

BRADLEY D. BILLHIMER
Ocean County Prosecutor

ANTHONY U. CARRINGTON
Chief of Detectives



MICHAEL T. NOLAN, JR.
First Assistant Prosecutor

ROBERT J. ARMSTRONG
Deputy First Assistant Prosecutor

OFFICE OF THE PROSECUTOR

Courthouse Annex Building
119 Hooper Avenue
P.O. Box 2191
Toms River, New Jersey 08754-2191
732-929-2027
www.OCPONJ.gov

October 12, 2022

Via OPRA Machine: opra+request-35732-a5b45b8d@requests.opramachine.com

Re: Open Public Record Request (OPRA)
Misconduct Investigations and Staff List

Dear Madam:

This Office is in receipt of your request made under the New Jersey Open Public Records Act (OPRA). Enclosed please find the responsive documents for items one and three of your request.

In item two, you request "names of Prosecutor's that have been investigated from 2012 to present and the findings". Please be advised that internal affairs investigations are a subject matter which our courts have ruled to be exempt from disclosure under OPRA. Paff v. Bergen Cty., A-1839-14T1, 2017 WL 957735, at *5 (N.J. Super. Ct. App. Div. Mar. 13, 2017) ("The nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information."). Therefore, we cannot fulfill your request.

Additionally, law enforcement agencies routinely receive allegations that are determined to be unprovable, unfounded or untrue. Confirming the existence of investigations into such allegations could unfairly subject an individual to irreparable harm and subject this office and its employees to civil liability and professional discipline. It is for this reason, among others, that grand jury proceedings are conducted in secret.

Our courts have previously held that a prosecutor's office is ethically bound to refuse to confirm or deny the existence of records that may reveal whether there is, or has been, an investigation surrounding events for which a person has not been subject to arrest:

In sum, before OPRA was enacted, judicial decisions recognized the need to maintain "a high degree of confidentiality" for records regarding a person who has not been arrested or charged. The

confidentiality accorded such information promotes both the integrity and effectiveness of law enforcement efforts for the benefit of the public at large. In addition, the grant of confidentiality protects the privacy interest of the individual who, lacking an opportunity to challenge allegations in court, would face irremediable public condemnation. The need and scope of confidentiality recognized in our courts' decisions "may duly be claimed to restrict public access to a public record or government record." *N.J.S.A. 47:1A-9(b)*. We therefore hold that, pursuant to *N.J.S.A. 47:1A-9(b)*, an exemption exists for information received or maintained by law enforcement agencies regarding a person who has not been arrested or charged with an offense.

N. Jersey Media Grp. Inc. v. Bergen Cty. Prosecutor's Office, 447 N.J. Super. 182, 204 (App. Div. 2016)

Thus, as the above authority indicates, we cannot comment on whether any records exist pursuant to your request in item two.

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

Enclosures

Prestia , Donna

due 10/12

From: Khajezadeh, Dina
Sent: Friday, September 30, 2022 9:03 AM
To: Prestia , Donna; Carey, Erin
Subject: FW: [EXTERNAL] OPRA request - Misconduct investigations and staff list

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Erin <opra+request-35732-a5b45b8d@requests.opramachine.com>
Date: 9/30/22 8:56 AM (GMT-05:00)
To: "Khajezadeh, Dina" <DKhajezadeh@co.ocean.nj.us>
Subject: [EXTERNAL] OPRA request - Misconduct investigations and staff list

This message has originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Dear Ocean County Prosecutor's Office,

This is a request for public records made under OPRA and the common law right of access. I am not required to fill out an official form. Please acknowledge receipt of this message.

Records requested:

- 1) Your office's investigation procedure into misconduct of a Prosecutor.
- 2) Names of Prosecutor's that have been investigated from 2012 to present and the findings.
- 3) Names of all current prosecutorial staff and interns and their positions currently held.

Yours faithfully,

Erin

Please use deliver records electronically via email to the below UNIQUE address for all replies to this request:
opra+request-35732-a5b45b8d@requests.opramachine.com

Is DKhajezadeh@co.ocean.nj.us the wrong address for OPRA requests to Ocean County Prosecutor's Office? If so, please contact us using this form:

https://opramachine.com/change_request/new?body=ocean_county_prosecutors_office

INTERNS-OCEAN COUNTY PROSECUTOR'S OFFICE

1. Stephanie Cucinello
2. Santino Galati
3. Alexander Karn
4. Maxwell Manfre
5. Marina Michelini
6. Giana Rapolla
7. Kyle Riordan

Assistant Prosecutors		
1	Abatemarco, Michael M.	Supv. A/P
2	Angelo, Ashley L.	Sr. A/P
3	Armstrong, Michelle K.	Executive Assistant Prosecutor
4	Armstrong, Robert J.	Deputy First Assistant Prosecutor
5	Becker, Alexander	A/P
6	Billhimer, Bradley D.	Prosecutor
7	Brater (Hanley) Mara	Sr. A/P
8	Bryce, Hillary H.	Chief Grand Jury & Intake
9	Buczynski, Madeline M.	A/P
10	Burke, Kaitlyn	A/P
11	Burke, Stephen E.	A/P
12	Carr, Kimberly	A/P
13	Cassidy, Robert J.	Supv. A/P
14	Chant-Berry, Shanon	Sr. A/P
15	Coughlin, Bridget J.	Supv. A/P
16	DeBari, Alec T.	A/P
17	Deen, Shiraz I.	A/P
18	DeJesus, Brandon E.	A/P
19	Esler, Victoria E.	A/P
20	Hammel, Cheryl L.	A/P
21	Heisler, Christopher P.	Sr. A/P
22	Hurst, Emma C.	A/P
23	Juan, Lynn M.	A/P
24	Kelly Jr., Timothy	A/P
25	Khajezadeh, Dina R.	A/P
26	Krasteva, Iva I.	A/P
27	Leimbach, Andrew T.	A/P
28	Lento, Christine S.	Supv. A/P
29	Linardakis, Terry Ann	Supv. A/P
30	Mandara, Alyssa K.	A/P
31	Marzarella, Samuel J.	Chief Appellate Attorney
32	Meighan, Kyle	Supv. A/P
33	Monaco, Nicholas	A/P
34	Moscato, Genna E.	A/P
35	Nolan Jr., Michael T.	First Assistant Prosecutor
36	O'Neill (Clark), Meghan M.	Sr. A/P
37	Pennypacker, Kaitlin C.	A/P
38	Peterson, Julie E.	A/P
39	Pierro, Anthony V.	Chief Juvenile/Domestic Violence Atty.
40	Pouch, Natalie	A/P
41	Porter, William A.	Chief Assistant Prosecutor-Narcotics
42	Pressman, Kristin L.	Supv. A/P
43	Scharfenberg, William W.	Chief Professional Standards Prosecutor

44	Schron, Jamie L.	Sr. A/P
45	Tannenbaum-Newman, Heidi	A/P
46	Tarver, Rachel L.	A/P
47	Toscano, Taylor	A/P
48	Tucker, Samantha D.	A/P
49	Veni, Victoria R.	A/P
50	Weatherstone, Michael R.	Chief Trial Attorney
51	White, Renee T.	Supv. A/P

OCEAN COUNTY PROSECUTOR'S OFFICE

Standard Operating Procedure

VOLUME: 2

CHAPTER: 15

OF PAGES: 33



SUBJECT: INTERNAL AFFAIRS

EFFECTIVE DATE:

April 26, 2012

AGGREDITATION
STANDARDS:

1.3.1, 1.4.3a-e

REVISION DATE

PAGE #

00/00/15

3-5, 7-8, 11,

29-31

11/29/17

10-11, 26, 32

2/24/21

ALL

02/15/2022

ALL

BY THE ORDER OF:

Prosecutor Bradley D. Billhimer

SUPERSEDES ORDER #:

All Previous Orders

PURPOSE: The purpose of this directive is to maintain a high quality of law enforcement services. Improving the relationship between employees and the public facilitates cooperation vital to the office's ability to achieve its goals. This office is committed to providing law enforcement services that are fair, effective, and impartially delivered. Employees are held to the highest standards of conduct and are expected to respect the rights of all citizens. This office must be responsive to the community by providing formal procedures for the processing of complaints regarding individual employee performance. An effective disciplinary framework permits office personnel to monitor employee compliance with office directives, assist employees in meeting office objectives, enhance performance, and permit managers to identify problem areas which require increased training or direction. Finally, this directive shall ensure fundamental fairness and due process protection to citizens and employees alike.

