



AC43

SERVICE RECORDS OF DISCIPLINE

AC43

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POLICY

1. The Delta Police Department (“Department”) is committed to meeting the obligations imposed by the *Police Act* (“Act”) for the creation and maintenance of Service Records of Discipline (“Service Records”) for all members and former members.
2. The Professional Standards Section (“PSS”) Inspector is responsible for the maintenance of the Department’s Service Records and shall ensure compliance with this policy.

REASON FOR POLICY

3. To define what a Service Record is with respect to the Department’s sworn members and former members.
4. To establish standardized procedures for creating and maintaining Service Records so that members and former members are all treated fairly and consistently with respect to disciplinary records.
5. To ensure that the Department is in compliance with the Act rules regarding Service Records and the expungement of those records.
6. To ensure that sworn members’ and former members’ Service Records are up to date at all times so that the Department can properly comply with its obligations to disclose disciplinary records in accordance with the Supreme Court of Canada’s decision in *R. v. McNeil*¹.

RELATED POLICIES

AC42 – Internal Discipline Rules
AC44 – McNeil Disclosure

¹ *R. v. McNeil* [2009] 1 S.C.R. 56



DEFINITIONS

7. For the purpose of this policy, the following definitions will apply:

Admissible Complaint - a complaint against a member that the Office of the Police Complaint Commissioner (“O.P.C.C.”) determines may constitute misconduct and directs that matter for investigation in accordance with Division 3 of the Act.

Chief Constable - the Chief Constable of the Delta Police Department.

Disciplinary Matters - refers to misconduct as described in the Act and Internal Discipline matters.

Disciplinary or Corrective Measures - any and all of the disciplinary or corrective measures described in Section 126 of the Act.

Discipline Proceeding - a formal disciplinary hearing held pursuant to the Act, to determine if any allegation(s) examined in an investigation have been proven and if so, whether the member or former member involved should receive any disciplinary or corrective measures related to his or her conduct.

Former Member - any sworn peace officer who was employed at the Department but who has resigned or retired from the Department and is no longer a municipal constable in British Columbia.

Internal Discipline matters - any issues concerning the conduct of a member that result in a formal investigation and potential discipline being imposed on a member pursuant to related Policy **AC42 - Internal Discipline Rules**.

Member - a sworn municipal constable and a special municipal constable appointed and employed by Delta Police Board in accordance with the Act.

Operative Period - the period of time during which Disciplinary Matters remain recorded on a member or former member’s Service Record.

Prehearing Conference - the informal disciplinary process set out under Section 120 of the Act, which may be offered to a member or former member in order to resolve allegations of misconduct where the Discipline



Authority has concluded that the allegations in part or in total are substantiated.

Service Record of Discipline- the record of disciplinary or corrective measures recorded for the duration of the Operative Period.

Personnel Record – the record of all disciplinary matters for a member or former member maintained by the Department in accordance with Section 180 of the Act and this policy.

PROCEDURES

8. The Department shall maintain a Service Record for each member or former member. The Service Record shall set out the required information for all Disciplinary Matters for the duration of the operative period together with copies of any documents specified by the Act and this policy that provide details and context to the Disciplinary Matters listed within the Service Record.
9. With respect to Service Records, the Department shall:
 - a) keep them in a secure location, as determined by Management;
 - b) keep them separate from the members and former members' personnel files;
 - c) ensure that they are maintained and updated as specified in the Act and this policy; and
 - d) notify a member or former member each and every time that their Service Record is updated or altered, by either the recording of a new Disciplinary matter or the expungement of any information or records listed within the service record.

