

MONTCLAIR POLICE DEPARTMENT

POLICY & PROCEDURES



SUBJECT: **INTERNAL AFFAIRS**

EFFECTIVE DATE: October 11, 2017

NUMBER OF PAGES: 36

ACCREDITATION STANDARDS: **1.3.1, 1.4.3a-e**

BY THE ORDER OF:
Chief of Police Todd M. Conforti

PURPOSE: The purpose of this written directive is to maintain a high quality of law enforcement services. Improving the relationship between employees and the public facilitates cooperation vital to the department's ability to achieve its goals. This department 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 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 department personnel to monitor employee compliance with department directives, assist employees in meeting department objectives, enhance performance, and permit managers to identify problem areas which require increased training or direction. Finally, this written directive shall ensure fundamental fairness and due process protection to citizens and employees alike.

POLICY: It is the policy of the Montclair Police Department 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. Following a thorough and objective examination of the available factual information, a conclusion will be determined and the employee shall be either exonerated or held responsible for the alleged misconduct. When applicable, discipline shall be administered according to the degree of misconduct. When a performance deficiency has been identified, the employee shall be subject to the appropriate administrative remedy. 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 department 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 internal investigation of any allegation of misconduct shall strive to conduct a thorough and objective investigation respecting the rights of the employee, other employees, any other law enforcement officers, 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 department's Internal Affairs policy.

This written directive has been developed in accordance with the revised New Jersey Attorney General Directive on Internal Affairs 2019-5.

PROCEDURE:

I. DEFINITION OF TERMS/FORMS

- A. The following forms/reports shall be used in accordance with this written directive:
1. **Request for Extension of Investigation - (MPD IA-1):** This form shall be used to seek approval from the Chief of Police when additional time, beyond the thirty day period, is needed to complete the internal affairs investigations.
 2. **Investigation Plan - (MPD IA-2):** This form shall be used to develop an investigative plan prior to conducting internal affairs investigations.
 3. **Investigation Report - (MPD IA-3, 4, 7 & 8):** This report shall be used to memorialize the investigation of any internal affairs matters or performance deficiencies. This form shall also 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. This form shall be reviewed through the chain of command.
 4. **Supplemental Internal Investigation Report - (MPD IA-5):** This report shall be used to supplement the initial investigation report.
 5. **Attachment Log - (MPD IA-6):** This form shall be used to account for all attachments accumulated during the investigation.
 6. **New Principal/Allegation Identification Form - (MPD IA-9):** 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 written directives not relevant to the complaint or the alleged misconduct being investigated.
 7. **Administrative Advisement Form - (MPD IA-10):** This form shall be used during internal affairs investigation interviews when interviewing the principal in an internal affairs investigation.
 8. **Miranda and Waiver Form - (MPD IA-11):** This form shall be used in an internal affairs investigation when interviewing an employee accused of committing a crime after consultation with the Essex County Prosecutor's Office.
 9. **Witness Acknowledgment Form - (MPD IA-12):** The form shall be used during internal affairs investigation interviews when interviewing a witness in an internal affairs investigation.
 10. **Weingarten Representative Acknowledgement Form - (MPD IA-13):** This form shall be provided to the Weingarten representative present during an internal affairs interview.
 11. **State Standardized Internal Affairs Complaint Form - (MPD-21): – (MPD IA-14):** This form shall be utilized to document citizen complaints,

internal complaints, and self-reported incidents involving agency employees, which may require a formal internal affairs investigation.

12. **Compliment Form - (MPD IA-15):** This form shall be offered to any citizen who wants to compliment an employee of the department. The employee accepting the compliment form shall submit it to Internal Affairs.
13. **Citizen Complaint Information Form - (MPD IA-16):** This form, which explains the department's internal affairs procedures, shall be provided to all citizen complainants.
14. **Performance Notice - (MPD IA-17):** 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.
15. **Summary Report - (MPD IA-18):** This report shall be submitted to the Essex County Prosecutor's Office on a quarterly and annual basis detailing all internal affairs investigations investigated by the department during the reporting period.
16. **Preliminary Notice of Disciplinary - (MPD IA-19):** This form shall be used to formally notify the principal of charges approved by the Chief of Police in connection with the completed Internal Affairs investigation. This disciplinary form shall only be used for discipline that exceeds a written reprimand.
17. **Reprimand Notice - (MPD IA-20):** This form shall be used to notify formally, the principal of discipline approved by the Chief of Police in connection with the completed internal affairs investigation. This disciplinary form shall be used for discipline that does not exceed a written reprimand. This entry in IA Pro shall be used when documenting verbal and written reprimands.