POLICY: It is the policy of the Ocean County Prosecutor's Office to accept and investigate all complaints of agency and employee's alleged misconduct or wrongdoing from all persons who wish to file a complaint, regardless of the hour or day of the week. This includes reports from anonymous sources, juveniles, undocumented immigrants, and persons under arrest or in custody. All allegations of employee misconduct shall be thoroughly, objectively, and promptly investigated to their logical conclusion in conformance with this policy, regardless of whether the employee resigns or otherwise separates from the agency. Discipline shall be administered according to the degree of misconduct. All employees, regardless of rank/title, shall be subject to disciplinary action for violating their oath and trust. Committing an offense punishable under the laws of the United States, the State of New Jersey, or municipality constitutes a violation of that oath and trust. Employees are also subject to disciplinary action for the willful or negligent failure to perform the duties of their rank or assignment. In addition, employees may be disciplined for violation of any rule or regulation of the office or for failure to obey any lawful instruction, order, or command of a superior officer or supervisor. Disciplinary/corrective action in all matters will be determined based upon the merits of each case. Investigators conducting the investigation of any allegation of misconduct shall strive to conduct a thorough and objective investigation respecting the rights of the principal, any other law enforcement officer, and all members of the public. Accordingly, any supervisor and any officer who may be called upon to conduct an internal investigation must be thoroughly familiar with the office's Internal Affairs policy. *This policy has been developed in accordance with the revised New Jersey Attorney General Directive on Internal Affairs.*

PROCEDURE:

I. DEFINITION OF TERMS

A. The following forms/reports shall be used in accordance with this directive:

1. **State Standardized Internal Affairs Complaint Form - (IA-1):** This form shall be utilized by department employees to document a reportable incident by all complainants.
2. **Ten Day Letter to Complainant – (IA-2):** This letter shall be utilized by office employees advising the complainant to contact the agency to conduct a further investigation into the complaint.
3. **OCPO IA Complaint Notification Letter (allegations) (IA-2B):** This letter shall be offered to any citizen who wants to complain about an employee of the office and/or local police department. The employee receiving the complaint form shall complete the State Standardized Internal Affairs Complaint Form and submit it to Internal Affairs.
3. **OCPO IA Complainant Information Form (IA-2C):** This information form is provided to the complainant to guide them on how the Internal Affairs processes proceeds.
4. **OCPO IA Investigation Report (IA-3):** This report shall be used to memorialize the investigation of any internal affairs matter or performance deficiency.
5. **OCPO IA Supplementary Report (IA-4):** This report shall be used to supplement the initial investigation report.
6. **OCPO IA Notification Letter of Interviews (scheduled) (IA-5A):** This letter will be provided to the individual person who will notified of the date to be interviewed by an Internal Affairs Detective
7. **OCPO IA Witness Acknowledgment Form (IA-5B):** The form shall be used during internal affairs investigation interviews when interviewing a witness in an internal affairs investigation.
8. **OCPO IA Garrity Request Form (IA-6):** This form will be provided to the Prosecutor for review to approve or disapprove Garrity Rights.
9. **OCPO IA Garrity Authorization Letter to Subject Officer (IA-7):** This form is the letter granting Garrity Rights to subject officer.
10. **OCPO IA Use Immunity Grant Advisement Form (IA-7A):** This form will be given to the subject officer for Garrity Warning.
11. **OCPO IA Administrative Advisement Form (IA-8):** This form shall be used during internal affairs investigation interviews when interviewing the principal in an internal affairs investigation.
12. **Miranda Form (Pros. 134):** This form shall be used in an internal affairs investigation when interviewing an employee accused of committing a crime after consultation with the New Jersey Office of the Attorney General.

13. **OCPO IA Medical Records Authorization (IA-9):** This form will be given to the complainant to authorize the agency to obtain any medical reports.
14. **OCPO IA Case Review Form (IA-10):** This form shall be used when an internal affairs investigation is reviewed through the chain of command.
15. **OCPO IA Complaint Determination Letter (IA-11):** This form will be provided to the subject officer of the findings of the internal affairs outcome.
16. **IA-13 Letter Referring Case Back to Police Department (IA-12):** This letter is to inform the local police department to conduct an investigation into the allegations against the subject officer
17. **Letter Asking Chief to Request We Take over Conflict (IA-13):** This form is requesting the local police department to advise the Prosecutor's Office in writing of a conflict and to request the Prosecutor's Office to take over the investigation.
18. **OCPO IA Waiver of Prosecution (IA-14):** This form is for the complainant to waive any formal complaint against the subject officer.
19. **Letter to Attorney General Notifying them of Criminal Charges which may be Indictable (IA15):** This form is to notify the Attorney General of any criminal charges on Prosecutor personnel only.
20. **OCPO Performance Notice - (IA-16):** This form shall be completed by a supervisor to memorialize any corrective action (not discipline) taken either as a result of a reported performance deficiency incident or internal affairs investigation. This form shall also be used to commend an employee for positive performance.
21. **OCPO IA Weingarten Representative Acknowledgement Form (IA-17):** This form shall be provided to the Weingarten representative present during an internal affairs interview.
22. **OCPO Attachment Log - (IA-18):** This form shall be used to account for all attachments accumulated during the investigation.
23. **OCPO Internal Investigation Allegations and Conclusions Form - (IA-19):** This form shall be used to establish a narrative of the alleged misconduct, and the relationship to the specific provision of the Rules and Regulations and/or written directive allegedly violated.
24. **OCPO New Principal/Allegation Identification Form - (IA-20):** This form shall be used when an employee shifts from a witness to a principal. This form shall also be used to document perceived violations of policy and procedure not relevant to the complaint or the alleged misconduct being investigated.
25. **OCPO Reprimand Notice - (IA-25):** This form shall be used to notify formally, the principal of discipline approved by the Internal Affairs Unit Commander in connection with the completed internal affairs investigation. This disciplinary form shall be used for discipline that does not exceed a written reprimand.

26. **OCPO Notice of Disciplinary Action Form:** This form shall be used to notify formally, the principal of charges approved by the Chief of Detectives or designee in connection with the completed internal affairs investigation. This disciplinary form shall only be used for charges that exceed a written reprimand.

B. **Reportable Incident:** is any behavior, performance, or non-performance that may violate office rules, regulations, procedures, applicable criminal and civil laws, and the United States or New Jersey Constitutions. All reportable incidents shall be carefully and thoroughly reviewed by the Internal Affairs Unit Commander to determine the manner of response that best serves the public, the office, and the employee. Reportable incidents classified as misconduct will result in an internal investigation conducted in accordance with the New Jersey Attorney General's Internal Affairs Directive and this directive. Reportable incidents include, but are not limited to the following:

1. A complaint that an employee has engaged in any form of misconduct, as defined in this directive, whether on or off-duty;
2. An alleged violation of any of the Office Rules and Regulations;
3. An alleged violation of any written directive issued by this office or appropriate authority as defined by ordinance;
4. A refusal to or a failure to comply with a lawful written or verbal order, directive, or instruction;
5. The filing of a civil suit by a civilian alleging any misconduct by an employee while on duty or acting in an official capacity;
6. The filing of a civil suit against an employee for off-duty conduct while not acting in an official capacity that alleges racial bias, physical violence, or threat of physical violence;
7. Criminal arrest of or filing of a criminal charge against an employee;
8. Allegation(s) that an employee is either an alleged perpetrator or victim of a domestic violence incident.

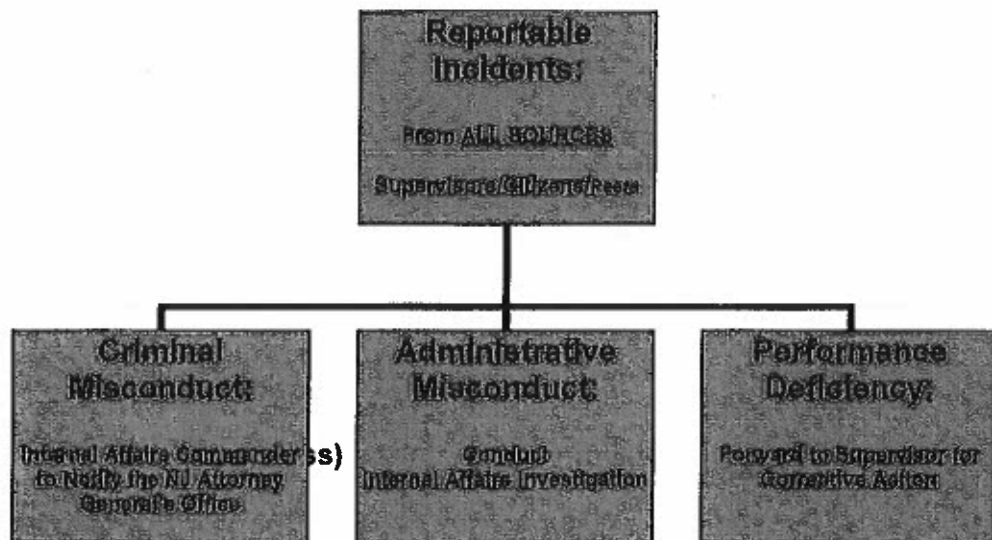
C. **Classification:** There are three classifications of a reportable incident. All reportable incidents shall be forwarded to the Internal Affairs Unit Commander to screen, record and classify the incident as one of the following (**See Figure #1**):

NOTE: All allegations of misconduct, whether criminal or administrative, regardless of the source of the allegation shall result in an internal investigation.

1. Criminal Misconduct - Reportable Incidents classified as criminal misconduct will result in immediate notification to the New Jersey Office of the Attorney General of the receipt of the complaint by the Internal Affairs Unit Commander. No further action shall be taken, including the filing of charges against an employee, until directed by the Prosecutor.

- a. Criminal Misconduct is defined as a reportable incident where there is an allegation of a crime or a disorderly or petty disorderly offense.