Content of the Service Record

10. A Service Record must contain the following records, subject to expungement as laid out in this policy:



- a) for each allegation of misconduct, a notation that a complaint was initiated shall appear on the Service Record Form with a copy of the Notice of Admissibility of Complaint from the O.P.C.C.;
- b) for each O.P.C.C. ordered investigation, a notation of that investigation shall appear on a Service Record Form with a copy of the O.P.C.C. order that initiated the investigation;
- c) a notation shall be made on the Service Record Form of any disciplinary or corrective measures imposed on a member or former member arising from all disciplinary investigations:
 - i) accepted by the member or former member through informal resolution or mediation;
 - ii) accepted by the member or former member in a Prehearing Conference;
 - iii) imposed after a finding of misconduct in a Discipline Proceeding; and
 - iv) imposed by an adjudicator after a Review on the Record or a Public Hearing.
- d) the following records and documents shall be compiled in the Service Record Form of a member or former member arising from any disciplinary investigation:
 - i) a copy of the Discipline Authority decision not substantiating the allegation(s), together with the O.P.C.C. record of appointment of a new discipline authority, under Section 117 of the Act;
 - ii) a record of every resolution coming out of any Prehearing Conference that has been approved by the O.P.C.C., together with a copy of the Prehearing Conference Report and the O.P.C.C. Conclusion of Proceedings;
 - iii) where a Discipline Proceeding was held, a record of every finding or determination coming out of the Discipline Proceeding that is final/conclusive (i.e., where the O.P.C.C. determines that there will be no review on the record or Public Hearing), including a copy of:



- (1) the Form 3 - Findings of the Discipline Authority;
 - (2) the Form 4 – Discipline Disposition Record;
 - (3) the O.P.C.C.'s Conclusion of Proceedings; and
 - (4) a record of any decisions made by an adjudicator in a Review on the Record or a Public Hearing, including a copy of their decision document(s).
- e) for every Internal Discipline matter involving the member, the following shall be compiled in the Service Record Form:
- i) the notice of an internal investigation;
 - ii) a record of any discipline and other additional measures imposed on the member after a finding of misconduct;
 - iii) a record of any grievances and arbitrations filed with respect to the discipline and/or other measures imposed; and
 - iv) a record of the outcome of any grievance and/or arbitrations that arise with respect to that Internal Discipline matter.

Maintenance of the Service Record

11. A Service Record Form will be created for each member under investigation for a Disciplinary Matter.
12. Each entry in the Service Record Form will include the required details and documents as indicated in this policy and will be updated promptly at the conclusion of each step.
13. If disciplinary or corrective measures are imposed upon a member or former member and those corrective measures include; treatment, counseling, training, or some other program, the Service Record will be updated with entries to indicate when that counseling, treatment, training or other program was completed.



Expungement of Disciplinary Records

14. Notwithstanding any other provisions in this policy, records referred to in Section 10 must be expunged from a member's or former member's Service Record in accordance with the criteria set out in this policy.
15. With respect to any disciplinary matter, automatic expungement of that matter shall take place in the following circumstances:
 - a) for complaints that are not substantiated, upon notification by the O.P.C.C. that the proceedings have been concluded; and
 - b) for complaints that are concluded by withdrawal, discontinuance, or through consent resolution, or through mediation with no disciplinary or corrective measures being imposed on the member or former member, upon being notified by the O.P.C.C. that the resolution is confirmed.
16. With respect to any disciplinary matter involving a member or former member that results in the member or former member receiving one or more disciplinary or corrective measures, expungement shall take place in accordance with the following rules:
 - a) the Operative Period, during which a disciplinary matter remains recorded on a member's Service Record, is calculated from the date the disciplinary or corrective measures are confirmed by the O.P.C.C. to be final and conclusive;
 - b) the duration of the Operative Period will be in accordance with the Act and is dependent upon the Service Record being clear of any further disciplinary matter that may occur during the Operative Period, as set out below:
 - i) where a subsequent disciplinary matter is recorded in the member's Service Record the Operative Period for a preceding disciplinary matter shall be halted;
 - ii) upon the conclusion of a subsequent disciplinary matter which is unsubstantiated, the Operative Period for the preceding disciplinary matter shall be resumed and follow the original expungement due date; and



