

| TOWNSHIP OF BERKELEY POLICE DEPARTMENT              |                                                    |                |                  |                   |
|-----------------------------------------------------|----------------------------------------------------|----------------|------------------|-------------------|
| VOLUME: 2                                           | CHAPTER: 15                                        | # OF PAGES: 16 | REVISION DATE    | PAGE #            |
| SUBJECT: INTERNAL AFFAIRS INVESTIGATIONS            |                                                    |                | March 1, 2013    | 1,2,3,7,8,9,14,15 |
| EFFECTIVE DATE:<br>April 3, 2009                    | ACCREDITATION<br>STANDARDS:<br>1.3.1, 1.4.3, 2.2.3 |                | August 26, 2014  | 3, 12, 13         |
| BY THE ORDER OF:<br>Police Chief Karin T. DiMichele |                                                    |                | October 30, 2014 | 14                |

**PURPOSE:** The purpose of this directive is to establish and implement guidelines consistent with the New Jersey Attorney General Guidelines on Internal Affairs Policy and Procedure. It shall be the practice of this organization to adhere to the guidelines of the New Jersey Attorney General and the directive of the Berkeley Township Police Department. Employees are held to the highest standards of conduct and are expected to respect the rights of all citizens. This department must be responsive to the community by providing formal procedures for the processing of complaints regarding individual employee performance. An effective disciplinary framework permits agency officials to monitor employee compliance with department directives, assist employees in meeting department objectives, and permits managers to identify problem areas requiring increased training or direction. This policy will provide for a meaningful and objective investigation of citizen complaints of police misconduct. Finally, this directive will ensure fundamental fairness and due process protection to citizens and employees alike. The internal affairs process shall also be used to identify and correct unclear or inappropriate agency directives, organizational conditions that may contribute to misconduct such as poor recruitment and selection procedures, or inadequate training and supervision of employees.

**POLICY:** It is the policy of the Berkeley Township Police Department to accept and investigate all complaints of alleged employee misconduct from any citizen or agency employee. Employees, regardless of rank or assignment, shall be subject to disciplinary action for violating public trust. Committing any offense punishable under the laws of the United States, the State of New Jersey, or its political subdivisions constitutes a violation of that trust. Employees are also subject to disciplinary action for failure, either willfully or through negligence or incompetence, to perform the duties of their rank or assignment. Employees may be disciplined for violation of any directive of the department or for failure to obey any lawful instruction, order, or command of a supervisor. Disciplinary action in all matters will be determined based upon the merits of each case. It is the policy of this department that personnel conducting an investigation of any allegation of misconduct must strive to conduct a thorough and objective investigation without violating the rights of the subject employee, witness, or member of the public. All personnel who may be assigned to conduct or participate in an internal investigation must be thoroughly familiar with this directive.

It is the policy of this agency that prevention is the primary means of reducing and controlling misconduct. It is further the policy of this agency to discover and correct organizational conditions which permit misconduct to occur. Special emphasis is placed on recruitment, selection and training of employees, community outreach, and the analysis of misconduct complaints and their disposition. It is the policy of this agency that each employee shall be provided ready access to an official, agency manual, which contains specific directions for conducting all aspects of law enforcement work.