2. **Administrative Misconduct** - An incident may be classified as administrative misconduct in which case an investigation shall be conducted in accordance with this directive.
 - a. Administrative Misconduct is defined as a reportable incident where there is a serious violation of office rules and regulations, written directive; or, conduct which adversely reflects upon the employee or the office.
 - b. Repeat performance deficiencies may be classified as administrative misconduct.
3. **Performance Deficiency** - An incident which is classified as a performance deficiency shall be referred to the supervisor for addressing through non-disciplinary corrective actions, (corrective action shall be training or counseling only).
 - a. A performance deficiency is defined as a reportable incident of any minor rule infraction that can be addressed at the supervisory level of an employee. This office recognizes that not all reportable incidents constitute misconduct and certain reportable incidents are more effectively handled outside of the disciplinary process. Performance deficiency incidents **are not** internal affairs investigations. The employee's supervisor shall investigate the performance deficiency and any performance notices shall be forwarded to the Internal Affairs Unit for review and filing.



II. GUIDING PRINCIPLES

- A. The investigative process should seek to locate and identify all evidence available to either prove or disprove allegations made against an employee.
- B. With the exception of internal investigations that are part of an ongoing or potential criminal investigation, the majority of internal investigations are administrative in nature. Unlike criminal investigations where the burden of proof is beyond a reasonable doubt, the standard for administrative cases is a preponderance of the evidence.
- C. Also important is that strict rules of evidence and certain constitutional protections that apply in criminal cases do not attach to these investigations. In accordance

with established case law, the investigator, reviewing authority and the Chief of Detectives can rely on types of evidence that would be inadmissible in a criminal proceeding, providing there is some indication of reliability.

- D. Furthermore, unlike criminal investigations, certain specific legal protections that arise in employment & labor matters and in police discipline matters apply to employees subject to an internal investigation. These include rights and practices commonly referred to as Weingarten, Loudermill, and Garrity rights, as well as contractual rights or those based on state or federal statutes.
- E. Investigators and reviewers shall scrupulously adhere to the principles that all employees shall be afforded all rights to which they are entitled. At the same time, investigative and review personnel will also be aware of their obligations to determine the facts of each case utilizing investigative methods, which are consistent with acceptable practices in employee discipline cases.
- F. Internal Affairs investigations shall not rely solely on the outcome of related criminal matters or traffic matters. The conviction of a citizen complainant shall not be dispositive as to the citizen's complaint regarding the employee's conduct related to the incident. However, the court proceedings will be relevant and should be reviewed. Unless otherwise determined by the investigative plan, most cases involving a court action will require the collection and analysis of court records and transcripts of court appearances by the principal, complainant, or critical witnesses. The investigator should make every attempt to attend court proceedings, to monitor the progress/outcome of the case. As a monitor, the investigator need not notify the prosecutor, judge, or other court personnel of his/her presence and should not have any input in the proceedings.
- G. If a civilian signs criminal or traffic complaints, in addition to making an internal affairs complaint against an employee, a not guilty disposition of the court shall not automatically determine the outcome of the internal complaint. However, it will be relevant and part of the investigation.
- H. The investigator and reviewing authority shall consider that administrative charges have a different threshold of proof, as well as less restrictive rules of evidence.
- I. As internal affairs investigators, a tendency to automatically grant more credibility to statements given by employees of the office and other law enforcement officials than to statements given by civilian complainants and witnesses must be carefully avoided. In certain situations where the credibility and motive of the complainant is reasonably suspected, a credibility determination may be made as provided for in this policy. However, investigators, unless otherwise authorized, will investigate the relevant facts of the allegations and not the background or motive of the complainant, unless relevant to the investigation.
- J. It is the policy of this office that personnel conducting internal investigations deal with complainants, witnesses, and principals in a professional manner. This includes being prepared for interviews, promptly responding to telephone calls, and handling all related contacts during an investigation to leave citizens and employees alike with the impression that a thorough, fair, and impartial investigation of the allegation(s) will be conducted.

- K. Discovery of additional allegations and identification of additional principals:
1. In conducting investigations, the propriety of all conduct by the employee relating to the subject matter of the investigation shall be reviewed.
 2. If during the course of an investigation, the investigator has reason to believe that misconduct occurred, other than that alleged, the investigator shall:
 - a. Document the information on a New Principal/Allegation Identification Form and forward it to the Internal Affairs Unit Commander to determine the appropriate response. Upon completion of the review, the form, which shall include all appropriate endorsements, will be returned to the investigator, and maintained as an attachment to the investigation.
 - b. Unless otherwise directed, the investigator shall investigate the additional allegation to its logical conclusion.
 3. If during the course of an investigation, the investigator has reason to believe that another employee may have been involved in alleged misconduct and should be interviewed as a principal, the investigator shall:
 - a. Report the information on a New Principal/Allegation Identification Form to the Internal Affairs Unit Commander and await further instructions. Other aspects of the investigation should continue.

L. The New Jersey Resiliency Program for Law Enforcement

1. Under no circumstances, shall a detective face any type of discrimination or adverse internal affairs consequences for the sole reason that the officer decided to seek medical or psychological treatment for a mental health concern, including depression, anxiety, post-traumatic stress disorder, or substance use disorder.
2. All detectives are encouraged to take advantage of the resources provided by the New Jersey Resiliency Program for Law Enforcement, as well as the other resources identified in Attorney General Directive 2019-1.

- M. The agency may not enter into binding agreements with law enforcement officers concerning the precise content of a public report concerning major discipline. In other words, law enforcement agencies may not reach any agreement as a condition of a plea or settlement agreement in an internal affairs investigation, or otherwise specifying whether and how that agency will describe the misconduct or sanction in future public reporting.

III. INTERNAL AFFAIRS UNIT

- A. The Internal Affairs Unit is herein established. Personnel assigned to the Internal Affairs Unit shall serve at the pleasure of and be directly responsible to the County Prosecutor or designee. The Internal Affairs Unit Commander has the authority to report directly to the Prosecutor or his/her designee in the absence of the Prosecutor on Internal Affairs matters. The Chief of Detectives shall not assign

any person responsible for the representation of employees of the collective bargaining function to the Internal Affairs Unit.

1. Investigators must recuse from cases where they have a conflict of interest that may prevent them from being impartial in the investigation of a subject employee.
 2. Personnel assigned to the Internal Affairs Unit shall complete training as mandated by the Division of Criminal Justice.
 - a. Personnel may attend additional training on internal affairs provided by other sources.
- B. The goal of the Internal Affairs Unit is to ensure that the integrity of the office is maintained through a system of internal discipline where fairness and justice are assured by objective, impartial investigation and review.
- C. Under no circumstances may the Ocean County Prosecutor's Office Internal Affairs Unit be contracted or delegated to a private entity.
1. Instead, when necessary, the Ocean County Prosecutor's Office may request that an internal affairs complaint be investigated directly by the Attorney General's Office, who shall determine whether to investigate the matter, refer the matter to the Internal Affairs function of another law enforcement entity, or return the matter to the Ocean County Prosecutor's Office, if the Attorney General's Office determines that the Office can appropriately investigate the matter.
 2. Nothing in this written directive shall prevent the Ocean County Prosecutor's Office from retaining a qualified private individual to serve as a hearing officer or an expert witness.
- D. The Internal Affairs Unit Commander shall be responsible for:
1. The management of the Internal Affairs Unit;
 2. The coordination and review of all internal affairs investigations;
 3. The review of all allegations of misconduct by employees of this office;
 4. The immediate notification of the County Prosecutor and Chief of Detectives or designee of any allegation of wrongdoing on the part of an employee that would constitute a criminal offense or has the potential to have a significant negative impact on the operation or reputation of the office.
 - a. All other notifications shall be made on the next business day.
 5. The maintenance of a comprehensive central file and recordkeeping system on all complaints received by this office, whether investigated by Internal Affairs Unit personnel or assigned to an employee's supervisor for investigation and disposition. The Internal Affairs filing system and records shall be accessible only to the following agency personnel: the County Prosecutor, Chief of Detectives, the Internal Affairs Unit Commander, and personnel assigned to the internal affairs function.

6. The preparing and mailing of a Complaint Acknowledgement Letter to all civilian complainants.

E. The Internal Affairs Unit shall be responsible for:

1. The investigation and review of all allegations of misconduct by employees of this office.
2. In addition to investigations concerning allegations of misconduct, the Internal Affairs Unit shall receive notice of:
 - a. Any firearm discharge by Office personnel, whether on-duty or off-duty, unless the discharge occurred during the course of a law enforcement training exercise; routine target practice at a firing range; a lawful animal hunt; or the humane killing of an injured animal;
 - b. Any discharge of an agency-owned firearm by anyone other than agency personnel;
 - c. Any use of force by agency personnel that results in injury to any person,
 - d. Any vehicular pursuit involving agency personnel; and
 - e. Any collision involving agency-owned vehicle
3. Once notification has been received, internal affairs will determine whether additional investigation is necessary.
4. Internal affairs shall conduct a manual or computerized audit of its records to determine if an employee exhibits a pattern, practices or trend of inappropriate behavior or misconduct.
5. Internal Affairs shall be responsible for any other investigation as directed by the Chief of Detectives.
6. The Internal Affairs Unit may conduct an internal affairs investigation on its own initiative upon notice to, or at the direction of the Chief of Detectives or Internal Affairs Unit Commander.
7. The Internal Affairs Unit may refer reportable incidents classified as a performance deficiency to an employee's supervisor for investigation and corrective action.
8. The Internal Affairs Unit investigators or personnel temporarily assigned to that function shall have the authority to interview any employee of the office and to review any record or report of the office relative to their assignment. Requests from the Internal Affairs Unit personnel, in furtherance of their duties and responsibilities, shall be given full cooperation and compliance as though the requests came directly from the Chief of Detectives. Employees assigned to the Internal Affairs Unit come under the authority of the Internal Affairs Unit Commander.