- iii) upon the conclusion of a subsequent disciplinary matter which is substantiated, the Operative Period for the preceding disciplinary matter(s) will be extended until the expiration of the operative period for the subsequent disciplinary matter; and
 - iv) the Operative Period for each Service Record entry will be re-started and the date for expungement will be re-calculated in this manner each time a new disciplinary matter is recorded on that Service Record during the Operative Period(s) of any existing Service Record entries.
17. The Operative Period of a disciplinary matter is dependent upon the level and seriousness of the disciplinary or corrective measures that were imposed on the member. Where a member receives more than one disciplinary or corrective measure for a single disciplinary matter, the Operative Period shall be calculated based on the most serious disciplinary or corrective measure imposed with respect to that matter. The Operative Periods are as follows:
- a) for disciplinary matters that resulted in the member receiving disciplinary or corrective measures for the following:
 - i) advice as to future conduct;
 - ii) verbal reprimand; or
 - iii) written reprimand,

the Operative Period is two (2) years from the date on which the O.P.C.C. confirmed that result as final and conclusive;
 - b) for disciplinary matters that resulted in the member receiving disciplinary or corrective measures for the following:
 - i) one or more directions to work under close supervision;
 - ii) one or more directions to undertake specialized training or retraining;
 - iii) one or more directions to undertake counseling or treatment;
or



iv) one or more directions to participate in a program or activity, and did not include dismissal, reduction in rank, suspension, transfer or reassignment, the Operative Period is three (3) years from the date on which the O.P.C.C. confirmed that result as final and conclusive; and

c) for disciplinary matters that resulted in the member receiving disciplinary or corrective measures of any of the following:

- i) reduction in rank;
- ii) suspension of any duration; or
- iii) transfer or reassignment,

and did not include dismissal, the Operative Period is five (5) years from the date on which the O.P.C.C. confirmed that result as final and conclusive.

- 18. With respect to any disciplinary matter involving a former member that results in the former member receiving one or more disciplinary or corrective measures, those disciplinary or corrective measures will be recorded on the Service Record as set out in this policy; however, no expungement shall take place.
- 19. Upon expungement of any Disciplinary records from a member's or former member's Service Record, PSS staff shall ensure that notification of the expungement is sent to the member or former member.
- 20. A Personnel Record will be maintained for each member or former member of the department for McNeil and non-disciplinary purposes.

Disclosure of a Service Record

- 21. Subject to Sections 22 and 23, a member or former member's Service Record may be disclosed only as follows:
 - a) to that member or former member;
 - b) to Crown counsel related to a McNeil request and in accordance with the McNeil disclosure standards;



- c) to the relevant Discipline Authority, Prehearing Conference Authority and/or investigator(s) with conduct of that member's or former member's disciplinary investigation;
 - d) to the Chief Constable, and to the Chief Constable of another police department with which the member or former member was employed at the time of the alleged misconduct, if any;
 - e) to the chair of the Delta Police Board ("Board");
 - f) to the O.P.C.C.;
 - g) to any adjudicator responsible to review an allegation of misconduct;
 - h) to any arbitrator appointed in an Internal Discipline matter; and
 - i) to a senior officer or police board for another police force or agency, but only upon their written request and only if the member or former member is seeking employment with that other police force or agency.
22. Notwithstanding Section 21, and except in cases of McNeil Disclosure, disclosure of a member or former member's Service Record to anyone other than those individuals listed in Section 21 requires:
- a) authorization by the Chief Constable or delegate; and
 - b) written consent of the member or former member.
23. Notwithstanding Sections 21 and 22, a member's Service Record can be used for non-disciplinary purposes, including consideration of promotion, transfer, re-assignment within the Department, and can be disclosed internally for those purposes.

Dispute Resolution

24. Disputes as to the appropriate content on a member's Service Record or the expungement of the disciplinary records shall be dealt with through the grievance process set out in the Collective Agreement.