B. **Reportable Incident:** is any behavior, performance, or non-performance that may violate department 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 Office of Professional Standards to determine the manner of response that best serves the public, the department, 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 written 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 written directive, whether on or off-duty;
2. An alleged violation of any of the Department Rules and Regulations;
3. An alleged violation of any written directive issued by this department 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 Office of Professional Standards 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 Essex County Prosecutor of the receipt of the complaint by the Office of Professional Standards. No further action shall be taken, including the filing of charges against an employee, until directed by the County Prosecutor.
 - a. Criminal Misconduct is defined as a reportable incident where there is an allegation of a crime or an offense.
2. **Administrative Misconduct** - An incident may be classified as administrative misconduct in which case an investigation shall be conducted in accordance with this written directive.
 - a. Administrative Misconduct is defined as a reportable incident where there is a serious violation of department rules and regulations, written directive; or, conduct which adversely reflects upon the employee or the department.
 - b. Repeat performance deficiencies may be classified as administrative misconduct.
3. **Performance Deficiency** - An incident that is classified as a performance deficiency shall be referred to the supervisor for addressing through non-disciplinary corrective actions, (e.g. 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. Performance deficiency incidents **are not** internal affairs investigations.

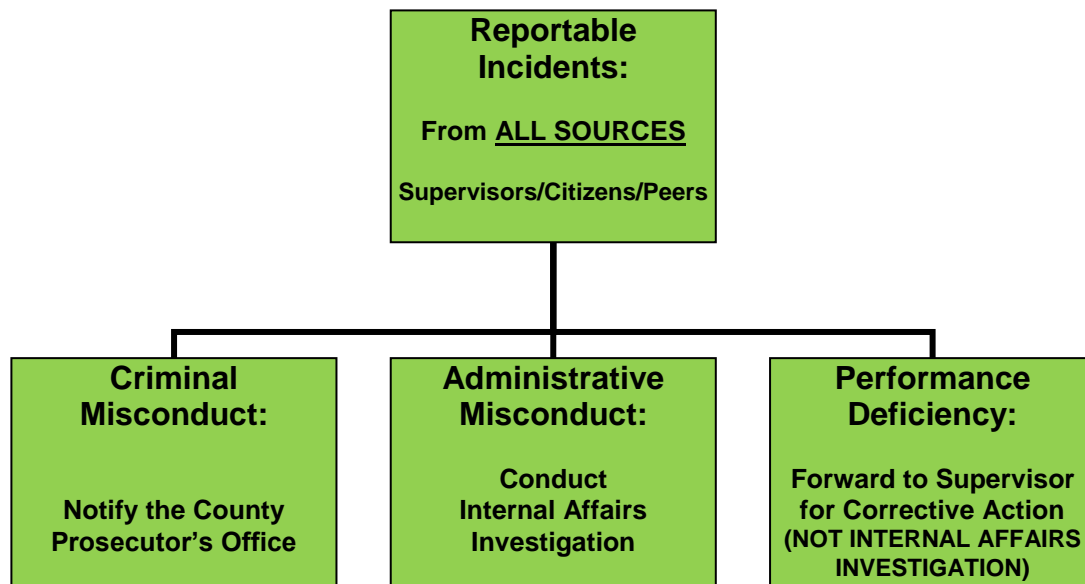


Figure #1 (Classification Process)

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. The standard rules of evidence in criminal matters are substantially relaxed in administrative hearings. Some constitutional protections that apply in criminal matters do not attach to administrative investigations. In accordance with established case law, the investigator, reviewing authority and the Chief of Police can rely on types of evidence that would be inadmissible in a criminal proceeding.
- D. 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 may 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 may 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 department 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 written directive. 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 department 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 Office of Professional Standards/Chief of Police 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 Office of Professional Standards/Chief of Police, 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 an officer 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 officers 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.

III. OFFICE OF PROFESSIONAL STANDARDS

- A. The Office of Professional Standards/Internal Affairs Unit is herein established. The Office of Professional Standards shall have direct access to the Chief of Police on all matters involving internal affairs. Personnel assigned to the Office of Professional Standards shall serve at the pleasure of and be directly responsible to the Chief of Police or designee.
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. Officers assigned to the Office of Professional Standards/Internal Affairs Unit shall complete training as mandated by the Division of Criminal Justice.
 - a. Officers may attend additional training on internal affairs provided by the Essex County Prosecutor's Office and other sources.
- B. The goal of the Office of Professional Standards 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.
- C. Under no circumstances may the Montclair Township Police Department's Office of Professional Standards/Internal Affairs Unit be contracted or delegated to a private entity.
1. Instead, when necessary, the Montclair Township Police Department may request that an internal affairs complaint be investigated directly by the Essex County Prosecutor, 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 Montclair Township Police Department, if the Essex County Prosecutor determines that the department can appropriately investigate the matter.

