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July 10, 2020

J Alexander

Via Email: opra+request-14378-e0585482@requests.opramachine.com

RE: Open Public Records Act (OPRA) Request

Dear Sir/Madam:

I am in receipt of your request for reconsideration of our response to your OPRA request. As the Attorney General Law Enforcement Directive No. 2020-5 has not yet become effective, I would invite you to resubmit your request after the directive is in effect. As a courtesy, I have attached the directive which outlines the effective dates.

Should you disagree with our decision, please contact us in writing with your concerns so that we may consider them. If I can be of further assistance, please contact me at 732-929-2027, x3135.

Yours very truly,

Dina R. Khajezadeh

Dina R. Khajezadeh
Assistant Prosecutor

DRK/dp

Enclosure



State of New Jersey

PHILIP D. MURPHY
Governor

OFFICE OF THE ATTORNEY GENERAL
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GURBIR S. GREWAL
Attorney General

SHEILA Y. OLIVER
Lt. Governor

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2020-5

TO: All Law Enforcement Chief Executives

FROM: Gurbir S. Grewal, Attorney General

DATE: June 15, 2020

SUBJECT: Directive Requiring Public Disclosure of the Identities of Officers Who Commit Serious Disciplinary Violations

For decades, New Jersey has treated a police department's internal disciplinary files—generally known as “internal affairs” records—as highly confidential, in line with the way that personnel records for all public employees are usually treated. This Directive establishes an important and necessary exception to that practice for serious cases of law enforcement officer discipline.

There are good reasons why internal affairs records are not generally disclosed to the public, including the need to protect those who report and witness police misconduct. Complainants might be unwilling to report misconduct if they knew that their names would ultimately be disclosed publicly. Similarly, witnesses—including officers asked to testify against a colleague—might be unwilling to cooperate in an inquiry if they knew that their statements would be available for public inspection. These are among the reasons why, even within police departments, internal affairs records are closely guarded and generally not shared outside the agency's internal affairs unit.

Moreover, a number of misconduct complaints against law enforcement officers are ultimately determined to be unsubstantiated or unfounded. In cases where these complaints were thoroughly and objectively investigated by the appropriate authorities, it would be unfair to publicly disclose unproven allegations against officers—particularly given that such complaints against other public employees are not typically disclosed absent extenuating circumstances.

At the same time, however, law enforcement officers are entrusted with extraordinary responsibility and it is imperative that all officers maintain the highest standards of good



discipline and conduct. Therefore, when a law enforcement agency concludes that one of its members has violated agency rules in a way that warrants professional sanction, there is a stronger rationale for public disclosure. And the more significant the violation, the more important it is that the public knows about the misconduct.

In New Jersey, the internal disciplinary process for law enforcement agencies is governed by *Internal Affairs Policy & Procedures (IAPP)*, a binding policy first issued by the Attorney General in August 1991 and updated multiple times. By law, every law enforcement agency in the state is required to adopt policies consistent with *IAPP*. N.J.S.A. 40A:14-181.

In December 2019, I issued Attorney General Law Enforcement Directive No. 2019-5, known as the “Internal Affairs Directive.” The Directive marked one of the most substantial revisions to *IAPP* since its initial publication, and represented a significant step forward in promoting accountability and strengthening public confidence in law enforcement. Among many other changes, the Internal Affairs Directive strengthened oversight of internal affairs, and allowed for internal affairs files to be shared with civilian review boards that establish certain procedural safeguards. Importantly, the Directive also clarified *IAPP* to require that each law enforcement agency publish on its website an annual “synopsis” summarizing all disciplinary complaints against the agency’s officers resulting in a fine or suspension of ten days or more, but did not require the disclosure of the identity of those officers. *IAPP* § 9.11.2.

After further review, I believe that even this significant set of changes does not go far enough. More is required to promote trust, transparency and accountability, and I have concluded that it is in the public’s interest to reveal the identities of New Jersey law enforcement officers sanctioned for serious disciplinary violations. Our state’s law enforcement agencies cannot carry out their important public safety responsibilities without the confidence of the people they serve. The public’s trust depends on maintaining confidence that police officers serve their communities with dignity and respect. In the uncommon instance when officers fall well short of those expectations, the public has a right to know that an infraction occurred, and that the underlying issue was corrected before that officer potentially returned to duty.

