject of the private data.
- Confidential data on individuals (or protected not-public data not on or about individuals) means data which are not made public according to federal or state laws which are applicable to the specific series or type of data, and is inaccessible even to the individual who is the subject of that data.

⁷ Minn. Stat. § 13.03, subd. 1.

The following chart summarizes the classification of data under the Data Practices Act.

CLASSIFICATION	IMPACT	EXCEPTION(S)	POLICY OUTCOME
PUBLIC	Accessible to general public for inspection or copying, with little or no restraints.	----	Broad accessibility requirements.
PRIVATE	Not accessible to the general public.	Data remains accessible to subject of the data, but not others.	Narrow accessibility, limits on who may have access to the data.
CONFIDENTIAL	No access provided.	Data is inaccessible even to subject of the data.	Strictly regulated, no access provided except when required by federal or state law.

When private or confidential data is collected from an individual, or about an individual, then that person has the right to be informed (a) as to the purpose and intended use for the collected data, (b) whether the individual may refuse to provide the data, (c) any known consequences of refusing to provide the data, and (d) the identity of persons or agencies authorized to receive the data. Generally speaking, private or confidential data is available only to City staffers whose work assignments reasonable require such access. Moreover, private or confidential data can only be used in accordance with the advisory given to the individual at the time when the data is collected. Private or confidential data generally can only be released pursuant to a court order or with the informed consent of the subject of the data (which should be in writing).

Exceptions to Data Classification

Although the Data Practices Act presumes to classify all government data as public, the number of exceptions to this presumption proves contradictory to that statement. The bulk of the Act actually constitutes legally-defined exceptions to the classification of public data. A few of the most common privacy and confidentiality issues are described below.

A. Personnel Data

One of the most commonly raised issues involves the classification of personnel data on employees. Under the Act, personnel data is defined as data collected because an individual is or was an employee of the City, or an applicant for employment, or performs services on a voluntary basis, or acts as an independent contractor.⁸

This statutory provision related to personnel data reverses the ordinary presumption of data classified under the Act in that personnel data is normally deemed to be private data unless there is a specific enumeration within the section that is classified as public data. The public personnel data is as follows:

- (1) Name; employee identification number, which must not be the employee's Social Security number; actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer paid fringe benefits; and the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary;
- (2) Job title and bargaining unit; job description; education and training background; and previous work experience;
- (3) Date of first and last employment;
- (4) The existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action;
- (5) The final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the public body;
- (6) The terms of any agreement settling any dispute arising out of an employment relationship, including a buyout agreement,⁹ except that the agreement must include specific reasons for the agreement if it involves the payment of more than \$10,000 of public money;
- (7) Work location; a work telephone number; badge number; and honors and awards received; and
- (8) Payroll time sheets or other comparable data that are only used to account for employee's work time for payroll purposes, except to the extent that release of time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data.

⁸ Minn. Stat. § 13.43

⁹ See Minn. Stat. § 123B.143, subd. 2 (a).

All other personnel data are private. The dissemination of personnel data is rife with complications and is often the subject of claims of breach of privacy. Elected policymakers are advised to contact the City's Responsible Authority (City Clerk) or the City Attorney's Office before proceeding to disseminate any personnel data.

B. Elected Official's Data

In Minneapolis, full-time elected officials are treated as employees for the purposes of the Data Practices Act. However, financial disclosure statements of elected or appointed officials which, by requirement of the political subdivision, are filed with the political subdivision, are public data.

Correspondence between elected officials and individuals is classified as private data on individuals, but may be made public by either the sender or the recipient.

C. Pending Civil Legal Actions

Data that is collected as part of an active investigation which is undertaken for the purpose of the commencement or defense of a pending civil legal action, as determined by the City Attorney, is classified as confidential data. The data remain confidential until the conclusion of the civil legal action.

D. Law Enforcement Data

Law enforcement data is that data which is created, received, or maintained by agencies which carry on a law enforcement function, which includes but is not limited to the Minneapolis Police and Fire departments. The Data Practices Act also provides that criminal investigative data is classified as confidential data while the investigation is active. The law enforcement section of the Data Practices Act also provides for protection of the identities of certain victims and witnesses.

E. Other Data

Other examples of private data include medical data, certain educational data, certain welfare data, and Social Security numbers. Elected policymakers should take precautions to protect the statutory privacy interests of individuals.

Remedies for Violations of the Data Practices Act

The Data Practices Act provides that a willful violation of its provisions is a misdemeanor. The Act also authorizes a private legal action to enjoin violations of the Act and provides for exemplary damages of not less than \$1,000 or more than \$15,000 for each willful violation. If the court issues an order to compel compliance, it may impose a civil penalty of up to \$1,000 against a government entity. The Act also allows a party prevailing in a suit for damages arising from a violation to recover costs and disbursements, including reasonable attorney fees.

Responsible Authority and Data Practices Compliance Official

Responsible authority

Under the Data Practices Act, the City is required to appoint a Responsible Authority.¹⁰ The Responsible Authority is ultimately accountable for the collection, use, and dissemination of all enterprise data, and for all data practice decisions by the enterprise. The Responsible Authority

¹⁰ Minn. Stat. § 13.02, subd. 16; § 13.05; Minnesota Rules 1205.0200, subparts 12-15; and 1205.0800-1500.

also must ensure that the enterprise complies with all requirements of the Minnesota Government Data Practices Act [Minn. Stat., Chapter 13] and related state rules. Both the City Government and the Responsible Authority are liable for any violations. The Responsible Authority, along with the City Attorney's Office, provides information, clarification, and assistance to City departments when requested. The City Clerk (Casey Joe Carl) has been designated as the Responsible Authority for the City of Minneapolis.

Data practices compliance official

The Data Practices Compliance Official¹¹ is responsible for receiving and responding to questions or concerns about problems with accessing public data, the enforcement of legal requirements under the Minnesota Government Data Practices Act, including problems in obtaining access to data created, received, and kept by the enterprise. The City Clerk (Casey Joe Carl) has also been designated as the Data Practices Compliance Official for the City of Minneapolis.

Department designees

Under the Minnesota Government Data Practices Act, a "designee" is an employee designated by the Responsible Authority to help administer and implement the requirements of the act and associated rules. The law states that a designee¹² is responsible for receiving and complying with requests for access to and inspection of government data, and for answering public inquiries concerning the provisions of the law. The law defines the designee as a person who is in charge of and responsible for the files, records, data or data systems containing government data.

¹¹ Minn. Stat. § 13.05, subd. 13

¹² Minn. Stat. § 13.02, subd. 6