2. Nothing in this written directive shall prevent the Montclair Township Police Department from retaining a qualified private individual to serve as a hearing officer or an expert witness.
- D. The Office of Professional Standards shall be responsible for:
1. The management of the Office of Professional Standards;
 2. The coordination and review of all internal affairs investigations;
 3. The review of all allegations of misconduct by employees of this department;
 4. The immediate notification of the Chief of Police 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 department.
 - 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 and investigated, including disposition. A quarterly report on the status of all pending Internal Affairs investigations will be provided to the Chief of Police.
 6. The preparing and mailing of a Complaint Acknowledgement Letter to all civilian complainants.
- E. The Office of Professional Standards shall be responsible for:
1. The investigation and review of all allegations of misconduct by employees of this department.
 2. In addition to investigations concerning allegations of misconduct, the Office of Professional Standards shall receive notice of:
 - a. Any firearm discharge by department 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; or a lawful animal hunt.
 - 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, the Office of Professional Standards/Internal Affairs Unit will determine whether additional investigation is necessary.

4. The Office of Professional Standards shall conduct a manual or computerized audit of its records to determine if an employee has the emergence of a pattern, practices or trend of inappropriate behavior or misconduct in accordance with department written directive governing early warning.
5. The Office of Professional Standards shall be responsible for any other investigation as directed by the Chief of Police.
6. The Office of Professional Standards may conduct an internal affairs investigation on their own initiative upon notice to, or at the direction of the Chief of Police or Office of Professional Standards.
7. The Office of Professional Standards may refer reportable incidents classified as a performance deficiency to an employee's supervisor for inquiry and corrective action.
8. The Office of Professional Standards 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 the Office of Professional Standards 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.
9. Notification to the Essex County Prosecutor's Office
 - a. The Chief of Police or designee shall immediately notify the Essex County Prosecutor of the receipt of the complaint by the Office of Professional Standards of any allegation involving criminal wrongdoing by a principal that may lead to charges of an indictable nature.
 - b. The Chief of Police or designee shall report all excessive force allegations to the ECPO Professional Standards Bureau (ECPO PSB) immediately by sending an email to NOTIFY@njecpo.org. This shall include excessive force allegations that may not initially appear to be criminal. In other words, once a civilian has made a complaint, or once an internal complaint has been initiated by a supervisor or other officer, the ECPO PSB must be notified. The notification shall include all reports as well as any pertinent video footage.
 - 1) Pertinent video footage includes any and all video including from private citizens' cell phones or other electronic devices. In the age of social media, it is imperative that the ECPO notification include any such footage from inception of the investigation. There are often crucial investigative steps that must be taken at the outset to preserve such social media video footage and identify witnesses as early as possible. In addition, an immediate phone call shall be made to the on-call detective from the ECPO PSB whenever there is any indication that there is an excessive force incident that was

recorded by private citizens.

10. The Montclair Township Police Department must submit quarterly reports to the Essex County Prosecutor's Office summarizing the allegations received and the investigations concluded for that period. Each county prosecutor shall establish a schedule for the submission of the reports and specify the content of the reports.
11. An annual report summarizing the types of complaints received and the dispositions of the complaints may be made available to the public. The names of complainants, witnesses, and principals shall not be published in this report.
12. The Montclair Township Police Department shall periodically release a brief synopsis of all complaints where a fine or suspension of ten days or more was assessed to a member of the agency. The synopsis shall not contain the identities of the principals or complainants. However, it should briefly outline the nature of the transgression and the fine or suspension imposed.
13. The Montclair Township Police Department shall report to the Essex County Prosecutor's Office.
 - a. A finding by a court or the appropriate administrative fact-finder that a police officer has filed a false report or submitted a false certification in any criminal, administrative, employment, financial or insurance matter in his or her professional or personal life.
 - b. Any pending court complaint or conviction for any criminal, disorderly persons, petty disorderly persons, municipal ordinance or driving while intoxicated matter.
 - c. A finding that undermines or contradicts a police officer's educational achievements or qualifications as an expert witness.
 - d. A finding of fact by a judicial authority or administrative tribunal that is known to the officer's employing agency which concludes that a police officer intentionally did not tell the truth in a matter.
 - e. A sustained finding that a police officer intentionally mishandled or destroyed evidence.
 - f. A sustained finding that a police officer is biased against a particular group enumerated in the *Department's Bias Based Profiling* written directive.
 - g. Any open/pending Internal Affairs investigations against the police officer at the time of a request by the Essex County Prosecutor and/or his/her designee.