## **PROCEDURE:**

### **I. Internal Affairs Unit**

- A. The Internal Affairs Unit shall be staffed by personnel of the department as assigned by the Chief of Police. Personnel assigned to the Internal Affairs Unit shall be directly responsible to the Chief of Police.
  - 1. The Chief of Police shall not assign any person responsible for the representation of employees of the collective bargaining unit to the internal affairs unit.
  - 2. The goal of internal affairs is to ensure that the integrity of the department is maintained through a system of internal discipline where fairness and justice are assured by objective, impartial investigation and review.
- B. Duties and Responsibilities
  - 1. The Internal Affairs Unit is responsible for the investigation and review of all allegations of misconduct by employees of this department. Misconduct is defined as:
    - a. Commission of a crime or an offense; or,
    - b. Violation of departmental rules and regulations; or,
    - c. Conduct which adversely reflects upon the employee, the department, or the Township.
    - d. If the department has reason to question an officer's credibility based upon a false report, a pending court complaint, a court conviction, or a judicial finding then the Internal Affairs Unit shall notify the Ocean County Prosecutors Office Internal Affairs Unit.
  - 2. In addition to investigations concerning allegations of misconduct, internal affairs shall be responsible for:
    - a. The coordination of investigations involving the discharge of firearms by department personnel, excluding firearms qualifications and/or training;
    - b. Investigation and review of all vehicle pursuits and the completion of the annual analysis report of all vehicle pursuits to the Ocean County Prosecutors Office; and
    - c. Investigation and review of all use of force incidents and the completion of the annual report on the Use of Force incidents to the Ocean County Prosecutors Office; and
    - d. Reviewing administrative reviews of all collisions involving departmental vehicles; and
    - e. Investigation and review of all reports involving department personnel regarding domestic violence complaints; and

- f. Any other investigation as directed by the Chief of Police or designee; and
  - g. Continue to administratively investigate cases in which a municipal or Superior Court complaint has been dismissed.
- 3. Internal affairs personnel may conduct an internal affairs investigation only at the direction of the Chief of Police and the Internal Affairs Supervisor.
- 4. Internal affairs personnel may refer investigations to an employee's supervisor for investigation of minor policy and/or rules and regulations infractions i.e.; untidiness, tardiness, poor vehicle operation, etc.
- 5. Internal affairs investigators or personnel temporarily assigned to that function shall have the authority to interview any employee of the department and to review any record or report of the department relative to their assignment. Requests from internal affairs 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 Police. Employees assigned to the Internal Affairs Unit come under the direct authority of the Internal Affairs' chain of command.
- 6. The Internal Affairs Unit shall maintain a comprehensive central file on all complaints received by this department whether investigated by internal affairs or assigned to an employee's supervisor for investigation and disposition. The completed Internal Affairs file shall be secured in the Chief of Police's office.
- 7. An annual Internal Affairs Summary Report, which includes data collected during the preceding year on internal affairs investigations shall be forwarded to the Ocean County Prosecutor's Office.
- 8. A quarterly report shall be submitted to the Ocean County Prosecutor's Office summarizing the allegations and investigations concluded for that period.
- 9. An annual report summarizing the types of complaints received and the dispositions of the complaints should be made available to members of the public. The names of complainants, witnesses, and subject employees shall not be published in this report. In addition, the department shall release periodically a brief synopsis of all complaints where a fine or suspension of 10 days or more was assessed to an agency member.

## **II. Accepting Complaints**

### **A. Initiation of Citizen Complaints**

- 1. All department personnel are directed to accept reports of employee misconduct from all persons who wish to file a complaint regardless of the hour or day of the week. Citizens 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 department representative shall visit the individual at their home, place of business, or at another

location in order to complete the report, if possible. Complaints may be taken from third parties, juveniles and telephonically.

2. If a member of the Internal Affairs Unit is immediately available, they shall take the complaint.
3. If a member of the Internal Affairs Unit is not immediately available, department personnel are directed to accept the report of employee misconduct. This requires the completion of the internal affairs complaint form on all complaints.
  - a. The supervisor shall be available to accept a citizen complaint if a member of the Internal Affairs Unit is not available.
  - b. If the supervisor is not available, a patrol officer will accept the complaint.
4. Department personnel receiving the complaint will:
  - a. Provide the person making the complaint with the Internal Affairs Informational form which explains the department's internal affairs procedures.
  - b. Advise the complainant that they will be kept informed of the status of the complaint and its ultimate disposition.
  - c. Complete the internal affairs complaint form.
  - d. Have the complainant sign the completed form. If the complainant will not sign the form, personnel receiving the complaint will so note that fact. However, the failure of a citizen to sign a complaint will in no way preclude the investigation of the allegations.
5. All department personnel are directed to accept reports of 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. In the case of an anonymous complaint, the employee accepting the complaint shall complete as much of the internal affairs complaint form as they can with the information provided.
6. Complaints shall be handled as follows:
  - a. All complaints will be forwarded to the Internal Affairs Unit for screening and entry on to the Internal Affairs Case Master Log.
  - b. Supervisors receiving demeanor and minor rule infractions complaint shall accept the complaint, conduct the preliminary investigation, forward all paperwork to Internal Affairs for complaint screening and logging into the Internal Affairs Case Master Log. Internal Affairs may choose to conduct the investigation or return to the employee's supervisor for investigation. Internal Affairs shall be responsible for the imposing of any discipline after approval of the Chief of Police.