It is time to end the practice of protecting the few to the detriment of the many. The vast majority of law enforcement officers in New Jersey serve with honor and astonishing courage under extremely difficult circumstances. Most go through their entire careers without engaging in conduct that warrants a major disciplinary action against them. But their good work is easily undermined—and quickly forgotten—whenever an officer breaches the public’s trust and dishonors the entire profession. The likelihood of such misbehavior increases when officers believe they can act with impunity; it decreases when officers know that their misconduct will be subject to public scrutiny and not protected. The deterrent effect of this scrutiny will, in the end, improve the culture of accountability among New Jersey law enforcement.

For the purposes this Directive, I am treating disciplinary violations as sufficiently serious to warrant public disclosure of an officer’s identity when the sanction involves

termination of employment, reduction in rank or grade, and/or a suspension greater than five days. Correspondingly, I am revising *IAPP* to indicate that every law enforcement agency's annual synopsis report must include all final disciplinary actions that meet this threshold.

This classification mirrors the distinction that the New Jersey State Police draws between “minor discipline,” which may result in a written reprimand or a suspension of up to five days, and “major discipline,” which may result in termination, reduction in rank, or lengthier suspensions. Major disciplinary violations can include conduct involving, among other things, excessive force against civilians, racially derogatory comments, driving while intoxicated, domestic violence, theft, the filing of false reports, and/or conduct that results in criminal charges against the officer.

To be clear, today's Directive applies prospectively. Law enforcement agencies subject to its requirements must publish their first report disclosing names of officers recently suspended for serious misconduct no later than December 31, 2020. At the same time, nothing in this Directive prevents agencies from releasing similar information regarding historical incidents of officer misconduct. For example, the law enforcement agencies housed with the Department of Law & Public Safety—the New Jersey State Police, the Division of Criminal Justice, and the Juvenile Justice Commission—will publish the names of any officers who have been subject to serious discipline by July 15, 2020. The New Jersey State Police, which since 2000 has published an annual report summarizing incidents of major discipline that does not disclose the identities of the State Troopers, intends to update these annual reports with the Troopers' names no later than July 15, 2020.

Pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the state in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the state, I hereby direct all law enforcement and prosecuting agencies operating under the authority of the laws of the state of New Jersey to implement and comply with *IAPP* as revised by this Directive, and to take any additional measures necessary to update their guidelines consistent with *IAPP*, as required by N.J.S.A 40A:14-181.

I. Revision to Internal Affairs Policy & Procedures

A. *Publication of public reports.* *IAPP* Section 9.11 (Public Reports) is amended in part to read:

9.11.1 On an annual basis, every law enforcement agency shall publish on its public website a report summarizing the types of complaints received and the dispositions of those complaints. This report ~~can~~ **should** be statistical in nature;

~~and the names of complainants and subject officers shall not be published.~~

9.11.2 On a periodic basis, and at least once a year, every agency shall submit to the County Prosecutor and publish on the agency's public website a brief synopsis of all complaints where a ~~fine or~~ **termination, reduction in rank or grade,** ~~and/or~~ suspension of ~~ten days or~~ more **than five days** was assessed to an agency member. **This synopsis shall include the identity of each officer subject to final discipline, a brief summary of their transgressions, and a statement of the sanction imposed.** This synopsis shall not contain the identities of the ~~officers or~~ complainants, ~~but should briefly outline the nature of the transgression and the fine or suspension imposed.~~ An example of a synopsis is found in Appendix U.

- B. ***Initial report.*** Each law enforcement agency shall publish its first report in compliance with the revised Section 9.11.2 no later than December 31, 2020. The first report shall cover disciplinary actions finalized during, at a minimum, the preceding twelve months.

II. **Other Provisions**

- A. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.
- B. ***Severability.*** The provisions of both this Directive and *IAPP* shall be severable. If any phrase, clause, sentence or provision of either this Directive or *IAPP* is declared by a court of competent jurisdiction to be invalid, the validity of the remainder either document shall not be affected.
- C. ***Questions.*** Any questions concerning the interpretation or implementation of this Directive or *IAPP* shall be addressed to the Executive Director of Office of Public Integrity & Accountability (OPIA), or their designee.
- D. ***Effective date.*** This Directive shall take effect on August 31, 2020. Prior to the effective date, OPIA shall publish an updated *IAPP* that incorporates the revisions mandated by both this Directive and the Internal Affairs Directive issued on December 4, 2019. The

provisions of this Directive shall remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General.



Gurbir S. Grewal
Attorney General

ATTEST:



Jennifer Davenport
First Assistant Attorney General
Dated: June 15, 2020