IV. ACCEPTING COMPLAINTS

A. Duty of Employees to Self-Report

1. All employees shall immediately self-report using the State Standardized Internal Affairs Complaint Form, in no case, more than four (4) hours, the following information to the Office of Professional Standards and the Chief of Police through the chain of command:
 - 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 or as soon as practical.
 - 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 an alleged perpetrator or victim of a domestic violence incident.
 - e. Other reportable incidents under circumstances not specified in this sub-section above shall be reported in a manner consistent with Off-Duty Actions/Firearms - Policy and Field Reporting - Policy or other applicable policy and procedure.
2. When employees report this information to a supervisor, the supervisor shall directly and immediately report the information to the Office of Professional Standards and/or Chief of Police. The Chief of Police or his/her designee shall notify the Essex County Prosecutor's Office 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 Office of Professional Standards.
2. All employees must report directly to the Office of Professional Standards, or the Chief of Police 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 department's communication center.
3. A supervisor receiving or initiating a reportable incident, shall forward the State Standardized Internal Affairs Complaint Form, together with any supporting documentation, to the Office of Professional Standards for follow-up.
 4. 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 department 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 Office of Professional Standards may 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.
2. If a member of the Office of Professional Standards is immediately available, they may take the complaint.
 - a. If a member of the Office of Professional Standards is not immediately available, the complainant will be referred to the desk supervisor. In the absence of the desk supervisor, any department employee shall accept the report of employee misconduct.
3. In some cases, a complaint is based on a misunderstanding of accepted law enforcement practices or the duties of the officer. Supervisors are authorized to informally resolve minor complaints, whenever possible, at the time the report is made. If the complainant is not satisfied with such a resolution, the complaint should be forwarded to the Office of Professional Standards for further action as warranted. The process of informally resolving internal affairs complaints requires the exercise of discretion by supervisors. The proper exercise of discretion in such matters cannot be codified.
4. Department personnel receiving the complaint shall:
 - a. Provide the person making the complaint with the Citizen Complaint Information Form, which explains the department's Internal Affairs

procedures. Explain the department's disciplinary procedures to the person making the complaint.

- b. Advise the complainant that he or she will be kept informed of the status of the complaint, if requested and its ultimate disposition.
 - c. Complete as much of the State Standardized Internal Affairs Complaint Form as possible before forwarding it to the Office of Professional Standards.
 - d. Have the complainant sign the completed form. If the complainant will not sign the form, the employee 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.
 - e. The State Standardized Internal Affairs Complaint Form shall be completed by the employee taking the complaint and shall be entered into Blue Team. The form shall be forwarded to the Office of Professional Standards for recording in the master recordkeeping system and classification by the Office of Professional Standards.
5. All department 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 department 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 Office of Professional Standards for classification.
8. Complaints against the Chief of Police 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 Essex County Prosecutor.
9. 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.

D. Complaints shall be handled as follows:

1. All complaints will be forwarded to the Office of Professional Standards for classification and entry into the recordkeeping system.

2. Where civil litigation has been filed, and the complainant is a party to the litigation or a principal witness in the litigation, the Office of Professional Standards investigator shall consult with legal counsel to determine whether an investigation is appropriate or warranted.
3. Unless otherwise directed by the Office of Professional Standards or the Chief of Police, complaints classified as a performance deficiency may then be forwarded to the supervisor of the employee for inquiry and corrective action.
4. All other complaints classified as misconduct shall be retained by the Office of Professional Standards.
5. The principal shall be notified in writing of the complaint as soon as possible, unless the nature of the investigation requires secrecy.

V. IMMEDIATE SUSPENSIONS

A. Suspension Pending Disposition or Investigation

1. A supervisor or 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 or a disorderly person's 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, if applicable.

- c. Notify the employee's Deputy Chief in writing of the suspension and the facts and circumstances requiring the suspension. The Chief of Police and Office of Professional Standards shall then be advised without delay.
- 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 Police or designee upon the outcome of the investigation.
- 4. Filing formal charges
 - a. Within five days of the suspension, the department must complete and file formal disciplinary charges against the suspended employee or return the employee to work. The filing of charges shall be suspended if the employee's suspension is due to a potential criminal matter under review by the Essex County Prosecutor's Office.