9. Notification to the New Jersey Office of the Attorney General
 - a. The County Prosecutor or designee shall immediately notify the New Jersey Office of the Attorney General of the receipt of the complaint of any allegation involving criminal wrongdoing by a law enforcement officer that may lead to charges of an indictable nature.
10. The Ocean County Prosecutor's Office shall submit a quarterly summary report to the Attorney General's Office summarizing the allegations received and the investigations concluded for that period.
11. On an annual basis, the Ocean County Prosecutor's Office shall publish on its public website a report summarizing the types of complaints received and the dispositions of those complaints. This report **should** be statistical in nature.
12. The Ocean County Prosecutor's Office shall on a periodic basis, no later than January 31 of the following year submit to the Attorney General, and publish on the agency's public website, a brief synopsis of all complaints where a termination, reduction in rank or grade, and/or suspension of more than five days was assessed to an agency member. This synopsis shall follow the format provided herein and shall include the identity of each member 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 complainants or any victims. Where discipline relates to domestic violence, the synopsis shall not disclose the relationship between a victim and a member. Whenever practicable, notice shall be given to victims of domestic violence in advance of an agency's disclosure. In rare circumstances, further redactions may be necessary to protect the identity of a victim.
 - a. The agency may not, as part of a plea or settlement agreement in an internal affairs investigation or otherwise, enter into any agreement concerning the content of a synopsis subject to public disclosure, including any agreement regarding the identities of officers subject to final discipline, summaries of transgressions, or statements of the sanctions imposed.
 - b. Reports corresponding to the substantiated major discipline in a calendar year shall be published no later than January 31 of the following year. (First Report 6/15-12/31/2020).
 - c. Agencies shall electronically transmit a copy of each public report formatted as provided in a revised Appendix L and submitted to the Executive Director of the Office of Public Integrity & Accountability (OPIA) or their designee.
13. The Ocean County Prosecutor's Office shall designate an Office Giglio Liaison. See OCPO Brady/Giglio policy.

IV. ACCEPTING COMPLAINTS

A. Duty of Employees to Self Report

1. All employees shall immediately self-report, to the Internal Affairs Unit or the Chief of Detectives through the chain of command, using the State Standardized Internal Affairs Complaint Form within four hours after the event or becoming aware of the incident:
 - a. Whenever the employee is arrested or criminally charged for any conduct.
 - 1) The report must be made immediately, and in all cases prior to release or leaving the law enforcement agency. In the case of service of criminal charges, the notification must be made immediately upon the receipt of the charges.
 - b. Whenever the employee is named as a party in any civil suit involving their conduct while on duty or otherwise while acting in an official capacity.
 - c. Whenever the employee is named as a party in any civil suit regarding off-duty conduct while not acting in an official capacity that alleges racial bias, physical violence, or threats of physical violence by the employee.
 - d. Whenever the employee is either as an alleged perpetrator or victim of a domestic violence incident.
2. When employees report this information to a supervisor, the supervisor shall directly and immediately report the information to the Internal Affairs Unit, in no case more than four hours after receipt of the notification. The Chief of Detectives shall notify the County Prosecutor or designee of the receipt of this information.

B. Duty of Employees to File a State Standardized Internal Affairs Complaint Form for Actions of Other Employees

1. An employee who receives information defined as a reportable incident shall report such information to the Internal Affairs Unit.
2. All employees must report directly to the Internal Affairs Unit any conduct by another employee that reasonably appears to constitute any of the following:
 - a. Prohibited discrimination;
 - b. An unreasonable use of force or a threat of force;
 - c. A constitutional violation;
 - d. Failure to follow any of the documentation requirements, including documentation of civilian complaint filing procedures;

- e. Providing false information in an investigation of an employee for misconduct or in any report, log, or transmittal of information to the Ocean County Communication Center.
 - f. Any violations discovered during a supervisory review (staff inspection) of personnel. Supervisors conducting the review shall be held accountable for their referral decisions.
3. Retaliation against any employee for reporting misconduct shall constitute a serious disciplinary offense and may lead to a severe penalty up to and including termination.

C. Complaints from the Public

- 1. All office personnel are directed to accept reports of agency or employee misconduct from all persons who wish to file a complaint regardless of the hour or day of the week. Complainants are to be encouraged to submit their complaints in person as soon after the incident as possible. If the complainant cannot file the report in person, a representative from the Internal Affairs Unit shall visit the individual at their home, place of business, or at another location in order to complete the report, if possible. Telephone, e-mail, web-based reporting, and facsimile complaints shall also be accepted and shall be immediately forwarded to the Internal Affairs Unit.
- 2. If a member of the Internal Affairs Unit is immediately available, they shall take the complaint.
 - a. If a member of the Internal Affairs Unit is not immediately available, the complainant will be referred to a supervisor. In the absence of a supervisor, any office employee shall accept the report of employee misconduct.
- 3. Office personnel receiving the complaint shall:
 - a. Complete as much of the State Standardized Internal Affairs Complaint Form as possible.
 - b. Have the complainant sign the completed form and immediately forward the form to the Internal Affairs Unit. If the complainant will not/cannot sign the form, the employee receiving the complaint will so note that fact before forwarding the form to the Internal Affairs Unit. However, the failure of a citizen to sign a complaint will in no way preclude the investigation of the allegations.
 - c. The State Standardized Internal Affairs Complaint Form shall be completed by the employee taking the complaint and shall be forwarded to the Internal Affairs Unit for recording in the master Internal Affairs recordkeeping system and classification by the Internal Affairs Unit Commander.
 - d. The internal affairs investigator, supervisor, officer, or other employee receiving the complaint will explain the department's disciplinary procedures to the person making the complaint. Explain the Office's disciplinary procedures to the person making the complaint.

- e. The employee shall advise the complainant that he or she will be kept informed of the status of the complaint, if requested, and its ultimate disposition.
- 4. In accordance with the Attorney General's Directive No. 2018-6 on immigration issues, no state, county or local law enforcement officer shall inquire about or investigate the immigration status of any victim, witness, potential witness or person requesting or receiving police assistance.
- 5. All office personnel are directed to accept reports of agency or employee misconduct from anonymous sources. If the anonymous complainant is talking to an employee, the employee should encourage them to submit their complaint in person. In any case, the complaint will be accepted.
 - a. An employee of the office who interferes with or delays the reporting or investigation of such complaints may be subjected to disciplinary action.
- 6. If a complainant wants to make a complaint against an employee of another law enforcement agency, he/she will be referred to that agency. If the complainant expresses fears or concerns about making the report directly, he/she will be referred to the respective county prosecutor's office.
- 7. If a complaint is received from another law enforcement agency, the complaint will be forwarded to the Internal Affairs Unit Commander for classification.
- 8. Complaints against the Chief of County Detectives and command staff may originate from a member of the public or from an employee of the agency. All such complaints shall be documented and referred to the Attorney General's Office.
- 9. Request for Assistance from Other Law Enforcement Agencies: All requests for investigative assistance on Internal Affairs matters from any outside law enforcement agency must first be approved by the Chief of Detectives through the County Prosecutor.
- 10. Complaints Regarding Senior Law Enforcement Personnel
 - a. Whenever a matter involving possible charges against the police chief or executive officer of any municipality or any county law enforcement agency is under investigation by the County Prosecutor, such matters are to be called to the attention of and discussed with the Director of the Division of Criminal Justice.

D. Complaints shall be handled as follows:

- 1. All complaints will be forwarded to the Internal Affairs Unit Commander for classification and entry into the record keeping system.
- 2. Unless otherwise directed by the Chief of Detectives or designee, complaints classified as a performance deficiency shall then be forwarded to the supervisor of the employee for investigation and corrective action.

3. All other complaints classified as misconduct shall be retained by the Internal Affairs Unit.
4. Once a complaint has been received, the subject employee shall be notified in writing that a report has been made and that an investigation will commence. Such notification shall not include the name of the complainant. This notification is not necessary if doing so would impede the investigation.

