



Policy Name:	SERVICE RECORD OF DISCIPLINE		
Policy #:	AD 2.9	Last Updated:	2021-10-21
Issued By:	COMMUNITY POLICING BUREAU	Approved By:	SURREY POLICE BOARD
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RELATED POLICIES

AD 2.2 Complaints and Professional Standards

AD 2.4 Internal Discipline

AD 2.5 McNeil Disclosure

1. PURPOSE

- 1.1. To establish standardized procedures for creating and maintaining Service Records of Discipline (Service Records) so that Members and former Members are treated fairly and consistently with respect to Service Records.
- 1.2. To ensure that the Surrey Police Service (SPS) complies with the *Police Act* rules regarding Service Records and the expungement of those records.

2. SCOPE

- 2.1. This Policy applies to all SPS Members.

3. POLICY

- 3.1. SPS is committed to meeting the obligations imposed by the *Police Act* for the creation and maintenance of Service Records for all Members and former Members.
- 3.2. The Professional Standards Section (PSS) Inspector is responsible for the maintenance of SPS' Service Records and shall ensure compliance with this policy.
- 3.3. SPS 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 *Police Act* and this policy that provide details and context to the Disciplinary Matters listed within the Service Record.

3.4. With respect to Service Records, SPS shall:

- i. keep Service Records in a secure location, as determined by SPS Management;
- ii. keep Service Records separate from the Members' and former Members' personnel files;
- iii. ensure that Service Records are maintained and updated as required by the *Police Act* and this policy; and
- iv. notify a Member or former Member every time their Service Record is updated or altered, by either the recording of a new Disciplinary Matter or the expungement of any information or records in the Service Record.

Content of the Record

3.5. A Service Record must contain the following records, subject to expungement as required by this policy:

- i. a record of complaint against the Member or former Member that is determined by the Office of the Police Complaint Commissioner (OPCC) to be an admissible complaint;
- ii. a record of each investigation that is initiated as an ordered investigation by the OPCC;
- iii. a notation on the Service Record Form of any disciplinary or corrected measures imposed on a Member or former Member arising from all disciplinary investigations:
 - a. accepted by the Member or former Member through informal resolution or mediation;
 - b. accepted by the Member or former Member in a Prehearing Conference;
 - c. imposed after a finding of misconduct in a Discipline Proceeding; and
 - d. imposed by an adjudicator after a Review on the Record or a Public Hearing.

3.6. The following records and documents shall be compiled in the Service Record 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 OPCC record of appointment of a new discipline authority, under s.117 of the *Police Act*;
- ii. a record of every resolution coming out of any Prehearing Conference that has been approved by the OPCC together with a copy of the Prehearing Conference Report and the OPCC 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 OPCC 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 OPCC's Conclusion of Proceedings; and

4. a record of decisions by an adjudicator in a Review on the Record or a Public Hearing, including a copy of their decision document(s);
- iv. For every Internal Discipline matter involving the Member, the following shall be compiled in the Service Record:
 1. the notice of an internal investigation
 2. a record of any discipline and other additional measures imposed on the Member after a finding of misconduct;
 3. a record of any grievances and arbitrations filed with respect to the discipline and/or other measures imposed; and
 4. 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

3.7. A Service Record will be created for each Member under investigation for a Disciplinary Matter.

3.8. Each entry in the Service Record Form will include the required details and documents as indicated in this policy.

3.9. If disciplinary or corrective measures are imposed upon a Member or former Member and those corrective measures include treatment, counselling, training, or some other program, the Service Record will be updated with entries to indicate when that counselling, treatment, training, or other program was completed.

Expungement of Disciplinary Records

3.10. Despite any other provisions in this policy, records referred to s. 3.5 above must be expunged from a Member's or former Member's Service Record in accordance with the criteria in this policy.

3.11. With respect to any Disciplinary Matter, automatic expungement of that matter will occur in the following circumstances:

- i. complaints that are not substantiated, upon notification by the OPCC that the proceedings have been concluded; and
- ii. complaints that are concluded by withdrawal, discontinuance, consent resolution, or mediation when no disciplinary or corrective measures being imposed on the Member or former Member, upon being notified by the OPCC that the resolution is confirmed.

3.12. 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:

- i. 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 OPCC to be final and conclusive;
- ii. the duration of the Operative Period will be in accordance with the *Police 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:
 - a. where a subsequent Disciplinary Matter is recorded in the Member's Service Record the Operative Period for a preceding disciplinary matter expungement shall be suspended;
 - b. upon the conclusion of a subsequent Disciplinary Matter which is unsubstantiated, withdrawn or discontinued the Operative Period for the preceding disciplinary matter shall be resumed and follow the original expungement due date;
 - c. 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
 - d. 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.