VI. INVESTIGATION AND ADJUDICATION

- A. All internal affairs investigations should be conducted in accordance with the department's Internal Affairs Investigation Policy, Rules and Regulations and the Attorney General's Guidelines for the State of New Jersey.
- 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 Police shall be notified immediately who will then notify the Essex County Prosecutor's Office. No further action shall be taken, including the filing of charges against the employee, until directed by the Chief of Police and the Essex County Prosecutor's Office.
 - 2. The Office of Professional Standards may 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 Essex County Prosecutor's Office.
 - b. The Office of Professional Standards investigator shall consult with the Essex County Prosecutor 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 Office of Professional Standards, who will conduct a full investigation of the matter; and
 - b. The Office of Professional Standards Unit will notify the Chief of Police of the offense; and
 - c. The Office of Professional Standards will forward copies of the appropriate disciplinary documents and investigation reports to the Chief of Police for review; and
 - d. The Office of Professional Standards will be responsible for the final case disposition and implementation of discipline, as determined by the Chief of Police or designee.

D. Performance Deficiency Complaints and Minor Complaints

1. When a complaint has been classified as demeanor, a performance deficiency, or minor complaint, the complaint may be forwarded to the employee's Division Commander for inquiry and further action necessary. The Division Commander or his/her designees shall then prepare a report summarizing the matter, recommending the appropriate corrective action as necessary.
2. The Division Commander shall forward the entire investigation package to the Office of Professional Standards for review.
3. The Office of Professional Standards shall review the case file and recommended disposition(s) and must sign the Internal Affairs Investigation Review Sheet. In the comments section, the Office of Professional Standards shall record his agreement or disagreement with the recommendation(s).
4. The case file shall be forwarded to the Chief of Police for their review. The Chief will approve or modify the recommended disposition(s) based upon the report and recommendations and forward the disciplinary document back to the investigating superior officer for the imposition of the discipline/corrective action. The superior officer shall provide a copy of that document to the employee being issued disciplined/corrective action.
5. A copy of the disciplinary/corrective document shall be placed in the principal's personnel file, and sent to the Office of Professional Standards for entry into the index file and filing.
 - a. For Performance Notices and Oral Reprimands:
 - 1) Six months after the date of the issuance the Performance Notice or Oral Reprimand should be removed from the personnel file, provided no other breach of discipline has

occurred. Once removed from the personnel file, the Performance Notice or Oral Reprimand shall be retained in the employee's internal affairs file.

- 2) The principal shall be notified in writing that the Performance Notice or Oral Reprimand has been purged from the personnel file.
- b. For Written Reprimands and charges that exceed a written reprimand:
- 1) The Written Reprimand and charges that exceed a written reprimand will remain permanently in the personnel file of the respective officer or employee.

E. Interview Procedures

1. Preparation

- a. All complainants, 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 may 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 department personnel may be audio recorded. (pertinent portions of this statement will be transcribed.)
 - 2) Video recorded.
 - 3) Handwritten statements taken by investigator should be reduced to writing and signed on each page by the person making the statement.
 - 4) A summary of the substance of the interview should 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 department 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-police 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) should, upon request, be provided with a copy of same by the investigator, as authorized by the Office of Professional Standards/Chief of Police, unless by doing so, it could compromise the investigation.
- d. Other than investigators authorized by the department, employees of this department 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 may result in serious disciplinary action.
- e. Audio or written statements should be made attachments within the investigative file, unless the matter is criminal in nature. In that case, evidence shall be handled in accordance with department written directive regarding the handling of evidence in a criminal matter.
- f. All recorded statements should be summarized in the body of the appropriate internal investigation report. When directed by the Office of Professional Standards, the pertinent portions of the statement may be transcribed and the transcript itself also included as an attachment to the case.
- g. The interview of any non-department 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;
 - 10) Date, time, and location of interview; and

- 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 may 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.
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 Legal Right to Legal Representation in Administrative Internal Affairs Investigations
 - a. During the course of the administrative interview, an employee may be represented by a union representative to include an attorney, so long as the availability of the attorney does not in any way hamper or impede the ongoing investigation. There is not a Sixth Amendment right in Administrative Internal Affairs Investigations for principals and witnesses. If the investigation is criminal in nature and it appears that the employee's union representative may become a witness or principal in the investigation, the union representative shall be 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 should be made to interview a complainant in person. Complainant interviews may be conducted formally resulting in a statement secured in accordance with the provisions enumerated under Interview Procedures.
 - b. The investigator should 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 department or at a time other than regular business hours.
 - c. Interviews of civilian complainants, which take place over the telephone, should be recorded.