V. IMMEDIATE SUSPENSIONS

A. Suspension Pending Disposition or Investigation

1. A Prosecutor, Chief of Detectives or supervisor may immediately suspend an employee from duty if it is determined that one of the following conditions exists:
 - a. The employee is unfit for duty; or
 - b. The employee is a hazard to any person if permitted to remain on the job; or
 - c. An immediate suspension is necessary to maintain safety, health, order or effective direction of public services; or
 - d. The employee has been formally charged with a first, second or third degree crime; or
 - e. The employee has been formally charged with a first, second, third or fourth degree crime or a disorderly persons offense while on-duty or the act touches upon his or her employment.
2. The supervisor imposing the immediate suspension must:
 - a. Advise the employee in writing of why an immediate suspension is sought and the charges and general evidence in support of the charges.
 - 1) If the employee refuses to accept the written notification of immediate suspension, it shall be given to a representative of the employee's collective bargaining unit.
 - b. Provide the employee with a sufficient opportunity to review the charges and the evidence and to respond to either orally or in writing.
 - c. Advise his/her immediate supervisor in writing of the suspension and the facts and circumstances requiring the suspension.
3. Administrative Reassignment
 - a. Administrative reassignment may be used in cases involving the use of force, which results in death or serious bodily injury, unless the employee is suspended or placed on administrative leave pending the outcome of the investigation.

- b. The administrative reassignment is subject to change by the Chief of Detectives or his/her designee upon the outcome of the investigation.
- 4. Filing formal charges
 - a. Within five days of the immediate suspension, the Office must complete and file formal disciplinary charges against the suspended employee.

VI. INVESTIGATION

- A. All internal affairs investigations shall be conducted in accordance with the Office's Internal Affairs Investigation written directive.
- B. Criminal Misconduct Complaints
 - 1. Where preliminary investigative data indicates the possibility of a criminal act on the part of the employee, or the investigation involves an allegation of the excessive use of force, the Chief of Detectives shall be notified immediately who will then notify the Prosecutor.
 - a. Whenever conduct or alleged conduct of members of the Ocean County Prosecutor's Office may be criminal in nature, the Attorney General's Office, Prosecutors' Supervisory Section, shall be contacted immediately, so that the Attorney General's Office may determine if it will supersede the Ocean County Prosecutor's Office in the investigation of the matter. All communication with the Attorney General's Office, Prosecutors' Supervisory Section, shall be documented in writing.
 - b. The Chief of Detectives shall be immediately notified when an employee is accused of a crime, domestic violence incident where the employee is either an alleged perpetrator or victim, any incident that attracts media attention, and any incident that would affect the efficient and effective operation of the office. In addition, the duty supervisor shall take any immediate action necessary to preserve the integrity of the office until directed otherwise by the Chief of Detectives or his/her designee.
 - c. All other notifications shall be made on the next business day.
 - 2. The Internal Affairs Unit shall interview the complainant, all witnesses, as well as review relevant reports and records, and obtain other relevant information and materials.
 - a. A principal shall not be compelled to answer any questions in the absence of a grant of use immunity as conferred by the County Prosecutor in conjunction with the Attorney General's Office.
 - b. The Internal Affairs Unit investigator shall consult with the County Prosecutor or designee regarding the advisability of giving a Miranda Warning Form to the principal.

C. Administrative Misconduct Complaints

1. When preliminary investigative data indicates an administrative misconduct offense, which may result in disciplinary action:
 - a. A supervisor must notify the Internal Affairs Unit, who will conduct a full investigation of the matter; and
 - b. The Internal Affairs Unit will notify the Chief of Detectives of the offense; and
 - c. The Internal Affairs Unit will forward copies of the appropriate disciplinary documents and investigation reports to the Chief of Detectives for review; and
 - d. The Internal Affairs Unit will be responsible for the final case disposition and implementation of discipline, as determined by the Chief of Detectives or designee.

D. Performance Deficiency Complaints

1. Minor complaints should be assigned to and handled by a commanding officer at least one step removed from the employee's immediate supervisor, when possible.
2. When a complaint has been classified as a performance deficiency, the complaint shall be forwarded to the employee's supervisor or commanding officer for investigation. The supervisor or commanding officer shall interview the complainant, all witnesses and the principal, as well as review relevant reports. The supervisor or commanding officer shall then prepare a report summarizing the matter, recommending the appropriate corrective action.
3. The supervisor or commanding officer shall forward the completed investigation report to the Internal Affairs Unit for review, and entry of the disposition in the Internal Affairs record keeping system.

E. Interview Procedures

1. Preparation
 - a. All principals and witnesses shall be interviewed after careful preparation, including the review of the investigative file and all documents, evidence, and interviews conducted up until the interview. The investigator, in consideration of the investigative plan, should have pre-formulated goals to be accomplished with each interview.
2. Memorializing of the Interview
 - a. The interview of the complainant, principal, and any other witness with critical information shall be documented or memorialized in one of the following ways:
 - 1) An audio recorded statement is the preferred method of documenting and memorializing information obtained

through an interview. A synopsis of the recorded statement will be included in the narrative of the Internal Investigation Report. All statements of Office personnel will be audio recorded. (When directed by the Internal Affairs Unit Commander or Chief of Detectives, the pertinent portions of this statement will be transcribed.)

- 2) Video recorded statement.
 - 3) Handwritten statements taken by the investigator shall be reduced to writing and signed on each page by the person making the statement.
 - 4) A summary of the substance of the interview will be incorporated in the body of the appropriate internal investigation report.
- b. Investigators must at all times remain cognizant that civilian witnesses who are not employees of the Office cannot be compelled to provide a statement in any manner. However, all reasonable efforts should be made to obtain a statement when warranted from non-law enforcement personnel in the order of priority as is listed above.
 - c. All persons submitting to such a recorded or written statement, including the complainant, witnesses, and the principal(s), will, upon request, be provided with a copy of same by the investigator, as authorized by the Chief of Detectives, unless by doing so, it could compromise the investigation.
 - d. Other than investigators authorized by the Office, employees of this Office shall not electronically record nor cause any interview to be electronically recorded. The copy of the official statement shall be produced and provided within a reasonable amount of time. The employee receiving the copy of the statement shall be reminded of the absolute requirement that same not be copied, shown, or revealed to anyone other than the employee's attorney, if any. Violation of this provision will result in serious disciplinary action.
 - e. Audio or written statements shall be made attachments within the investigative file, unless the matter is criminal in nature. In that case, evidence shall be handled in accordance with Office policy regarding the handling of evidence in a criminal matter.
 - f. All recorded statements will be summarized in the body of the appropriate internal investigation report. (When directed by the Internal Affairs Unit Commander or Chief of Detectives, the pertinent portions of the statement will be transcribed and the transcript itself also included as an attachment to the case.)
 - g. The interview of any non-office person shall document the following identifiers:
 - 1) Full name;
 - 2) Address;

- 3) Home Telephone;
- 4) Race;
- 5) Sex;
- 6) DOB;
- 7) Place of Employment;
- 8) Work Telephone;
- 9) Names of all persons present during interview; and
- 10) Date, time, and location of interview.
- 11) Further identifiers such as Social Security number or SBI or FBI numbers shall not be requested or utilized unless directly relevant to the investigation.

h. Upon obtaining an audio recorded statement, investigators will then label the medium, protect against re-record loss, and include it as a case attachment to the report. The statement, if transcribed, will also be included as a case attachment regarding administrative investigations. In cases where the interview concerns a criminal matter, the recorded medium will be secured and handled as evidence.

i. The investigator will label the recording medium in the following manner:

- 1) Statement of: Detective J. Smith;
- 2) Signature of Detective Smith and date;
- 3) Signature of Investigator and badge number;
- 4) Initials and badge number of witnessing investigator;
- 5) Date and time of interview; and
- 6) Case number.

3. Secondary Investigator as a Witness

a. The utilization of a second investigator as a witness to any interview or written statement is not required; however, it may be authorized in certain circumstances.

4. No Right to Legal Representation in Administrative Internal Investigations

a. During the course of the administrative interview, an employee may be represented by a union representative of their choosing to include an attorney, so long as the availability of the attorney does not in any way hamper or impede the on-going investigation. There

is not a Sixth Amendment right in Administrative Internal Affairs Investigations for principals and witnesses. If the investigation is criminal in nature the employee's union representative is prohibited from attending the interview.

- b. Complainants and witnesses who are not employees of the agency cannot be precluded from having a legal representative present while being interviewed by investigators.