3.13. The Operative Period of a disciplinary matter depends on 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:

- i. for Disciplinary Matters that resulted in the Member receiving disciplinary or corrective measures of the following nature::
 - a. advice as to future conduct
 - b. verbal reprimand; or
 - c. written reprimand,

the Operative Period is two (2) years from the date on which the OPCC confirmed that result as final and conclusive;

- ii. for disciplinary matters that resulted in the Member receiving disciplinary or corrective measures of the following nature::
 - a. one or more directions to work under close supervision;
 - b. one or more directions to undertake specialized training or retraining;
 - c. one or more directions to undertake counselling or treatment; or
 - d. 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 OPCC confirmed that result as final and conclusive; and

- iii. for disciplinary matters that resulted on the Member receiving disciplinary or corrective measures of the following nature:
 - a. reduction in rank;
 - b. suspension of any duration; or
 - c. transfer or reassignment,

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

3.14. 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.

3.15. Upon expungement of any Disciplinary records from a Member's or former Member's Service Record, PSS staff must notify the Member or former Member.

3.16. A Personnel Record will be maintained for each Member or former Member for McNeil Disclosure as well as non-disciplinary purposes.

Disclosure of a Service Record

3.17. Subject to s. 3.18 and s. 3.19 below, a Member or former Member's Service Record may be disclosed only as follows:

- i. to that Member or former Member;
- ii. to Crown Counsel related to a McNeil request and in accordance with the McNeil Disclosure standards;
- iii. to the relevant Discipline Authority, Prehearing Conference Authority and/ or investigator(s) with conduct of that Member or former Member's disciplinary investigation;
- iv. to the Chief Constable, and to the Chief Constable of another police agency with which the Member or former Member was employed at the time of the alleged misconduct, if any;
- v. to the Chair of the SPS Police Board;
- vi. to the OPCC;
- vii. to the investigating officer of a Division 3 investigation that involves the conduct of the member or former member;
- viii. to the adjudicator responsible to review an allegation of misconduct;
- ix. to any arbitrator appointed in an Internal Discipline Matter; and
- x. to a senior officer or the police board for another police agency, but only upon their written request and only if the Member or former Member is seeking employment with that other police agency.

3.18. Despite s. 3.17 above, and except in cases of McNeil Disclosure, disclosure of a Member's or former Member's Service Record to anyone other than those individuals listed in s. 3.17 requires:

- i. authorization by the Chief Constable or delegate; and
- ii. written consent of the Member or former Member.

3.19. Despite s. 3.17 and s. 3.18 above, a Member's Service Record can be used for non-disciplinary purposes, including consideration of promotion, transfer, re-assignment within SPS, and can be disclosed internally for those purposes.

Dispute Resolution

3.20. Disputes as to the appropriate content of 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.

APPENDIX A: DEFINITIONS

“Admissible Complaint” means a complaint against a Member that the OPCC determines may constitute misconduct and directs that matter for investigation in accordance with Division 3 of the *Police Act*.

“Discipline Authority” means the Chief Constable or a delegate of the Chief Constable if it concerns the conduct of Members under the rank of Deputy Chief, and the Police Board Chair if it concerns the conduct of the Chief Constable or a Deputy Chief Constable. Under s. 76 of the *Police Act*, in certain circumstances, the Discipline Authority may be a retired judge, a senior officer, or a senior officer from an external police agency.

“Disciplinary Matters” means Public Trust Matters or Internal Discipline Matters..

“Disciplinary or Corrective Measures” means all disciplinary or corrective measures described in s. 126 of the *Police Act*.

“Discipline Proceeding” means formal disciplinary hearing held pursuant to the *Police 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” means any person who was previously employed as an SPS Member who has resigned or retired from SPS and is no longer a municipal constable (as defined in the *Police Act*) in British Columbia.

“Internal Discipline Matter” means a matter concerning the conduct or deportment of a Member that is not the subject of an admissible complaint or investigation under Division 3 (Process Respecting Alleged Misconduct) of the *Police Act* and does not directly involve or affect the public.

“Member” means a sworn Police Officer appointed by the Surrey Police Board.

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

“Prehearing Conference” - the informal disciplinary process set out under s. 120 of the *Police 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 s. 180 of the *Police Act* and this policy.

“Public Trust Matters” means a matter as defined in s. 77 (2) *Police Act* alleging an offence under an enactment of Canada, or of any province or territory in Canada, or a conviction in respect of which does or would likely render a member unfit to perform their duties as a member, or discredit the reputation of the SPS.

APPENDIX B: REFERENCES

Police Act, R.S.B.C. 1996, c. 367