- c. All other complaints shall be retained by the Internal Affairs Unit, including complaints of:
  - 1) **CRIMINAL ACTIVITY:** Complaint regarding the involvement in unlawful behavior.
  - 2) **EXCESSIVE FORCE:** Complaint regarding the use or threatened use of excessive force against a person.
  - 3) **IMPROPER or UNJUST ARREST:** Complaint that the restraint of a person's liberty was improper, unjust or violates a persons civil rights.
  - 4) **IMPROPER or EXCESSIVE ENTRY:** Complaint that entry into a building or onto property was improper or that excessive force was used against property to gain entry.
  - 5) **IMPROPER or UNJUSTIFIED SEARCH:** Complaint that the search of a person or property was improper, unjustified or otherwise in violation of established police procedures.
  - 6) **SERIOUS DEMEANOR INFRACTION RELATING TO DIFFERENTIAL TREATMENT:** Complaint that the taking, failing to take, or method of police action was predicated upon irrelevant factors such as race, attire, age or sex. Complaint that a department employee's bearing, gestures, language or other actions were inappropriate.
  - 7) **SERIOUS RULE INFRACTIONS:** Complaint such as disrespect toward a supervisor(s), drunkenness on duty, sleeping on duty, neglect of duty, false statements, or malingering.
  - 8) **MINOR RULE INFRACTIONS:** Complaint such as untidiness, tardiness, faulty driving or failure to follow procedures.
  - 9) **HARASSMENT IN THE WORKPLACE:** Complaint such as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
  - 10) **ALL VEHICLE PURSUIT REVIEW AND INVESTIGATION**
  - 11) **ALL USE OF FORCE REVIEW AND INVESTIGATION**

- 7. The employee shall be notified in writing of the complaint as soon as possible, unless the nature of the investigation requires secrecy.

B. Initiation of Departmental Complaints

- 1. All personnel that witness another employee's misconduct shall immediately notify the on duty supervisor and complete the Internal Affairs Investigation Report.

2. The supervisor shall notify internal affairs and complete the Internal Affairs Investigation Report.
3. An Internal Affairs Complaint Form is not needed.

### **III. Immediate Suspensions**

#### **A. Suspension Pending Disposition or investigation**

1. A supervisor, commander or the Chief of Police 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 while on-duty, or the criminal act related to their employment.
2. The suspended employee shall report to the Chief of Police by 0900 hours on the next business day, along with the supervisor imposing the suspension to conduct a Loudermill hearing that includes the following:
  - a. Advise the employee in writing of why an immediate suspension is sought and the charges and general evidence in support of the charges.
  - b. 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.
  - c. Provide the employee with sufficient opportunity to review the charges and the evidence to respond either orally or in writing.
  - d. Advise their immediate supervisor in writing of the suspension and the facts and circumstances requiring the suspension.
3. Within five days of the suspension, the department must complete and file a Preliminary Notice of Disciplinary Action against the suspended employee.
4. Administrative Reassignment

- a. Administrative reassignment shall be used in cases involving the use of force, which results in death or serious bodily injury, unless the officer is suspended as discussed above.
  - b. The administrative reassignment is subject to change by the Chief of Police upon the outcome of the investigation.
5. Time limitations shall be consistent with N.J.S.A.40A:14-147.