5. Interview of Complainant

- a. After the preparation detailed above, all efforts must be made to interview a complainant in person.
- b. The investigator shall arrange a convenient time and place, including by telephone (or TDD), to interview civilians for misconduct investigations. The investigator shall reasonably accommodate a civilian's circumstances to facilitate the progress of an investigation. This may include holding an interview at a location other than the Ocean County Prosecutor's Office or at a time other than regular business hours.
- c. Interviews of civilian complainants, which take place over the telephone, must be recorded, unless the witness objects to the recording.
- d. Investigators must treat the person being interviewed with dignity and respect and demonstrate interest and concern in dealing with the complainant. Employees shall not attempt to dissuade any person from making a complaint. Employees shall conduct themselves in such a manner as to facilitate the citizen's confidence in the internal investigative process.
- e. Complainants and witnesses shall not be questioned about any matters that are not directly relevant to the allegations of the investigation. Any questioning intended to challenge the credibility of a complainant or witness must be approved beforehand by the Internal Affairs Unit Commander and/or Chief of Detectives. Investigators shall make every effort not to ask questions that may demean, ridicule, or cause embarrassment to the complainant.
- f. Questions must be carefully thought out and absolutely relevant to the investigation. Any questionable issues should be discussed with and approved by the Internal Affairs Unit Commander and/or Chief of Detectives before conducting the interview.
- g. Group interviews shall not be conducted.
- h. Complainants should be interviewed outside the presence of other complainants and witnesses. A parent, or adult relative or guardian in the absence of a parent, shall be present during the interview of a minor. In the event a parent cannot be located the investigator must document the efforts taken to contact same. If a civilian insists that another potential witness be present during an interview, the interview must continue with the potential witness present and the report must note the circumstances.

i. Structure of Interview

- 1) Complainants should be initially asked to explain in their own words, in detail, the facts forming the basis of the complaint. The investigator should then clarify any questions or issues regarding the complainant's statement.
- 2) After the complainant has provided a statement, the narrative of the State Standardized Internal Affairs Complaint Form, recorded telephone complaint, or correspondence from the complainant should be reviewed with the complainant.
- 3) The investigator shall seek to rectify or identify any discrepancies as well as identify any further investigative requirements.
- 4) The complainant should be asked to identify any witnesses and state what they believe the witness may have knowledge of; turn over any evidence in their possession; and identify what other types of evidence they know.
- 5) Every relevant fact known to the complainant should be identified and explored thoroughly.
- 6) Issues identified in the Investigation Plan should be addressed.
- 7) In addressing the allegations, questions utilized in the basic investigative process, namely: who, what, when, where, why, and how, should be precisely addressed.
- 8) The complainant and or witnesses have no automatic right to view any Office video recordings. It shall be up to the discretion of the investigator to decide whether utilizing any Office video recordings during an interview will enhance or clarify the investigative process.
- 9) If a complainant refuses to be interviewed, or cannot be located or contacted, a letter should be immediately forwarded on Office letterhead, via certified mail, authorized and signed by the Internal Affairs Unit Commander and/or Chief of Detectives, advising that he/she should respond within ten (10) days or the investigation will proceed without his/her input.

6. Interview of Witness

- a. Every effort should be made to interview all witnesses. The full identity of the witness should be obtained. If the witness refuses to be interviewed, or cannot be contacted after a reasonable attempt to locate, a certified letter should be sent on Office letterhead advising that he/she should respond within ten calendar (10) days.

- b. Specific and detailed questions should be asked including: who, what, when, where, why, and how the incident or event occurred. The investigator should have a clear purpose in identifying relevant witnesses and selecting what questions to ask them. These issues should be established in the Investigative Plan.
- c. The aforementioned techniques outlined in the complainant interview should be applied to the interview of witnesses.
- d. Witness interviews shall be conducted formally resulting in a statement secured in accordance with the provisions enumerated under Interview Procedures.

7. Interview of Employees

- a. Generally, the interview of an employee is accomplished after the complainant and all witnesses are interviewed. However, this is determined by the character of the inquiry and remains a choice of the investigator. Such interviews are a critical step in the investigation and should be carefully planned. Investigators shall not accept a written statement from any employee in lieu of an interview.
- b. Employee as: WITNESSES
 - 1) It is required that a formal audio recorded statement be taken from each employee considered a witness. Statements need not be transcribed, but must be summarized in the appropriate internal investigation report. The key elements of the statement may be transcribed if necessary. A sworn law enforcement employee who is considered a witness is entitled to union representation if he/she reasonably believes that he/she may be subject to disciplinary action as a result of the investigation.
 - 2) Advise the employee that he/she is a witness, explaining the difference between a witness and principal.
 - a) A witness is a person reasonably believed to have information concerning the event under investigation, but whose own conduct is not the focus of the investigation.
 - b) A principal is a person whose conduct is the focus of the investigation.
 - 3) Before any questioning takes place, the employee shall be apprised of the identity of the investigator conducting the interview, including his/her rank, name, and assignment. This notice shall also include the identity of all persons present during the interview.
 - 4) The investigator may require the employee to submit a report detailing relevant facts in the investigation. If a report is required, the investigator will provide the employee with the background information regarding the nature and

timeframe of the complaint. The employee should be encouraged to review any of his or her own reports. **(NOTE) Not to be used in lieu of an audio recorded statement.**

- 5) A formal statement will be obtained from the witness after he/she has been given their Witness Acknowledgment Form. The investigator shall further verbally confirm the employee's obligation for candor throughout an internal investigation, pointing out the specific provision of the acknowledgment form denoting such.
- 6) If, during the interview, the status of an employee shifts from a witness to a principal, the employee shall be advised accordingly. The investigator shall contact the Internal Affairs Unit Commander to secure permission to proceed. If approval is granted to proceed, the investigator will execute a Principal Acknowledgment Form. Upon completion of the interview, the investigating officer will complete a New Principal/Allegation Identification Form, and forward same to the Internal Affairs Unit Commander for the purpose of updating the case. A copy of the completed form, incorporating all required endorsements must be secured and submitted as an attachment to the investigation.

c. Employee as: **PRINCIPAL**

- 1) No employee shall be designated a principal without the approval of the Internal Affairs Unit Commander.
- 2) Each employee of the Office is required to answer pertinent questions regarding the matter, which is the subject of investigation. All employees of the Office are obligated to answer questions and provide full and complete information to the investigator(s) during internal investigations. Less than complete candor during any statement may lead to serious disciplinary sanctions, which may include suspension or termination.
- 3) The investigator shall not automatically provide the principal with the State Standardized Internal Affairs Complaint Form. Principals shall be advised of the specific nature of the complaint, the time period involved, any allegation(s) or violation(s) of rules, regulations, and orders involved, and if applicable, the name or names of the complainant(s) and/or witnesses, in writing. The addresses of the witnesses or complainants need not be disclosed.
- 4) In cases where these documents are shown to the principal, the investigator shall redact from the letter of complaint, State Standardized Internal Affairs Complaint Form, or any other relevant document provided to the principal during the interview, any information that may compromise the investigative process by providing same to the principal. Redacted documents utilized during the investigation for any purpose shall be properly referenced in any interview and included as an attachment to the Investigation Report.

- 5) As an employee of the Office, the Weingarten Representative shall be advised of the obligation of confidentiality and the requirement not to discuss any information obtained during an interview with any other person. (Weingarten Rights)
- 6) The principal may produce records of his/her own or suggest names of witnesses he/she requests to be interviewed.
- 7) A formal taped statement will be obtained from the principal after he/she has been advised of their Administrative Advisement. The investigator shall further verbally confirm the employee's obligation for candor throughout an internal investigation.
- 8) The following guidelines will be followed when union representation is requested.
 - a) Any employee designated as a principal or witness, who reasonably believes that the investigation may result in disciplinary action against him/her, is entitled, upon request of the interviewee, to have a union representative accompany the interviewee to the interview.
 - b) Any employee who is a potential principal or witness in the investigation may not act as a Weingarten representative.
 - c) The exercise of the interviewee's right to union representation may not interfere with the investigation. However, a reasonable period of time should be allowed for the representative to appear for the interview.
 - d) Although an interviewee is entitled to the representative of his/her choosing, any union representative or other person designated by the union will satisfy the representation requirement. For additional guidance on interviewee representation, refer to the current version of the NJ Attorney General's IAPP.
 - e) The principal and his/her representative shall be informed of the subject matter of the investigation and given a reasonable period of time to confer prior to the interview. The union representative may be present during the interview, and once the interview has begun, they may not leave the room for purposes of further consultation. If the principal refuses to make a statement or answer any questions, he/she will be informed that such refusal may result in discipline/dismissal and the interview shall be terminated.

- f) The investigator shall not negotiate with the representative. The representative may be permitted to clarify facts or make suggestions (e.g., other potential witnesses) after the investigator's questioning of the principal. The investigator is free to insist that he/she is only interested in hearing the interviewee's own account of the matter under investigation. In other words, the representative shall not be permitted to answer for the principal or conduct their own interview.
- 9) The interview shall be conducted at a reasonable hour in a non-coercive manner, without threat or promise of reward, and preferably when the employee is on duty. No "off the record" questions will be asked and no "off the record" statements will be permitted. If the urgency of the investigation requires that the employee is questioned while off duty, such time will be recorded and treated as hours worked in accordance with the collective bargaining agreements, where applicable.
- 10) The interview shall be conducted at a location designated by the investigator, usually at headquarters.
- 11) The questioning shall be of a reasonable duration and rest periods allowed. Time shall be provided for personal necessities, meals, and telephone calls as are reasonably needed.
- 12) If at any time during the questioning session the employee becomes a suspect in a criminal act, the employee shall be so informed and the questioning shall end. Promptly notify the Attorney General's Office. Should the employee be afforded a grant of use immunity by the Attorney General's Office, the Internal Affairs Unit investigator shall schedule an interview with the employee.

F. Investigative Avenues

1. Physical Evidence

- a. Investigators should obtain all relevant physical evidence. All evidence, such as clothing, hair or fabric fibers, stains and weapons should be handled according to established evidence procedures.
- b. With respect to an audio file, they should be secured at the outset of the investigation. Transcripts or copies of the original recordings can be used as investigative leads. Audio files should be monitored to reveal the totality of the circumstances.
- c. Sworn statements from all parties.