- 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 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 Office of Professional Standards.
- f. The Office of Professional Standards should notify the Essex County Prosecutor's Office in any case where a complainant has fabricated or intentionally misrepresented material facts to initiate a complaint of officer misconduct.
- g. Investigators shall make every effort not to ask questions that may demean, ridicule, or cause embarrassment to the complainant.
- h. Questions must be carefully thought out and absolutely relevant to the investigation. Any questionable issues should be discussed with and approved by the Office of Professional Standards before conducting the interview.
- i. Group interviews shall not be conducted.
- j. 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.
- k. 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 department video recordings. It shall be up to the discretion of the investigator, whether utilizing any department 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 department letterhead, via certified mail, authorized and signed by the Office of Professional Standards, 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 department letterhead advising that witness 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 interviews shall be conducted formally resulting in a statement secured in accordance with the provisions enumerated under Interview Procedures.
- c. 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 member 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) The interviewer shall 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 investigator conducting the interview shall identify him/herself. 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 Office of Professional Standards 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 investigator will complete a New Principal/Allegation Identification Form, and forward same to the Office of Professional Standards 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.

d. Employee as: **PRINCIPAL**

- 1) No employee shall be designated a principal without the approval of the Office of Professional Standards and/or Chief of Police.
- 2) Each employee of the department is required to answer pertinent questions regarding the matter, which is the subject of investigation. All employees of the department 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 may 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 department, 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 electronically recorded statement may 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 any 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 a 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 officer or representative or other person designated by the union will satisfy the representation requirement.
 - 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 may be terminated.
 - f) The investigator may 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 may not be permitted to answer for the principal or conduct his or her own interview.

- 9) The interview should 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 refer the case to the Essex County Prosecutor. Should the Prosecutor afford the employee a grant of use immunity, the Office of Professional Standards investigator shall schedule an interview with the employee.

E. 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. 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 police polygraph operator.

5. Search and Seizure

- a. All agency property, including but is not limited to: computers, lockers, phones, agency vehicles, desks/offices/work stations, filing cabinets and any other agency equipment remains the property of the Montclair Township Police Department and is subject to entry and inspection without notice at any time and without a search warrant.
- b. Personal briefcases, bags, and vehicles shall not be searched without a warrant, valid consent or other recognized exception to the warrant requirement.
- c. If a criminal investigation, prior to a search or confiscation of any agency issued property, approval must be obtained from the Essex County Prosecutor or his/her designee.
- d. Any search of agency or personal property should be conducted in the presence of another agency employee, preferably a Superior Officer, and should be properly recorded.

VII. REPORTING

- A. Upon completion of all possible avenues of inquiry, the 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 Office of Professional Standards and/or Chief of Police 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 Police through the Office of Professional Standards.

3. The completed report will be submitted in a report folder/envelope. The investigator will include the Internal Investigation Attachment Log, followed by the State Standardized Internal Affairs Complaint Form, the Investigation Report, and the remaining attachments, numbered sequentially. Supplemental Internal Investigation Reports will be placed in the folder/envelope as numbered attachments, in the correct chronological order.
4. All attachments may be marked, unless marking the document in that area would damage or interfere with the content of the attachment.

B. Report Flow

1. The investigation should be completed and all reports prepared within **thirty (30) calendar days** of being assigned. Authorization for additional time to complete investigations must be received from the Chief of Police, in accordance with the investigation extension procedure.
2. The investigator, upon completion of the report, shall forward it directly to the Office of Professional Standards, who will forward it to the Chief of Police.
3. The Office of Professional Standards will review the case and make recommendations to the Chief of Police regarding discipline.
4. The Chief of Police, upon receipt of the recommendation, will review the matter and make the final determination or return the case for further investigation.
5. Once the Chief of Police is provided with “sufficient information” to file a charge, the Chief of Police has forty-five (45) days to do so. (N.J.S.A 40A:14-147).
6. In all cases, a letter shall be sent 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 employee has been disciplined according to department procedures. It is not necessary to specify the discipline imposed.
7. Whenever a final determination is reached in an internal investigation, the Chief of Police shall in writing, notify the employee(s) involved as a principal(s) of that determination.
8. 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. Internal Investigation Plan

1. The case investigator may meet with the Office of Professional Standards within five (5) business days of being assigned to conduct the internal investigation, to discuss and formulate an investigative plan.
2. Thereafter the case investigator will complete an Internal Investigative Plan, and submit same for approval prior at the conclusion of the meeting. When approved by the Chief of Police, the plan will be maintained and secured in the case jacket dedicated to that investigation-

D. Internal Investigation Report

1. Documentation that the complainant has been contacted by the investigator to advise them of their assignment as the case investigator and to arrange a meeting to conduct an interview. If the investigator is unable to contact the complainant, the report must reflect that the appropriate certified ten (10) day letter, endorsed by the Office of Professional Standards or Chief of Police, has been mailed to the complainant.
2. Documentation that the case investigator has contacted the principal(s) and informed them of the nature of the complaint against them.
3. An analysis of the allegations to be addressed by the investigation, linked to specific provisions of the Rules and Regulations, and/or any guidelines that govern the behavior of employees of the department.

E. Supplemental Internal Investigation Report

1. A Supplemental Internal Investigation Report may be submitted on a regular basis to document the investigative process on all internal investigations wherein investigative activity took place during that period.

F. Internal Affairs Attachment Log

1. An Internal Investigation Attachment Log will accompany each case when submitted by the investigator.
2. The Attachment Log will account for all attachments accumulated during the investigation. The State Standardized Internal Affairs Complaint Form will always be attachment #1. The Internal Investigation Report will be attachment #2. Thereafter, each individual Supplemental Internal Investigation Report will be assigned a separate attachment number.
3. A separate log number will be assigned to every attachment, unless the attachment is a multiple page document, at which time it will be secured as a singular attachment.
4. Each attachment accumulated and documented in the investigation report will receive a separate log number and be appropriately cross referenced in chronological order.

G. Internal Investigation Allegations and Conclusion Report

1. At the conclusion of the investigation, the investigator will prepare allegations and conclusions.
2. The allegation will set forth, 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 officer 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 misconduct 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.
 - 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. 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>.

H. Internal Affairs Investigative Review Sheet

1. Upon the conclusion of all internal investigations, the investigator will generate an Internal Investigation Review Sheet, which will accompany the submitted investigation.
2. 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.
3. 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.

I. 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 Office of Professional Standards/Chief of Police 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 Office of Professional Standards, 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 written directives not relevant to the complaint or the alleged misconduct being investigated.

J. Request for Extension of Investigation

1. Exceptions to the thirty (30) calendar day requirement to complete all internal investigations may be granted only in the following cases:
 - a. The investigation is pending criminal prosecution.
 - b. The investigation is undergoing a prosecutorial review to determine if the matter will be prosecuted criminally.
 - c. Delays approved by the Chief of Police.
2. The Request for Extension of Investigation form must be submitted to the Chief of Police for approval as soon as any of the foregoing criteria is met. If charges are in order, they must be served pursuant to the time limit set by N.J.S.A. 40A:14-147.
3. The completed form, including all required endorsements, must be submitted as an attachment to the investigation.
4. If investigators are unable to complete an internal affairs investigation within thirty (30) calendar day of receiving a complaint, they must notify the

Chief of Police on or about the 30th day. In such situations, the Chief of Police should seek to identify the reasons for the extended investigation and whether the Office of Professional Standards/Internal Affairs Unit requires additional resources or oversight to complete the inquiry in a prompt manner.

- a. In addition, the Chief of Police should ensure compliance with the “45-day rule” established by N.J.S.A. 40A:14-147.
5. Investigators are required to provide further notice to the Chief of Police 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 Police should exercise increasing scrutiny of the investigators’ work the longer the case remains open.
 6. In the rare cases where the department has not filed disciplinary charges (or decided not to do so) within 180 days of receipt of the complaint, the department must notify the Essex County Prosecutor.
 - a. The Essex County Prosecutor, or their designee, shall investigate the reasons for the extended investigation and shall also examine whether the department’s Office of Professional Standards/Internal Affairs Unit faces any systemic issues that require additional resources or oversight.
 - b. The Essex County Prosecutor may take any steps necessary to ensure prompt resolution of the pending matter, including supersession of the department’s investigation.
 - c. The Montclair Township Police Department shall provide further notice to the Essex County Prosecutor every additional 90 days that the investigation remains open (*i.e.*, on or about the 270th and 360th days from the receipt of the complaint).
- K. 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. A Performance Notice shall also be used to commend an employee for positive performance.
 2. The supervisor recommending the issuance of a Performance Notice form for corrective action (counseling, and/or training) shall complete and forward the unsigned copy of the Performance Notice form along with the completed State Standardized Internal Affairs Complaint Form (for counseling and/or training only) through the chain of command to the respective Shift or Bureau Commander.
 3. Upon approval of the Performance Notice, the employee shall be advised of the corrective action or commendation 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 Office of Professional Standards/Internal Affairs Unit Supervisor for filing.

- L. 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 for disciplinary action (verbal/written reprimand) shall complete and forward the unsigned copy of the Reprimand Notice form along with the completed State Standardized Internal Affairs Complaint Form through the chain of command to the respective Shift or Bureau Commander.
 - 3. Upon approval, 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 Office of Professional Standards/Internal Affairs Unit Supervisor for filing.

- M. Formal Charge:
 - 1. If the complaint is sustained, and it is determined that formal charges should be preferred, the Chief of Police or designee shall prepare the Preliminary Notice of Disciplinary Form.
 - a. A Preliminary Notice of Disciplinary Form shall be used for requested discipline that could result in discipline exceeding a written reprimand.
 - 1) 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.
 - 2. 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.

- N. If the employee charged waives a hearing and enters a plea of guilty, the Chief of Police shall permit the employee to present factors in mitigation prior to assessing a penalty.

VII. HEARINGS

- A. The hearing shall be held before the appropriate authority or the appropriate authority's designee. In accordance with N.J.S.A. 40A:14-148, except as otherwise provided by law, the officer, board or authority empowered to hear and determine the charge or charges made against an employee of the police department, shall have the power to subpoena witnesses and documentary evidence. The Superior Court shall have jurisdiction to enforce any such subpoena.

- B. All disciplinary hearings shall be closed to the public. However, the employee may request an open hearing. The appropriate authority or the appropriate authority's designee shall conduct a closed hearing unless a legitimate reason exists to grant the employee's request for an open hearing. The hearing date will be set on the Preliminary Notice of Disciplinary Form.
- C. The Office of Professional Standards shall be responsible for or assist the assigned supervisor or 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 Office of Professional Standards will be responsible for preparing a discovery package from the Internal Affairs file, and providing it to the principal or his or her representative.
- E. The appropriate authority or the appropriate authority's designee will fix punishments that are deemed appropriate under the circumstances in accordance with the Rules and Regulations.
- F. The appropriate authority or the appropriate authority's designee is empowered to enter a finding of sustained or not sustained, or to modify the charges as deemed necessary. The decision of the appropriate authority or the appropriate authority's designee should be in writing and should be accompanied by findings of fact for each issue in the case.
- G. A copy of the decision or order and accompanying findings and conclusions shall be delivered to the employee who was the subject of the hearing.

IX. CONFIDENTIALITY

- A. The progress of Internal Affairs investigations and all supporting materials are considered confidential information. Upon completing a case, the Office of Professional Standards will enter the disposition in the Internal Affairs record keeping system.
- B. The Montclair Township Police Department 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 Chief of Police, Office of Professional Standards and others as authorized by the Chief of Police.
- C. The information and records of an internal investigation shall only be released under the following limited circumstances:
 - 1. In the event that administrative charges have been brought against an employee, and a hearing will be held, a copy of those internal investigation reports to be used as evidence in the administrative hearing shall be provided to the employee.
 - 2. If the principal, agency or municipality has been named as a defendant 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 principal, agency or jurisdiction.

3. Upon request or at the direction of the Essex County Prosecutor or New Jersey Attorney General.
 4. Upon a court order.
- D. The Chief of Police may authorize access to a particular file or record for good cause. The request and the authorization should be in writing, and the written authorization should specify who is being granted access, to which records access is being granted, and for what time period access is permitted. The authorization should also specify any conditions, such as one in which the files may be reviewed only at the Office of Professional Standards' office and may not be removed.
- E. Agencies may receive subpoenas directing the production of internal affairs investigative records. Before responding to the subpoena, the Chief of Police should consult with the Department's legal counsel or County Prosecutor's Office to determine whether the subpoena is valid.
- F. If the release of internal affairs documents is appropriate, the agency should inventory the reports they are releasing and obtain a signed receipt.
- G. Subpoenas for Employee's Personnel/Internal Affairs Files
1. In matters that involve criminal and/or civil actions resulting from an internal affairs case, the department shall **NOT** release any information in response to the subpoena without first contacting the Assistant Prosecutor to whom the matter has been assigned by telephone and in writing. All such contact shall be noted in the internal affairs report.

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.

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. The Montclair Township Police Department shall disclose the entire internal affairs file of a law enforcement candidate to prospective law enforcement employers. Candidates with out-of-state law enforcement experience must sign waivers of confidentiality regarding their internal affairs files so that they may be reviewed by the Montclair Township Police Department, where legally permissible.
3. This disclosure requirement does not apply when the department responsible for sharing internal affairs file is unable to do so because the information is clearly subject to a non-disparagement or non-disclosure agreement. Such agreements must be followed even though they inhibit the ability of law enforcement agencies to fully evaluate candidates applying for positions of public trust, and therefore have the potential to compromise public safety. Given the public safety risks that such agreements pose, county and municipal governing entities and their counsel are strongly discouraged from entering into them.
4. The Chief of Police 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 for Local Police Departments" and shall be maintained as such. Agencies are free to retain documents exceeding the recommended retention schedule.

XI. COUNTY PROSECUTOR

- A. The Essex County Prosecutor is responsible for conducting substantive oversight to ensure that the Office of Professional Standards/Internal Affairs Unit of the Montclair Township Police Department is operating professionally and effectively.