#### IV. Investigation and Adjudication

##### A. Minor Complaints

1. The supervisor shall interview the complainant, all witnesses and the subject employee, as well as review relevant reports. The supervisor shall then prepare a report summarizing the matter, indicating the appropriate disposition. Possible dispositions include the following:
  - a. **Exonerated:** The alleged incident did occur, but the actions of the employee were justified, legal and proper.
  - b. **Sustained:** The investigation disclosed sufficient evidence to prove the allegation, and the actions of the employee violated provisions of rule and regulation or agency procedures.
  - c. **Not Sustained:** The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.
  - d. **Unfounded:** The alleged incident did not occur.
  - e. **Administratively Closed:** Not enough information to complete the investigation and come to one of the above conclusions. Examples include situations when a complainant voluntarily requests that a complaint be withdrawn or does not cooperate in the investigation and their cooperation is necessary. (Note: Investigations may still proceed without complainant cooperation.)
2. If the supervisor determines the disposition of the complaint is exonerated, sustained, not sustained and unfounded, the investigation report is to be forwarded to the internal affairs unit for review, entry on the log and entry in the internal affairs file. If the supervisor believes the case should be administratively closed, the reports shall be forwarded to Internal Affairs for that determination of disposition.
3. The subject employee shall be notified in writing of the outcome of the investigation.
4. Complainants shall be kept advised of the case status by the Internal Affairs Supervisor. Protracted investigations shall require notification every 90 days. These notifications may be telephonic or by letter, but telephone contact shall be so noted in the case file. Upon final disposition of the complaint, the Chief of Police or designee shall send a letter to the complainant explaining the outcome of the investigation. It is not necessary to specify the discipline imposed, if any. In the event that a

complaint is deemed not sustained, the complainant must receive a letter with the explanation why it was not sustained.

6. Initiation of disciplinary action for minor complaints

- a. The supervisor giving the counseling notice, oral or written reprimand shall complete the Performance Notice.
- b. The employee shall be advised of the discipline and given a copy of the Performance Notice.
- c. The supervisor will forward copies of the Performance Notice to the Internal Affairs Unit for review, and filing.

B. Serious Complaints

1. Where preliminary investigative data indicates the possibility of a criminal act on the part of the employee, or the investigation involves the use of force by which results in serious bodily injury or death, the Chief of Police shall be notified immediately along with the Ocean County Prosecutor's Office. No further action shall be taken, including the filing of charges against the employee until directed by the Ocean County Prosecutor's Office.
  - a. If, in the opinion of the supervisor, the incident is of sufficient gravity such as, an employee is accused of a crime, domestic violence violations, any incident that attracts media attention, and any incident that the officer in charge of the shift feels would affect the efficient and effective operation of the police department they shall immediately notify the Chief of Police regardless of the hours. At that time the Chief will make the determination as to whether Internal Affairs or any investigation personnel shall start immediately or will resume the next business day. The Chief shall also make the determination as to what additional supervisors shall be notified, (e.g., on call lieutenant or captain). The on duty supervisor shall take any immediate action necessary to preserve the integrity of the department until additional supervisors or the Chief's arrival.
  - b. All other notifications shall be made on the next business day.
2. The internal affairs unit shall interview the complainant, all witnesses and the subject employee, as well as review relevant reports and records, and obtain other relevant information and materials.
  - a. A subject employee shall not be relieved from their responsibilities to file a routine report required in the course of their duties.
  - b. A subject employee shall not be compelled to answer any questions prior to the arrival of their representative.
  - c. In the event that a written report is required by the Chief of Police or Internal Affairs Investigator reports shall be treated as confidential material and addressed to the requestor in a sealed envelope.

3. Interviewing the subject employee
  - a. The internal affairs investigator shall schedule an interview with the employee.
  - b. One person of the employee's choosing may attend the interview. In investigations of criminal allegations, it is not appropriate for a union representative to be present. However, the employee shall be given the opportunity to consult with a union representative.
  - c. Before questioning begins, inform the subject employee of:
    - 1) The nature of the complaint,
    - 2) The name of the person in charge of the interview, and the names of all persons who will be present during the interview.
  - d. Questioning sessions should be audio recorded and may be video recorded.
  - e. 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 Chief of Police and refer the case to the Ocean County Prosecutors Office.
4. 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 radio transmission, the original recording is the best evidence and should be secured at the outset of the investigation. Transcripts or copies of the original recordings can be used as investigative leads. Recordings should be monitored to reveal the totality of the circumstances.
5. Photographs
  - a. Photographs of the complainant at the time of arrest or following the alleged incident of excessive force.
  - b. Photographs of the subject employee in the event that employee was a victim.
  - c. A recent photo of the employee in the event a photo spread will be used for identification purposes. The photo spread must be properly retained for possible evidentiary purposes.
  - d. Photographs of the scene of the alleged incident, if necessary.

6. Physical Tests

- a. Subject employees 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. 25(a). Evidence that may be obtained or procedures that may be used to obtain evidence under this rule include:
  - 1) Breath sample
  - 2) Blood sample
  - 3) Requiring employee to speak
  - 4) Voice recordings
  - 5) Participation in a suspect lineup
  - 6) Handwriting samples
  - 7) Hair and saliva samples
  - 8) Urine analysis
- 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.

7. Polygraph

- a. While an employee who is the subject of an internal 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). This is a disorderly persons offense.
- b. An employee cannot be required to submit to a polygraph test on threat 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 police polygraph operator.

8. Search and Seizure

- a. All agency assigned offices, lockers, desks, vehicles, computers, and electronic devices are subject to a search/inspection absent a warrant.

- b. Personal brief cases shall not be searched without a warrant.
- 9. If the matter under investigation involves an administrative allegation, the employee will be advised of their duties and obligations to answer using the Administrative Advisement Form.
- 10. If the matter under investigation involves a possible criminal violation, the Internal Affairs Unit shall consult with the Ocean County Prosecutor regarding the advisability of giving a Miranda warning to the subject employee.
- 11. Upon completion of all possible avenues of inquiry, the Internal Affairs Unit shall complete the Internal Affairs Investigation Report and submit all reports, statements and tape recordings to the Chief of Police within thirty (30) days from the date that the matter was assigned to the internal affairs officer. If charges are in order they must be served pursuant to time limit set by N.J.S.A. 40A:14-147.
  - a. If an internal affairs investigation cannot be completed before the 30 day time period, approval must be obtained from the Chief of Police to extend the length of the investigation. The investigation shall be an objective report of all of the investigative activity, including all of the information obtained during the course of the investigation. The report should be clear, concise, and satisfactorily answer all ancillary questions or collateral issues that arise from the investigation.
  - b. Extended time may be granted depending upon the complexity of the matter. All charges must be filed within 45 days from the date that sufficient evidence exists to substantiate a charge, or charges, for violations of rules, regulations, policy, procedures or special orders.
  - c. The internal affairs report shall have a conclusion, disposition and a recommended disciplinary penalty, if applicable.
- 12. Internal Affairs will forward the internal affairs file to the Chief of Police who will review all the reports, supporting documentation, information gathered during any supplemental investigation.
  - a. If a finding of exonerated, not sustained, or unfounded, the Chief of Police or designee shall notify the subject employee in writing of the disposition without undue delay.
  - b. If the complaint is sustained and it is determined that formal charges should be preferred, the Chief of Police shall direct Internal Affairs to prepare the Preliminary Notice of Disciplinary Action form 31A and have it served upon the subject employee. The appropriate authority will sign and file these charges.

13. The Preliminary 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 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.
14. If the employee charged enters a plea of guilty, the Chief of Police shall permit the employee to present factors in mitigation prior to assessing a penalty.
15. Conclusion of fact and the penalty imposed will be noted in the employee's personnel file after he or 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. Note: the Final Notice of Disciplinary Action form 31B must be filed within 20 days of disposition.

## **V. Hearings/Grievance Procedure**

- A. The hearing shall be before the appropriate authority or designee. The Chief of Police shall review each and every disciplinary matter involving employees of the police department. An employee is not entitled to a hearing for recommended penalties that will not rise above minor discipline defined as a formal written reprimand or a suspension or fine of five working days or less (Title 4A:2-3-1b).
- B. The hearing date will be set on the Preliminary Notice of Disciplinary Action form 31A in accordance with NJSA 40A: 14-147.
- C. The internal affairs unit shall be responsible for or assist the prosecutor in the preparation of the department's prosecution of the charges. This includes proper notification of all witnesses and preparing all documentary and physical evidence for presentation at the hearing.
- D. In the event of a hearing, the internal affairs unit will be responsible for preparing a discovery package from the internal affairs file, and providing it to the subject employee or their representative.
- E. All disciplinary hearings shall be closed to the public unless the subject employee requests an open hearing.
- F. The hearing authority is empowered to enter a finding of guilty or not guilty, or to modify the charges as deemed necessary. The decision of the hearing authority should be in writing and should be accompanied by findings of fact for each issue or charge in the case.
- G. The hearing authority will determine the following progressive discipline measures that are deemed appropriate under the circumstances (**Reference NJAC 4A: 2-2.2, NJAC 4A: 2-2.4, NJAC 4A: 2-3.1, and NJSA 40A: 14-147**).
  1. Training;
  2. Counseling;
  3. Oral reprimand;

4. Written reprimand;
  5. Monetary fine; **(only when suspension would be detrimental to public safety and agreed upon by the employee, see NJSA 11A: 2-20)**
  6. Transfer/reassignment;
  7. Suspension without pay;
  8. Loss of promotion opportunity;
  9. Demotion;
  10. Termination.
- H. A copy of the decision or order and accompanying findings and conclusions shall be delivered to the subject employee and the Chief of Police.
- I. Upon completion of the hearing, Internal Affairs will complete all required forms including the entry of the disposition in the Internal Affairs Case Master Log.
- J. If the charges were sustained, Internal Affairs will cause the penalty to be carried out. The Final Notice of Disciplinary Action form 31B shall be placed in the employee's personnel file.
- K. Minor discipline as defined in section V (a) above is subject to an alternate appeal process as provided by a negotiated contract provision. This process is defined by the collective bargaining agreement which states "Any action by the Township Administration or designee or Chief of Police or designee, which is defined as minor discipline under the New Jersey Administrative Code, shall be subject to the grievance procedure herein."

## **VI. Confidentiality**

- A. The progress of internal affairs investigations and all supporting materials are considered confidential information.
- B. Upon completing a case, internal affairs will enter the disposition in the Internal Affairs Case Master Log.
- C. The contents of internal investigation case files will be retained in the office of the Chief of Police. The files shall be clearly marked as confidential.
- D. Only the Chief of Police is empowered to release publicly the details of an internal investigation or disciplinary action. The employee may authorize the release of copies of formal disciplinary charges and their outcome to any third party. The employee shall make the request in writing.
- E. In the event that the subject employee, agency or governing jurisdiction have been named as defendants in a lawsuit arising out of the specific incident covered by an internal investigation, a copy of the internal investigation reports may be released to the attorney representing the subject employee, agency or jurisdiction.

- F. Upon request or at the direction of the Ocean County Prosecutor or the NJ Attorney General.
- G. Upon court order.
- H. Prior to responding to any subpoena directing the production of internal affairs investigative records, the Chief of Police should consult with the Township Attorney to determine whether the subpoena is valid and reasonable. Challenges to any subpoena must be filed in the appropriate court having jurisdiction.

## **VII. Retention of Discipline**

- A. A Department of Personnel Disciplinary Notice or Internal Affairs Disposition Report will be placed in the employee's personnel file. Internal Affairs reports shall not be placed in the personnel file.
  - 1. Counseling and Oral Reprimands
    - a. Two years after the date of the approved discipline, the Internal Affairs Disposition Report shall be removed from the personnel file and placed in the Internal Affairs file, provided no other breach of discipline has occurred. It is the responsibility of the employee to notify the Chief of Police at the end of the two year period.
    - b. Written reprimands shall remain permanently in accordance with the Attorney General's Internal Affairs Policy and Procedures.
  - 2. Monetary fine, Transfer/reassignment, Suspension without pay, Loss of promotion opportunity and Demotion
    - a. The Final Notice of Disciplinary Action form 31B shall remain permanently in the personnel file.
- B. Internal Affairs records shall be maintained pursuant to the New Jersey Division of Archives and Records Management Records Retention Schedule.

## **VIII. Early Warning System**

- A. In order to enhance integrity, provide an optimal level of service and reduce exposure to civil liability, this department will establish procedures for dealing with problem employees. The early warning system is designed to identify any pattern or practice by any member of this agency which warrants intervention or remediation before it develops into a problem. This agency will utilize the information gathered from the early warning system to prevent patterns, practices or trends of inappropriate behavior or conduct developing. The early warning system shall be the responsibility of the Internal Affairs Unit.
- B. Supervisors should be able to identify employees with misconduct and performance issues in a timely fashion. Supervisors can react to problems they identify through direction, counseling and effective performance evaluations. Supervisors are expected to recognize potentially troublesome employees, identify training needs and provide professional support in a consistent and fair manner.

Should a supervisor identify a potential problem area they shall notify the Internal Affairs Unit in writing.

- C. Many different measures of employee performance can be regularly examined for any patterns or practices. Some of the measures that may be considered for their suitability and inclusion in the early warning system are:
  - 1. Internal affair complaints, regardless of outcome
  - 2. Civil actions filed, regardless of outcome
  - 3. Use of force incidents
  - 4. Claims of a duty related injury (Workman's Compensation)
  - 5. Criminal Investigations or complaints against members
  - 6. Vehicular Pursuits
  - 7. Vehicular accidents involving department vehicles
  - 8. Sick time abuse/Tardiness
- D. If a review of the above measures points towards the emergence of a pattern, practice or trend of inappropriate behavior or misconduct, the internal affairs investigator shall consult with the appropriate supervisor. The investigator and supervisor shall review the information provided by the early warning system along with any other relevant information for the purpose of initiating a course of supervisory action designed to interrupt the emerging pattern, practice or trend. If the review indicates that the early warning system has identified a "false positive", that conclusion shall be documented.
- E. If the review reveals that an employee has violated department rules and regulations or standard operating procedures, the supervisor in consultation with the Internal Affairs Unit should proceed with an internal investigation and possible disciplinary action.
- F. If the review reveals that the employee engaged in conduct which indicates a lack of understanding or inability to comply with accepted procedures, the supervisor shall consult with the Internal Affairs Unit to determine the appropriate course of remedial action.
- G. Remedial intervention may include training, retraining, counseling and enhanced supervision. In addition, the actions of the officer may indicate a question about an employee's fitness for duty. In these cases, the employee should be examined for fitness for duty, either physically or psychologically after consultation with the Chief of Police and ordered by same. Internal disciplinary action, remedial action, referral to an employee assistance program and fitness for duty examinations are not mutually exclusive and should be jointly pursued if appropriate.
- H. When remedial action has been undertaken, the Internal Affairs Unit should be formally notified of such efforts in writing. This information shall be recorded in the internal affairs index file system. No entry will be made into the employee's personnel file, unless it results in disciplinary action. If the remedial action was

assignment to a training program, the attendance and completion of such program will be noted in the officer's training record.

- I. The purpose of the early warning system is to detect patterns and trends before the conduct escalates into more serious infractions. Employees must understand that the early warning system is not identical to the disciplinary process. Although it is possible that disciplinary action may be taken as a result of these reviews, it is not the sole or even primary intent of the system. The primary intent of the early warning system is to address potential problems through the use of appropriate management and supervisory strategies before formal discipline is warranted.