2. Photographs

- a. In the event of a complaint involving excessive force, the following photographic documentation shall be obtained when appropriate. Whenever possible, color photography shall be used.
 - 1) Photographs of the complainant at the time of arrest or following the alleged incident of excessive force.
 - 2) Photographs of the principal in the event that employee was a victim.
 - 3) A recent photo of the employee in the event a sequential photo display will be used for identification purposes. The photo display must be conducted in accordance with the New Jersey Attorney General's guidelines and retained for possible evidentiary purposes.
 - 4) Photographs of the scene of the alleged incident, if necessary.

3. Physical Tests

- a. Principals may be compelled to submit to various physical tests or procedures to gather evidence. Such evidence may be used against them in a disciplinary proceeding.
- b. No person has a constitutional right or privilege to refuse to submit to an examination to obtain a record of their physical features and other identifying characteristics of their physical or mental condition. Evid. R. 503(a). Evidence that may be obtained or procedures that may be used to obtain evidence under this rule include:
 - 1) Breath samples;
 - 2) Blood samples;
 - 3) Buccal Swabs;
 - 4) Requiring employee to speak;
 - 5) Voice recordings;
 - 6) Participation in suspect lineups;
 - 7) Handwriting samples;
 - 8) Hair and saliva samples;
 - 9) Urine analysis;
 - 10) Videotaping;
 - 11) Field sobriety tests.

- c. Generally, a person cannot be physically forced to produce this or other evidence or submit to such tests, although a court order may be obtained to legally compel them to do so. Refusal to comply with the order can result in additional criminal, civil, and/or administrative sanctions.

4. Polygraphs

- a. While an employee who is the subject of an Internal Affairs investigation may request a polygraph examination, an employer shall not influence, request or require an employee to take or submit to a polygraph examination as a condition of employment or continued employment (N.J.S.A. 2C:40A-1).
- b. An employee cannot be required to submit to a polygraph test on pain of dismissal. Engel v Township of Woodbridge, 124 N.J. Super. 307 (App. Div. 1973).
- c. If a polygraph is used, the test must be administered by a qualified law enforcement operator.

5. Search and Seizure

- a. As a general rule, the Fourth Amendment applies to any action taken by government. Law enforcement employees have the right, under the Fourth Amendment, to be free from unreasonable searches and seizures. Fourth Amendment warrant requirements apply to any search of an office, member's personal property including clothing, car, home or other belongings to include any computer or digital recordings.
 - b. A voluntary consent to a search may preclude some Fourth Amendment problems from developing. A consent search eliminates the need to determine what threshold standard must be met before conducting the search or seizure, either for an administrative or criminal investigation. Under New Jersey law, for consent to be legally valid, a person must be informed that he/she has the right to refuse to permit a search. State v. Johnson, 68 NJ 349 (1975). If a consent search is utilized, the investigator shall follow standard operating procedures and have the principal sign a consent to search form after being advised of the right to refuse such a search and to be present during the search, unless they waive this right.
- 3. In a criminal investigation, the standard to obtain a search warrant is probable cause. Generally, a search warrant should be sought to search an area belonging to the principal when the principal maintains an objective expectation of privacy in that area. Areas and objects in this category include the principal's home, personal car, safe deposit boxes and personal computers.
 - 4. Generally, during either administrative investigations or criminal investigations, work place areas may be searched without a search warrant. The critical question is whether the public employee has a reasonable expectation of privacy in the area of property the Internal Affairs Unit investigator wants to search. The determination

of a reasonable expectation of privacy must be decided on a case by case basis. There are some areas in the person's work place where this privacy expectation can exist just as there are some areas where no such expectation exists. Areas where supervisors or other employees may share or go to utilize files or equipment would present no expectation or diminished expectation of privacy. Included here would be government provided vehicles, filing cabinets, office computers, etc.

5. If the Office intends to retain the right to search property, which it assigns to employees for their use, including lockers, it should put employees on notice of that fact. This notification will help defeat an assertion of an expectation of privacy in the assigned property by the employee.
6. In addition, if the Office permits employees to use personally owned locks on assigned lockers and other property, it should be conditioned on the employees to provide the Office with a duplicate key or the lock combination, whichever is applicable.
7. It is advisable to obtain a warrant whenever there exists probable cause to believe that the Office property to be searched contains contraband or evidence of a crime.
8. Any search of an office or personal property should be conducted in the presence of another Office member, preferably a supervisor, and should be properly recorded.

VII. REPORTING

- A. Upon completion of all possible avenues of inquiry, the Internal Affairs Unit investigator shall complete the following reports:
 1. The internal investigation will be memorialized on the reports as are hereinafter identified. The reports will be submitted to the Internal Affairs Unit Commander for approval on a regular basis so as to keep the case current at all times.
 2. All approved original reports will be maintained by the investigator until the investigation is concluded at which time the complete case file will be submitted to the Chief of Detectives through the Internal Affairs Unit Commander.
 3. The completed report will be submitted in a report folder/envelope. The investigator will include the State Standardized Internal Affairs Complaint Form (if applicable), the Investigation Report and the remaining attachments. Supplemental Internal Investigation Reports will be placed in the folder/envelope.
 4. The Internal Investigation Allegations and Conclusions Form will be attached to the report folder/envelope.
 5. All attachments will be marked, unless marking the document in that area would damage or interfere with the content of the attachment.

B. Report Flow

1. It is understood that simple internal affairs investigations should be completed within 45 days.
2. If investigators are unable to complete an internal affairs investigation within forty-five (45) day of receiving a complaint, they must notify the Chief of Detectives on or about the 45th day. In such situations, the Chief of Detectives should seek to identify the reasons for the extended investigation and whether the Internal Affairs Unit requires additional resources or oversight to complete the inquiry in a prompt manner.
3. Investigators are required to provide further notice to the Chief of Detectives every additional 45 days that the internal affairs investigation remains open (*i.e.*, on or about the 90th, 135th, and 180th days from the receipt of the complaint), and the Chief of Detectives should exercise increasing scrutiny of the investigators' work the longer the case remains open.
5. The investigator, upon completion of the report, shall forward it directly to the Internal Affairs Unit Commander, who will forward it to the Chief of Detectives.
6. The Internal Affairs Unit Commander will review the case and make recommendations to the Chief of Detectives regarding discipline.
7. The Chief of Detectives, upon receipt of the recommendation, will review the matter and make the final determination or return the case for further investigation.
8. Once the Chief of Detectives is provided with "sufficient information" to file a charge, the Chief of Detectives has forty-five (45) days to do so. **(NJSA 40A:14-147).**
9. In all cases, an investigator in the Professional Standards Unit shall send a letter to the complainant explaining the outcome of the investigation. If the allegation was unfounded or the employee was exonerated, this conclusion shall be stated and defined for the civilian complainant. If the allegation was not sustained, the letter shall provide the complainant with a brief explanation why the complaint was not sustained (e.g., insufficient proof, lack of witnesses, etc.). If the allegation was sustained and discipline was imposed, the letter shall simply state that the allegation was sustained and that the officer has been disciplined according to department procedures. It is not necessary to specify the discipline imposed.
10. If discipline is imposed, a record of such discipline, not including the investigation report or attachments, shall be placed in the employee's personnel file.

C. Allegations and Conclusion

1. At the conclusion of the investigation, the investigator will prepare an Investigation Report detailing the factual findings.
2. The investigator shall prepare a Case Review Form detailing in narrative form the alleged misconduct in narrative form, the alleged misconduct and

be linked to the specific provision of the Rules and Regulations and/or directive purportedly violated.

3. The conclusion reached by the investigator, based upon the facts developed in his/her investigation, will fall into one of the following four (4) dispositions.
 - a. Sustained - A preponderance of the evidence shows an employee violated any law; regulation; directive, guideline, policy, or procedure issued by the Attorney General or County Prosecutor; agency protocol; standard operating procedure; rule; or training.
 - b. Unfounded - A preponderance of the evidence shows that the alleged conduct did not occur;
 - c. Exonerated - A preponderance of the evidence shows the alleged conduct did occur, but did not violate any law; regulation; directive, guideline, policy, or procedure issued by the Attorney General or County Prosecutor; agency protocol; standard operating procedure; rule; or training. (For example, at the conclusion of an investigation into an excessive force allegation, the agency finds that the officer used force (alleged conduct) but that the force was not excessive (alleged violation).)
 - d. Not Sustained - The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.
4. The conclusions should be written in paragraph form wherein each piece of evidence that is relied upon in order to reach the conclusion found is individually numbered.
5. These individual paragraphs should be in sufficient detail that standing alone they provide a concise synopsis of the investigation and its findings.
6. These individual paragraphs should be footnoted to the source attachment used in formulating the paragraph.
7. The final paragraph in the allegations and conclusions should encompass verbiage that reads, in effect; "that based upon the preponderance of evidence accumulated in the investigation it is concluded that:
 - a. There is insufficient evidence that <Officer/Employee> did <alleged behavior>.
 - b. The allegation that <Officer/Employee> did <alleged behavior> is unfounded.
 - c. The allegation that <Officer/Employee> did <alleged behavior> is substantiated.
 - d. The investigation exonerates <Officer/Employee> of the allegation of <alleged behavior>.

D. Internal Investigative Case Review Sheet

1. Each time a supervisor reviews the internal investigation, he/she will complete the form as the reviewer. Occasions may arise when the reviewer will review the case more than once. For example, the Internal Affairs Unit Commander reviews the case and returns it to the investigator. Subsequently, the investigator resubmits the case to the Internal Affairs Unit Commander. The Internal Affairs Unit Commander will now complete the Internal Investigation Review Sheet as the second reviewer.
2. Upon the conclusion of all internal investigations, the investigator will generate an Internal Investigation Review Sheet, which will accompany the submitted investigation.
3. The Internal Investigation Review Sheet will accompany the case as it progresses through the review process and be completed by each supervisor reviewing the case.
4. When the supervisory reviews of the case are ultimately concluded, the Internal Investigation Review Sheet will be maintained and secured in the case jacket. This report may be hand-written by the reviewer.

E. New Principal/Allegation Identification Form

1. During the interview, if the status of an employee shifts from a witness to a principal, the employee shall be advised accordingly. The investigator shall contact the Internal Affairs Unit Commander to secure permission to proceed.
2. If approval is granted to proceed, the investigator will complete a New Principal/Allegation Identification Form and forward same to the Internal Affairs Unit Commander, for the purposes of updating the case. A copy of the completed New Principal/Allegation Identification Form, incorporating all required endorsements, must be secured and submitted as an attachment to the investigation.
3. This form will also be used to document perceived violations of policy and procedure not relevant to the complaint or the alleged misconduct being investigated.

F. Performance Notice: is the form that must be completed by a supervisor to address the corrective action taken as a result of the performance deficiency.

1. A Performance Notice shall be used when the performance deficiency warrants a corrective action of training or counseling.
2. The supervisor recommending the issuance of a Performance Notice form (counseling, or training) shall complete and forward the unsigned copy along with the completed investigation report to the Internal Affairs Unit Commander for review and approval.
3. Upon approval, the Performance Notice will be returned to the principal's supervisor for signature and service.

4. The employee shall be advised of the corrective action by the issuing supervisor. The employee shall sign the Performance Notice and be given a copy of the document. The original document shall be forwarded to the Internal Affairs Unit Commander for filing.
- G. Reprimand Notice (verbal/written reprimand): is the form that must be completed by a supervisor to address the disciplinary action initiated as a result of repeated performance deficiencies or administrative misconduct.
1. A Reprimand Notice shall be used when the performance deficiency or misconduct warrants a disciplinary action of a verbal or written reprimand.
 2. The supervisor recommending the issuance of a Reprimand Notice form (verbal or written) shall complete and forward the unsigned copy along with the completed investigation report to the Internal Affairs Unit Commander for review and approval.
 3. Upon approval, the Reprimand Notice will be returned to the subject's supervisor for signature and service.
 4. The employee shall be advised of the disciplinary action by the issuing supervisor. The employee shall sign the Reprimand Notice and be given a copy of the document. The original document shall be forwarded to the Internal Affairs Unit Commander for filing.
- H. Formal Charge:
1. A Notice of Disciplinary Action Form shall be used for requested discipline that could result in a discipline exceeding a written reprimand.
 2. If the complaint is sustained, and it is determined that formal charges should be preferred, the Chief of Detectives or designee shall direct the Internal Affairs Unit Commander or designee to prepare the Notice of Disciplinary Action Form, sign, and serve charges upon the principal.
 3. The Notice of Disciplinary Action Form shall direct that the employee charged must enter a plea of guilty or not guilty, in writing, on or before the date set forth in the notice for entry of a plea. The date will be listed on the notice and must provide a reasonable time, at least 5 days after the date of service of the charges, to enter a plea and request a hearing, if applicable.
 4. Conclusion of fact and the penalty imposed will be noted in the employee's personnel file after he/she has been given an opportunity to read and sign it. Internal Affairs will cause the penalty to be carried out and complete all required forms.
- I. If the employee charged waives a hearing and enters a plea of guilty, the Chief of Detectives shall permit the employee to present factors in mitigation prior to assessing a penalty.

VIII. HEARINGS

- A. Upon written notice of a request for a hearing from the principal, the County Prosecutor or other designated hearing officer shall designate a hearing date

which shall not be less than ten (10) or more than thirty (30) days from the date of service of the complaint. 2A:157-10.1

- B. The Internal Affairs investigating officer or supervisor shall be responsible to assist the assigned prosecutor in the preparation of the agency's prosecution of charges. This includes proper notification of all witnesses and preparing all documentary and physical evidence for presentation at the hearing.
- C. The hearing shall be held before the County Prosecutor or her/his designee.
- D. The County Prosecutor is empowered to sustain, modify in whole or in part, or dismiss, the charges stated in the Notice of Disciplinary Action Form.
- E. The hearing authority will fix punishments that are deemed appropriate under the circumstances in accordance with the Rules and Regulations.

IX. CONFIDENTIALITY

- A. The progress of Internal Affairs investigations and all supporting materials are considered confidential information. Upon completing a case, the Internal Affairs Unit will enter the disposition in the Internal Affairs recordkeeping system.
- B. All employees of the Ocean County Prosecutor's Office shall protect and maintain the confidentiality of all internal affairs records against the agency or employees. These records shall be in a designated secure area accessible only to the Prosecutor or his/her designee, Internal Affairs Unit Commander and others as authorized by the Prosecutor. The files shall be clearly marked as confidential. Closed cases shall be secured in Building 3R.
- C. Employees shall be mindful at all times of the confidentiality of the matter and shall only disclose information regarding the complaint and investigation as may be required by this policy or when necessary to further the investigation.
- D. No disclosure of the complaint or investigation shall be made to anyone (except the complainant) outside of the Ocean County Prosecutor's Office without approval by the County Prosecutor or designee.
- E. If the release of internal affairs documents is appropriate, the agency should inventory the reports they are releasing and obtain a signed receipt.

X. INTERNAL AFFAIRS FILES

- A. A separate Internal Affairs file system shall be maintained in a secured file cabinet. Personnel records are separate and distinct from Internal Affairs records. Internal Affairs investigation reports shall not be placed in an employee's personnel records file.
 - 1. When a complaint has a disposition of exonerated, not sustained, or unfounded, there shall be no indication in the employee's personnel file that a complaint was ever made.
 - 2. When a complaint has been sustained, only the disciplinary action imposed shall be filed in an employee's personnel file.

- B. The file system shall contain all investigative files resulting from Internal Affairs complaints and the original copy of the following reports:
1. Vehicular Pursuit Reports;
 2. Use of Force Reports;
 3. Firearm's Discharge Reports;
 4. Accident Reports.
- C. Selection and Hiring
1. In addition to the requirements of the selection process, background investigations must include a review of the prior internal affairs files of any law enforcement candidate.
 2. If the Ocean County Prosecutor's Office has reason to believe that a candidate for employment was previously a sworn officer of another law enforcement agency, the Ocean County Prosecutor's Office has an affirmative obligation to identify all such former employers. The Ocean County Prosecutor's Office shall then request all internal affairs files for cases where the candidate was the principal, regardless of the ultimate disposition or status of the complaint.
 - a. If requested, the Ocean County Prosecutor's Office shall provide a written acknowledgement to the releasing agency that it will maintain the confidentiality of said files in accordance with this policy.
 3. If the Ocean County Prosecutor's Office receives such a request regarding a former employee, then it shall immediately share copies of all internal investigative information related to that candidate with the hiring agency, in accordance with N.J.S.A. 52:17B-247. Confidential internal affairs files shall not be disclosed to any other party.
 4. The Chief of Detectives retains the authority to defer a decision on hiring a particular candidate until all extant internal affairs information has been received and reviewed.
- D. Investigative records created during an Internal Affairs Investigation are included in the "Records Retention and Disposition Schedule" and shall be maintained as such.

XI. ATTORNEY GENERAL

- A. The Attorney General's Office is responsible for conducting substantive oversight to ensure that the Internal Affairs Unit of the Ocean County Prosecutor's Office is operating professionally and effectively.

OCEAN COUNTY PROSECUTOR'S OFFICE

INTERNAL AFFAIRS

WEINGARTEN REPRESENTATIVE ACKNOWLEDGMENT

CASE #

I, _____, a bargaining unit representative, do hereby acknowledge my presence at the interview of _____ (the Principal). The aforementioned Principal and I have been informed of the subject matter of the interview. To the best of my knowledge, I am not involved in the subject matter of the interview. I agree that all matters discussed in this interview will remain confidential.

I have been afforded the opportunity to consult with the Principal prior to the interview. I understand that I may be present during the interview, and I also understand that I shall not be permitted to answer questions for the Principal. I am, however, permitted to help clarify questions and answers and otherwise fulfill the role of a "Weingarten" representative, as long as I do not obstruct the progress of the interview.

At the end of the interview, the Principal may consult with me to clarify the issues, questions, and answers that were raised during the interview.

I acknowledge that I am responsible for maintaining the confidentiality of any information I may have regarding this internal investigation. I am not to disclose the existence or contents of this internal investigation, including any questions asked or answers given during this interview. If I am an employee, a breach of these confidentiality provisions may lead to disciplinary action up to and including termination.

Date:

Bargaining Unit Representative:

Signature

Others Present: