



**NPD/POLICY & PROCEDURE  
INTERNAL AFFAIRS FUNCTION  
S.O.P. # 1.09  
PURPOSE:**

**2**

The purpose of this policy is to guide members and employees of this Department to continuously strive to provide law enforcement services that are fair, effective and impartially applied. The internal affairs function will facilitate that commitment by:

- Ensuring the highest professional standards for the law enforcement agency.
- Providing citizens with a fair and effective avenue for redress of their legitimate grievances against law enforcement officers.
- Protecting officers from false charges of misconduct or wrongdoing and provide accused officers with due process safeguards.
- Monitoring officer's compliance with Department rules and regulations, policies and procedures and ensuring officers' fitness for duty.
- Identifying problem areas in which increased training or supervision is necessary.
- Identifying and correcting unclear or inappropriate department policies/procedures.

**POLICY:**

The internal affairs function is important for the maintenance of professional conduct in a law enforcement agency. It is the policy of the Newton Police Department to accept and investigate any and all complaints of alleged officer misconduct or wrongdoing from any citizen or agency employee, including complaints made anonymously. All allegations will be investigated to their logical conclusion. Following a thorough and impartial examination of the available factual information, the case report will include a final disposition. If discipline is in order, it shall be administered according to the degree of misconduct.

It is the policy of this department that officers conducting the investigation of any allegation of misconduct must strive to conduct a thorough and objective investigation without violating the rights of the subject officer or any other law enforcement officer and show proper respect to all members of the public. Accordingly, all supervisors and any other officer who may be called upon to do an internal investigation must be thoroughly familiar with the department's internal affairs policy. The Internal Affairs Officer shall have attended internal affairs training as mandated by the NJ Division of Criminal Justice.

There is no greater threat to the mission of the police department than to lose public confidence in our ability to respond as professionals. Members of the department are expected to be motivated by a moral and professional obligation to perform their job to the best of their ability and to conduct themselves so as to merit the trust placed in them by the public. Serving as a member of the Newton Police Department requires that we adopt a professional philosophy rather than simply considering our responsibilities as an occupation. Maintaining a positive relationship between the police department and the citizens we serve facilitates the degree of cooperation that is vital to the department's ability to achieve its goals. The public must have absolute confidence in the integrity of the internal affairs process since it represents the standard for addressing allegations of employee misconduct.

All employees, especially those sworn to uphold the law, must accept as part of their office the obligation to be truthful in all investigations. Therefore, it is essential that all employees be completely truthful and forthright in all facets of the internal affairs process. To mislead or lie is to demonstrate a character flaw that

*REVISED and REISSUED January 28, 2019*

**S.O.P. # 1.09**

is inconsistent with the law enforcement calling. Additionally, lying in an internal affairs investigation will frustrate the process and quickly erode the public trust and discipline within the Department. This agency is committed to taking the necessary steps of removing from our ranks any employee who is untruthful in an internal affairs investigation. Accordingly, all employees must understand that lying in an internal affairs investigation is synonymous with forfeiting one's employment with the Department.

It is the policy of this department that officers and employees, regardless of rank, 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 municipal ordinances constitutes a violation of that oath and trust. Officers are also subject to disciplinary action for failure, either willfully or through negligence or incompetence, to perform the duties of their rank or assignment. In addition, officers may be disciplined for violation of any rule and regulation of the department or for failure to obey any lawful instruction, order or command of a superior officer or supervisor. A thorough investigation must be conducted in each case to determine if an employee is unwilling, unable or unfit to perform their assigned duties. Disciplinary action in all matters will be determined based upon the merits of each case. Misconduct occurring while off-duty or outside of the jurisdiction of the Town of Newton is also subject to disciplinary action.

It is the policy of this agency that prevention is the primary means of reducing and controlling misconduct. To that end, it is the policy of this agency to discover and correct organizational conditions, which permit the misconduct to occur. The inspectional process which is a component of the internal affairs function is an essential mechanism for evaluating the quality of the department's operations; ensuring that the department's goals are being pursued; and identifying the need for additional resources. Special emphasis is placed on recruitment, selection and training of officers and supervisors, and the analysis of misconduct complaints and their outcome. The term "Disciplined" should be viewed as being well coached through a process of instruction, counseling and consequence and not solely viewed as punishment or as a means of controlling. Discipline should not engender a strictly negative connotation, as the disciplinary process is meant to correct employee actions and conduct that tend to impede the efficient and effective operation of the department. The proper use of discipline can achieve this objective without realizing a reduction in morale.

- Training is a component of discipline that may be the desirable alternative to other discipline in situations where the actions giving rise to the initial complaint were not deemed to be an intentional violation of established department directives. Training may also be appropriate in situations where the complaint reveals a very minor or technical violation that likely requires no more than a reinforcement of existing directives to correct the employee's behavior.
- Counseling as a component of discipline is an alternative for adjudicating minor complaints that should be considered when the need to address the employee in a forthright manner clearly exists, but the greater good will likely be served by limiting the discipline to formal counseling in lieu of punitive discipline. Counseling is not appropriate for serious violations or in situations where the offending employee's behavior is part of a continuing course of problematic behavior.
- Serious violations and those committed as one in a series of repeated violations require swift and certain punitive measures in order to maintain proper discipline within the department. The Rules and Regulations set forth a schedule depicting the classes of offenses and recommended penalties for all violations charged under the rules and regulations.

I. INTERNAL AFFAIRS FUNCTION

A. The Internal Affairs Responsibility is herein established. The personnel assigned to the Internal Affairs function shall serve at the pleasure of and be directly responsible to the Chief of Police. Primarily, the duties and responsibilities associated with this function are shared by each Division Commander.

1. 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.
2. Those officers who have been assigned the authority within the internal affairs function bear with it the responsibility and obligation to discipline officers fairly and consistently.
3. The Chief of Police will not assign any personnel charged with the representation of members of the collective bargaining unit to the internal affairs function.
4. Notwithstanding any other notification protocol herein included, the Chief of Police must be immediately advised 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.
5. The internal affairs function shall be responsible for the investigation and review of all allegations of misconduct by members of this department.
  - a. Misconduct is defined as:
    - (1) Commission of a crime or an offense (Refer to the Sussex County Prosecutor's Office);
    - (2) Violation of departmental rules and regulations, policy, procedures and special orders or;
    - (3) Conduct which adversely reflects upon the officer or the department.
6. The authority to issue disciplinary action shall be as follows:

Rank	Level of Disciplinary Action Authorized
Town Manager	Termination
Chief of Police	All Minor Discipline, Major Discipline w/Approval of Town Manager
Lieutenant	Written Reprimand and Oral Reprimand
Sergeant	Written Reprimand w/Approval of Lieutenant or Chief, Oral Reprimand
Shift Supervisor	Emergency Suspension until next business day

7. The department will utilize a comprehensive centralized and secure administrative database for maintaining all records of the internal affairs function, including the **Early Warning (EW) system**. All complaints, whether investigated by an internal affairs officer or assigned to the officer's supervisor for investigation and disposition, will be recorded in this database.
  - a. To assure confidentiality, the database can be accessed only by the Police Chief and those personnel who have been assigned duties of the internal affairs function. At least every six months, personnel assigned to manage the EW system shall audit the agency's tracking system and records to assess the accuracy and efficacy of the tracking system.
  - b. The database will also be used to detect patterns and trends of employee performance before conduct develops into more serious infractions or potentially escalating risk of harm to the public, the agency, and/or the officer. This EW system will make record of and cause the review and investigation of incidents of the following performance indicators:
    - (1) Internal affairs complaints against the officer, whether initiated by another officer or by a member of the public;
    - (2) Civil actions filed against the officer;
    - (3) Criminal investigations of or criminal complaints against the officer (if EW system notification to the officer could jeopardize an ongoing criminal investigation, the County Prosecutor may in his or her discretion permit delayed notification to the officer or delayed initiation of the EW system review process);
    - (4) Any use of force by the officer that is formally determined or adjudicated (for example, by internal affairs or a grand jury) to have been excessive, unjustified, or unreasonable;
    - (5) Domestic violence investigations in which the officer is an alleged subject;
    - (6) An arrest of the officer, including on a driving under the influence charge;
    - (7) Sexual harassment claims against the officer;
    - (8) Vehicular collisions involving the officer that are formally determined to have been the fault of the officer;
    - (9) A positive drug test by the officer;
    - (10) Cases or arrests by the officer that are rejected or dismissed by a Court;
    - (11) Cases in which evidence obtained by an officer is suppressed by a Court;
    - (12) Insubordination by the Officer;
    - (13) Neglect of duty by the Officer;
    - (14) Unexcused absences by the Officer; and
    - (15) Any other indicators, as determined by the Chief of Police.
  - c. At a minimum, upon three (3) separate instances of the above performance indicators occurring within any twelve-month period, the early warning review process shall be initiated.
  - d. When the EW system process is initiated, the Operations Division Commander should (1) formally notify the subject officer, in writing; (2) conference with the subject officer and appropriate supervisory personnel; (3) develop and administer a remedial program including the appropriate remedial/corrective

actions listed below; (4) continue to monitor the subject officer for at least three months, or until the supervisor concludes that the officer's behavior has been remediated (whichever is longer); (5) document and report findings to the Chief of Police. Any statement made by the subject in connection with the EW system review process may not be used against the subject officer in any disciplinary or other proceeding.

e. Remedial/corrective action may include the following:

- (1) Training or re-training;
- (2) Counseling;
- (3) Intensive supervision;
- (4) Fitness-for-duty examination;
- (5) Employee Assistance Program (EAP) referral; and
- (6) Any other appropriate remedial or corrective action, such as disciplinary action, in accordance with internal affairs guidelines and applicable law.

f. If any officer who is or has been subject to an EW system review process applies to or accepts employment at another law enforcement agency, it is our agency's responsibility to notify the other agency of the officer's EW system review process history and outcomes. Upon request, the officer's files shall be shared.

g. Upon initiation of the EW system review process, the Chief of Police shall make a confidential written notification to the County Prosecutor of the identity of the subject officer, the nature of the triggering performance indicators and the planned remedial program. Upon completion of the EW system review process, the Chief of Police shall make a confidential written notification to the County Prosecutor of the outcome of the EW system review, including any remedial measures taken on behalf of the subject officer.

8. The inspectional services component of the internal affairs function shall be both an ongoing activity that ensures that employees are adhering to agency directives and orders as well as to provide a periodic review of the department's administrative procedures and facilities.

B. The Chief of Police is responsible for the following:

1. Implementing the internal affairs policy within the agency.
2. Reviewing internal affairs reports and recommendations for disposition that are prepared by Division Commanders and making final decisions.
3. Conducting investigations into any reports of misconduct that may be alleged against the member of the Police Department who is next in command.
4. Annually reviewing and modifying polices from Functional Areas 1 and 2 of the written directive system to ensure that they are current, lawful and in accordance with any other directives or polices issued by the County Prosecutor, Attorney General or relevant Court decisions.

- C. The Operations Division Commander is responsible for the overall management and record-keeping of the internal affairs function. The Operations Division Commander will also be responsible for the following components of the internal affairs function:
1. Initial review of any allegations of employee misconduct and entry of the information into the internal affairs administrative database.
    - a. The Operations Division Commander shall be responsible for preparing and mailing a Complaint Acknowledgment Letter to all civilian complainants.
    - b. If the misconduct alleged may involve the possibility of a criminal act on the part of the accused officer, the Chief of Police and the Sussex County Prosecutor's Office shall be notified immediately. No further action shall be taken, including the filing of charges against the officer, until directed by the Sussex County Prosecutor's Office.
  2. The Operations Division Commander is responsible for the investigation of allegations of misconduct that occurs while on-duty involving members of the Operations Division as well as investigating any allegations of misconduct that occurs involving any department employee while they are off-duty. Subsequent to the investigation, the division commander shall be responsible for recommending and/or imposing the appropriate disciplinary action.
  3. The Operations Division Commander is responsible for the entry of all information related to any disciplinary action, complaints and dispositions into the computerized administrative database.
  4. Reviewing the discharge of firearms by department personnel both on-duty and off-duty; however, firearms qualifications that are authorized through the Chief of Police are excluded.
  5. Investigation and review of Vehicle Pursuits.
  6. The Operations Division Commander shall investigate and review all Use of Force incidents.
  7. Conduct any other investigation as directed by the Chief of Police.
  8. The Operations Division Commander may conduct an internal affairs investigation on his/her own initiative upon notice to, or at the direction of the Chief of Police.
  9. The Operations Division Commander will review and either approve or disapprove any written reprimands sought to be issued by a Sergeant.
  10. The Operations Division Commander may refer investigations to the employee's supervisor for investigation and resolution.
  11. The Operations Division Commander shall have the authority to interview any member of the department and to review any records or reports of the department relative to their assignment.

12. The Operations Division Commander shall prepare quarterly reports that summarize the nature and disposition of all misconduct complaints received by the agency for submission to the Chief of Police.
  - a. Copies of the internal affairs report shall be distributed to the other Division Commanders, to all Sergeants and to a designated representative of the Collective Bargaining Unit.
  - b. Recommendations shall be made for corrective actions for any developing patterns of abuse or problems.
13. The Operations Division Commander shall prepare an annual report summarizing the types of complaints received and the dispositions of the complaints that will be forwarded to the Sussex County Prosecutors Office. The names of complainants and accused officers shall not be published in this report.
14. The Operations Division Commander shall monitor employee performance trends, enter pertinent information into the administrative database to maintain the department's early warning system and develop appropriate management and supervisory strategies to effectively deal with the emerging potential problems before formal discipline is warranted.
  - a. Remedial intervention may include training, re-training, counseling and intensive supervision.
  - b. If the actions of the officer indicate a question about the officer's fitness for duty, then the Operations Division Commander should arrange, upon the approval of the Chief of Police, for the officer to be examined for his or her fitness for duty, either physically or psychologically.
    - (1) New Jersey law mandates that all police officers are to be free from any physical, emotional, and/or mental condition(s) that might adversely affect the lawful exercise of his or her powers in the performance of their duties.
    - (2) Additionally, when an officer has experienced an injury, illness or other medical condition, a fitness for duty evaluation may be ordered prior to an officer being allowed to return to full duty; or after an officer has returned to full duty and it becomes evident to a reasonable person that the injury, illness or other medical condition is preventing the officer from performing his or her duties to their fullest capacity where the safety of the officer, other officers or the public could be at risk.
15. The Operations Division Commander will be responsible for inspection of the personnel assigned under his or her command:
  - a. To ensure that members of the Operations Division adhere to rules/regulations, policies and procedures.

- b. Annually reviewing and modifying polices from Functional Areas 3, 4 and 5 of the written directive system to ensure that they are current, lawful and in accordance with any other directives or polices issued by the County Prosecutor, Attorney General or relevant Court decisions.

D. The **Detective Bureau Supervisor** may fulfill the responsibilities listed for the Operations Division Commander in his absence. The Detective Bureau Supervisor is responsible for the following components of the internal affairs function:

1. Assist the Operations Division Commander with investigations into allegations of serious misconduct; i.e. Complex investigations or investigations alleging criminal activity in cooperation with the Sussex County Prosecutor's Office or when they have referred the case back to the department to handle administratively.
2. The Detective Bureau Supervisor will be responsible for investigating allegations of misconduct occurring while on-duty involving members of the Detective Bureau. Subsequent to the investigation, the Detective Sergeant shall be responsible for recommending and/or imposing the appropriate disciplinary action.
3. The Detective Bureau Supervisor shall be responsible for any other investigation as directed by the Chief of Police.
4. He shall have the authority to interview any member of the department and to review any records or reports of the department relative to their assignment.
5. The Detective Bureau Supervisor may conduct an internal affairs investigation on his/her own initiative upon notice to, or at the direction of the Chief of Police.
6. The Detective Bureau Supervisor will be responsible for inspection of the personnel assigned under his or her command:
  - a. To ensure that members of the Detective Bureau adhere to rules/regulations, policies and procedures.
  - b. Annually reviewing and modifying polices from Functional Areas 7 and 8 of the written directive system to ensure that they are current, lawful and in accordance with any other directives or polices issued by the County Prosecutor, Attorney General or relevant Court decisions.

E. The **Support Services Division Commander** may fulfill the responsibilities listed for the Operations Division Commander in his absence and will provide assistance to him as needed. The Support Services Division Commander is responsible for the following components of the internal affairs function:

1. The Support Services Division Commander will be responsible for investigating allegations of misconduct occurring while on-duty involving members of the Patrol squads under his supervision, all Public Safety Telecommunicators and school crossing guards. Subsequent to the investigation, the Division Commander shall be responsible for recommending and/or imposing the appropriate disciplinary action.

2. The Support Services Division Commander will be responsible for inspection of the personnel assigned under his or her command:
    - a. To ensure that members in his chain of command adhere to rules/regulations, policies and procedures.
    - b. Annually reviewing and modifying policies from functional Area 6 of the written directive system to ensure that they are current, lawful and in accordance with any other directives or policies issued by the County Prosecutor, Attorney General or relevant Court decisions.
- F. The **Patrol Sergeant** or senior **officer in charge** on duty is responsible for the following components of the internal affairs function:
1. Patrol Sergeants are responsible for the daily inspection of the personnel assigned under his or her command supervision to ensure adherence to all rules/regulations, policies and procedures.
  2. Patrol Sergeants may be assigned to further investigate minor complaints by the Operations Division Commander.
    - a. Patrol Sergeants are authorized to issue performance notices in instances of special recognition, remedial training and counseling.
    - b. Oral reprimands and written reprimands may be issued by a Sergeant to a subordinate employee on the Notice of Minor Disciplinary Action form; however written reprimands must receive prior approval from the Operations Division Commander.

## II. SPECIFIC CATEGORIES OF MISCONDUCT

- A. There are specific categories of misconduct that are subject to disciplinary action. Generally, misconduct is defined as behavior that a reasonable person would consider to be inappropriate. Any incident of inappropriate behavior may fall into one or more of the following categories.
1. **CRIMINAL ACTIVITY:** Complaint regarding an employee's involvement in illegal behavior, such as bribery, theft, perjury or narcotics violations.
  2. **EXCESSIVE FORCE:** Complaint regarding the use or threatened use of excessive force against a person.
  3. **IMPROPER or UNJUST ARREST/SEIZURE:** Complaint that the restraint of a person's liberty was improper or unjust.
  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, unlawful or otherwise in violation of established police procedures.
6. **SERIOUS DIFFERENTIAL TREATMENT or DEMEANOR:** 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 member'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, malingering or other serious violations of the Department Rules and Regulations.
8. **REPEATED MINOR RULE INFRACTIONS:** Complaint such as untidiness, tardiness, faulty driving or failure to follow procedures.

### III. ACCEPTING CITIZEN COMPLAINTS

- A. All department personnel are directed to accept reports of officer misconduct from citizens 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.
- B. If the complainant cannot file the report in person, a department representative (except in very minor complaints) shall visit the individual at his or her home, place of business or at another location in order to complete the report.
  1. Nobody who comes to the police station to make a complaint against personnel shall be turned away and told to return at another time.
- C. Complaints might also be received from other law enforcement agencies, such as neighboring municipal police agencies, the County Prosecutor or the F. B. I. In such cases, the complaint should be forwarded to the Operations Division Commander for immediate handling.
- D. If a complainant has come to make a complaint about another police agency, he/she should be referred to that agency. However, if the complainant expresses fear or concerns about making the complaint directly, he should be referred to their respective County Prosecutor.
- E. All department personnel are directed to accept reports of officer misconduct from anonymous sources. If the anonymous complainant is talking to an officer, the officer should encourage him/her to submit his complaint in person. In any case, the complaint will be accepted.
  1. In the case of an anonymous complaint, the officer accepting the complaint shall complete as much of the Internal Affairs Complaint Report Form as he/she can with the information provided.
  2. Public Safety Telecommunicators shall refer to the Citizen Complaint Intake checklist in the event that they receive a complaint about personnel.
- F. Complainants shall be referred to the appropriate Division Commander if he/she is available.

- G. If the applicable Division Commander is not immediately available, the patrol shift supervisor shall accept the complaint and complete the Internal Affairs Complaint Report Form.
  - 1. If the complaint is about the shift supervisor, then the Division Commander shall be immediately informed to arrange for taking the complaint.
- H. The Officer receiving the complaint shall:
  - 1. Give the complainant a Citizen Complainant Information Brochure after completing your name and case number on the brochure where indicated, and;
    - a. Shall explain the department's disciplinary procedures, and;
    - b. Shall advise the complainant that he or she will be kept informed of the status of the complaint, if requested, and its ultimate disposition.
  - 2. Complete the Internal Affairs Complaint Report form and have the complainant review and sign the completed form. Refusal to sign the form does not negate the complaint.
    - a. A case number (CAD) using GC call type COMPLAINT AGAINST PERSONNEL will be assigned to each complaint received.
    - b. The complainant may not receive a photocopy of the Internal Affairs Complaint Report form or any other statements that they provide.
    - c. The complainant and/or witnesses present should also be offered the opportunity to provide a written statement if they would like to provide their own account of their complaint. This shall be included with the Internal Affairs Complaint Report Form.
- I. Some very minor complaints are merely a misunderstanding on the part of the citizen regarding accepted law enforcement practices or the duties of a Police Officer.
  - 1. If the supervisor accepting the complaint can resolve it to the complainant's satisfaction through an explanation of department rules or procedures, the complaint process will be terminated. In these cases, the resolution shall be noted on the Internal Affairs Complaint Report form and forwarded to the Operations Division Commander.
  - 2. If the complainant is not satisfied with such a resolution, the complaint should be forwarded to the Operations Divisions Commander for further action.
  - 3. If a minor complaint is resolved over the telephone, it is not necessary to have the complainant sign the Internal Affairs Complaint Report form prior to forwarding the complaint to the Operations Division Commander for entry into the database.
- J. The officer receiving the complaint must gather any available evidence, record names, addresses and telephone numbers of any witnesses and attach applicable CAD printouts to the Internal Affairs Complaint Report form. If needed to adequately explain what occurred, the receiving officer can prepare an internal memorandum addressed to the Operations Division Commander detailing the information they received from the complainant. This memo can also

serve to further explain the outcome if the complaint was resolved. The GC shall not contain any further information about the nature of the complaint. This package shall be either hand-delivered or left in the mail slot for the Operations Division Commander in a sealed envelope.

- K. The officer receiving the complaint shall immediately notify the applicable Division Commander of the accused employee whenever there is an allegation of criminal conduct or other serious misconduct.

#### IV. INITIATION OF DEPARTMENTAL COMPLAINTS

- A. Any officer that is a witness to an officer's misconduct shall immediately notify their supervisor or the Operations Division Commander.
  - 1. The Operations Division Commander shall initiate an internal affairs investigation and after evaluating the circumstances may forward the matter to the subject officer's supervisor for follow-up investigation.
- B. A Supervisor who observes misconduct or becomes aware of misconduct shall notify the applicable Division Commander. The supervisor shall take action to intervene and cause the misconduct to cease and shall take the appropriate disciplinary action consistent with this policy. Any action taken shall be documented and forwarded to the Operations Division Commander.
- C. Any officer that is a witness to a civil rights violation shall cause the action to cease and immediately notify the Operations Division Commander.
  - 1. Failure to intercede by the witnessing officer(s) may result in a federal violation charge [18 U.S.C. 241.] as well as other criminal or administrative violations.

#### V. INVESTIGATION AND ADJUDICATION OF COMPLAINTS

- A. The Operations Division Commander initiating any action shall document the factual information in the internal affairs administrative database.
  - 1. If another supervising officer initiated the Internal Affairs Investigation, then a memorandum shall be prepared, put together with any supporting documentation and shall be forwarded to the Operations Division Commander for follow-up investigation and entry into the administrative database.
- B. The Operations Division Commander or the Chief of Police shall direct further investigation by the original investigating supervisor or the applicable Division Commander as deemed appropriate.
- C. In cases not involving allegations of criminal conduct, the accused officer shall be notified of the complaint once preliminary investigative data has been gathered. The Division Commander shall serve the suspect officer with the Internal Affairs Notification Form unless the nature of the investigation requires secrecy.
  - 1. Before any notification is made, prior approval must be obtained from the Police Chief.

2. The notification will contain the following:
    - a. Nature of the charge/complaint
    - b. Date and time of the alleged misconduct
    - c. Complainant/victim name
  3. The notification will be signed by the Division Commander.
- D. The Operations Division Commander or other investigating officer shall interview the complainant, all witnesses and then the accused officer, as well as review relevant reports, activity sheets and telecommunications operators forms and obtain necessary information and materials, such as:
1. Physical evidence
  2. Sworn written statements or tape-recorded interviews from all witnesses
  3. Sworn written statements or tape-recorded interviews from all parties of specialized interest, such as doctors, employers, lawyers, teachers, legal advisors, parents, etc.
  4. Investigative aids such as various reports, activity sheets, complaint cards and telecommunication operator's forms.
- E. All reports, statements and tape recordings must be submitted to the Chief of Police without unreasonable delay.
1. If an internal affairs investigation cannot be completed without unnecessary delay, approval must be obtained from the Chief of Police to extend the length of the investigation. The investigation must be completed within 30 days, with regular status reports being made to the Chief of Police.
  2. 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.
- F. Where preliminary investigative data indicates the possibility of a criminal act on the part of the accused officer, the Chief of Police, the Operations Division Commander and the Sussex County Prosecutor's Office shall be notified immediately. No further action shall be taken, including the filing of charges against the officer, until directed by the Sussex County Prosecutor's Office.
1. The Chief of Police shall forward a copy of the entire investigation file to the Sussex County Prosecutor's Office.
    - a. Accused officer's interview shall not be forwarded to the Prosecutor's Office.
  2. The Chief of Police shall be the liaison to the Prosecutor's Office.

3. The Prosecutor's Office will review the investigation report and will advise the Chief as to whether criminal charges will be pursued. If the Prosecutor's decision is to close the file, written notice shall be given to the Chief of Police. An administrative investigation will then proceed. If criminal charges are to be pursued, the Prosecutor's Office will supersede the local investigation.
4. Whenever allegations of misconduct are made against a police officer holding the rank of lieutenant or above, excluding the Chief of Police, the procedures established herein shall be followed, except that the investigating officer must be one who is senior in grade to the officer being investigated. Whenever the allegations are directed against the Chief of Police, the investigation will be conducted by the Sussex County Prosecutor's Office.
5. All investigations of officers, municipal employees or public officials that are of a criminal nature shall not be closed until a letter is received from the Prosecutor's Office indicating that the investigation has been closed.

G. Interviewing Officers/Employees who may be Witnesses:

1. The investigating officer will schedule an interview with the witness employee.
2. The officer will be made aware of the difference between a witness and the subject of the investigation.
3. Officers are compelled to answer questions and cooperate fully with the investigation and provide complete and truthful information. They may face disciplinary action from reprimand to termination for refusal to answer questions or cooperate with the investigation.
4. Officers will read and sign the Witness Acknowledgement Form.
5. If at any time the witness becomes the target suspected of misconduct, the interview shall not continue until they review and sign the Interview Advisement Form. The procedure for interviewing the subject officer shall then be followed.

H. Interviewing the subject officer:

1. The investigating officer will schedule an interview with the officer.
  - a. One person of the officer's choosing may attend the interview session.
    - (1) In investigations of criminal allegations, it may be inappropriate for another officer who is acting as a union representative to be present due to the absence of an "attorney-client privilege". However, the officer shall be given the opportunity to consult with a union representative.
    - (2) The union representative shall not interfere with the interview and shall be present only to assist the officer and may attempt to clarify the facts or suggest other employees who may have knowledge of them.

- (3) The Chief of Police or his designee, however, is free to insist he is only interested, at that time, in hearing the employee's own account of the matter under investigation.
  - (4) If the representative is disruptive or interferes, the investigating officer can discontinue the interview, documenting the reasons the interview was ended.
2. Although the Department recognizes that Sixth Amendment Right to Counsel does not extend to internal affairs investigations, an officer shall be permitted to obtain an attorney if so desired.
3. As general rule, an officer shall be allowed at least two hours to obtain/consult with counsel or other representative of their choice prior to beginning the interview.
4. Before questioning begins, the subject officer will be informed:
  - a. Of the nature of the complaint.
  - b. That prior to commencement of any questioning, the officer will read and sign the Interview Advisement Form.
    - (1) Officers are compelled to answer questions and cooperate fully with the investigation and provide complete and truthful information.
    - (2) However, if during the course of an internal investigative interview, an officer refuses to answer any questions specifically directed and narrowly related to the performance of duty and fitness for office on the grounds that he may incriminate himself, and if the department deems that in order to properly conduct its investigation it must have the answers to those specific questions, the department may then contact the county prosecutor to initiate procedures to obtain use immunity from the County Prosecutor for the answers to the questions.
    - (3) The Use Immunity Grant Advisement Form shall then be completed and signed by the officer if so authorized.
  - c. Of the name of the person in charge of the investigation, and the names of all persons who will be present during questioning.
  - d. That officers may face disciplinary action from reprimand to termination for refusal to answer questions or cooperate with the investigation.
5. Questioning sessions may be audio or video recorded.
6. If at any time during the questioning session the officer becomes a suspect in a criminal act, the officer shall be so informed, and the questioning shall end. The investigating officer will promptly notify the Chief of Police, who will refer the case to the Sussex County Prosecutor's Office.
7. The subject officer may be required to submit a written report or provide a written formal statement. The right against self-incrimination only applies to criminal offenses. The officer shall review and sign each page of the statement.

- a. The officer does not have the right to refuse to submit a report on the grounds that the report may reveal a violation of a department policy, rules or regulations that is not a criminal offense.
8. Upon completion of all possible avenues of inquiry, the Division Commander shall document the findings in the administrative database, recommend a disposition and submit the report to the Chief of Police.
  - a. **Exonerated**
    - (1) The alleged incident did occur, but the actions of the officer were justified, lawful and proper.
    - (2) The officer's behavior was consistent with agency policy, but there was a policy failure.
  - b. **Substantiated**
    - (1) The investigation disclosed sufficient evidence to clearly prove the allegation.
  - c. **Not Sustained**
    - (1) The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.
  - d. **Unfounded**
    - (1) The investigation indicated that the acts complained of did not occur; or
    - (2) There is insufficient information to conduct a meaningful investigation.
9. The Chief of Police shall review all documentation and approve the recommended disposition or recommend action to be taken.
10. Notify the officer and complainants of the outcome of the investigation at the conclusion of the internal affairs investigation.
  - a. If the allegation was not sustained or unfounded, the Operations Division Commander will notify the subject officer of the investigation (if not previously notified) and of the recommended disposition.
  - b. The complainant shall also be notified by letter and provided with a brief explanation of the outcome. If the allegation was unfounded or the officer was exonerated, this conclusion shall be defined for the complainant. If the allegation was not sustained, the letter shall provide 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 the officer was disciplined according to department procedures. The discipline imposed does not have to be specified.

11. If the complaint is substantiated and it is determined that formal charges should be proffered, the Division Commander will prepare, sign and serve charges upon the accused officer or employee.
12. The Department must prove by a preponderance of credible evidence that the employee is guilty of the misconduct cited and that the penalty sought is appropriate.
13. **MINOR DISCIPLINE**  
[Five days suspension or less, Written Reprimand, Oral Reprimand]  
The Division Commander will prepare the formal charges on the Notice of Minor Discipline and serve upon the officer charged.
  - a. A Sergeant can always issue an oral reprimand and can issue a written reprimand if approved by a Lieutenant or the Chief.
  - b. The grievance procedure may be followed if the charged officer disagrees with disciplinary action that is less than a suspension.
  - c. In cases of a suspension or surrender of leave time of five days or less, an officer may request a hearing. This request must be made in writing and made within ten days of the service of the Notice of Minor Discipline, at which time a hearing date shall be set no less than ten days or more than thirty days from the date of service of the complaint unless agreed to by both parties.
14. **MAJOR DISCIPLINE**  
[Greater than 5-day Suspension, Demotion, Termination]  
The Division Commander will prepare the formal charges on the Preliminary Notice of Disciplinary Action (Form DPF-31A). Such notice shall be prepared and served upon the officer charged in accordance with N.J.S.A. 40A:14-147 et seq.
  - a. In cases of Major Discipline, the Preliminary Notice of Disciplinary Action (Form DPF-31A) shall direct that the officer charged must request a hearing within ten days of the service of the form at which time a hearing date will be set no less than ten days nor more than thirty days from the date of service of the complaint unless agreed to by both parties.
  - b. In cases of Major Discipline, if the officer charged does not request a hearing, the Chief of Police shall permit the officer to present factors in mitigation prior to assessing a penalty.
  - c. When all the facts are obtained, the Division Commander shall ensure that the internal affairs investigation report contains the findings and the aggravating and mitigating factors of the case including:
    - (1) Nature of the offense
    - (2) The disciplinary record of the accused officer
    - (3) The need to deter the accused officer or other officers from similar conduct
    - (4) The state of the accused officer's mind at the time of the offense
    - (5) Any mitigating factors

- d. Within twenty days, the Final Notice of Disciplinary Action for (DPF-31B) shall be completed by the Division Commander and served upon the subject employee. The penalty imposed will be noted in the officer's personnel file and the administrative database. The Operations Division Commander will cause the penalty to be carried out and complete all required forms.

## VI. SUSPENSION PENDING DISPOSITION OR INVESTIGATION

- A. Any supervisor or senior officer may immediately suspend with pay an officer from duty if he/she determines that one of the following conditions exists:
  1. The employee is unfit for duty (physical or psychological); or
  2. The employee is a hazard to any person if permitted to remain on the job; or
  3. An immediate suspension is necessary to maintain safety, health, order or effective direction of public services, or
  4. The employee has been formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job.
- B. The officer imposing the immediate suspension must:
  1. Have the suspended officer report to the Chief of Police by 0800 hours on the next business day, along with the supervisor imposing the suspension.
  2. Prepare the Notice of Immediate Suspension informing the employee of why an immediate suspension is sought and the charges and general evidence in support of the charges.
    - a. 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.
  3. Immediately notify the Officer's Division Commander and the Chief of Police who will direct if the officer's police identification and duty weapon shall be confiscated pending further investigation and/or hearing.
  4. Provide the employee with sufficient opportunity to review the charges and the evidence and to respond either orally or in writing.
- C. Within five days of the suspension, the suspended employee will be served with a Preliminary Notice of Disciplinary Action (DPF-31A).
- D. Administrative Reassignment
  1. In cases involving the Use of Force or serious motor vehicle accidents which results in death or serious bodily injury, pending the outcome of the investigation, the officer shall

be reassigned to other duty at headquarters as would be appropriate unless the officer is suspended as discussed above.

2. This reassignment is subject to change by the Chief of Police.
3. In cases of an officer involved shooting and the officers' weapon is seized as evidence, the officer shall be issued another duty weapon as soon as practicable, unless the officer is suspended.

## VII. HEARING

- A. The hearing date shall not be less than 10 days nor more than 30 days from the date of service of the Notice of Disciplinary Action.
- B. The Division Commander 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.
  1. All demands for documentary and physical evidence by the defendant officer will be made in writing to the prosecutor handling the matter. If unknown by the defendant officer, the name, address and telephone number of the prosecutor will be provided to the officer at the time of the service of the Notice of Disciplinary Action.
- C. The hearing shall be held before the Town Manager.
- D. A copy of the decision or order and accompanying findings and conclusions should be delivered to the officer or employee who was the subject of the hearing and to the Chief of Police.
- E. Upon completion of the hearing, the Operations Division Commander will complete the Final Disposition Report for the employee's personnel file and all other required forms including the entry of the disposition in the file and administrative database.
- F. If the charges were sustained, the Operations Division Commander will cause the penalty to be carried out.
- G. All disciplinary action shall be in accordance with the Rules and Regulations of the department.
- H. If an officer's dismissal results from misconduct, a report with the following information will be provided to the officer:
  1. Reason for dismissal
  2. Effective date of dismissal
  3. Statement of fringe benefits status
- I. Final determination for the imposition of all discipline shall be subject to the Chief's approval.
  1. Decisions for oral reprimands shall be final at the Chief's level.
  2. Written reprimands shall be final at the Town Manager's level.

- J. Upon final disposition of the complaint, a letter shall be sent by certified mail to the complainant by the Division Commander and provided with a brief explanation of the outcome. If the allegation was unfounded or the officer was exonerated, this conclusion shall be defined for the complainant. If the allegation was not sustained, the letter shall provide 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 the officer was disciplined according to department procedures. The discipline imposed does not have to be specified.

## VIII. CRIMINAL / MOTOR VEHICLE COMPLAINTS AGAINST EMPLOYEES

- A. Any employee who has been charged with an indictable offense, drug offense or any offense under the Prevention of Domestic Violence Act must make immediate notification to the on-duty shift supervisor at police headquarters setting forth the circumstances surrounding the complaint.
  - 1. It will be the responsibility of the on-duty shift supervisor to make a prompt notification to the Operations Division Commander.
  - 2. It shall be the responsibility of the Operations Division Commander to make an immediate notification to the Sussex County Prosecutor.
  - 3. It will be the responsibility of the Operations Division Commander, in consultation with the Chief of Police, to evaluate the need for an immediate response by internal affairs personnel.
- B. Any employee who is charged with a minor offense (disorderly persons offense, petty disorderly persons offense or municipal ordinance), received a motor vehicle summons, or has been involved in (but not charged as a result of) a domestic violence incident must notify the Operations Division Commander on the next business day.
- C. Any employee contacted or questioned by a law enforcement agency concerning an unlawful act (as a suspect or witness) or a law enforcement internal affairs matter must provide notification of such contact to their supervisor via memorandum on his/her next scheduled day of work.
- D. Internal affairs shall track the proceedings of any criminal or civil matters which officers of the department are involved in as a complainant, plaintiff or defendant.

## IX. CONFIDENTIALITY

- A. The progress of internal affairs investigations and all supporting materials are considered confidential information.
  - 1. Unless otherwise directed the officer accepting the complaint shall not disclose any details of any complaint or internal investigation to any other person other than the applicable Division Commander or the Chief of Police.
  - 2. Any officer or employee who becomes aware of any information or evidence that may be relevant to an internal affairs investigation shall notify the Division Commander or Chief

of Police. The notification shall be in written memo regardless of whether the officer or employee believes that the information may already be known.

- B. Upon completing a case, the Operations Division Commander will enter the disposition in the case file and the administrative database.
- C. The contents of internal investigation case files will be retained by the Chief of Police. The files shall be clearly marked as “confidential”.
- D. Only the Chief of Police or his/her designee is empowered to release publicly the details of an internal investigation or disciplinary action. The subject officer may authorize the release of copies of formal disciplinary charges and their outcome to any third party. The subject officer shall make the request in writing.
- E. All disciplinary hearings shall be closed to the public unless the defendant officer requests an open hearing.
- F. Personnel records are separate and distinct from internal affairs investigation records. Internal affairs investigation reports shall never be placed in personnel records.
  - 1. When a complaint has a disposition of exonerated, not sustained, or unfounded, there will be no indication in the employee’s personnel file that a complaint was ever made.
  - 2. In those cases where a complaint is sustained, a copy of the Disciplinary Action Final Disposition Report will be replaced in the employee personnel file. No other part of the internal affairs investigation report shall be placed in the personnel file.

**X. 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.
  - 1. Computer discs (CD’s/DVD’s) shall be retained with the internal affairs investigation case file. All other items of evidence related to an internal affairs investigation shall be clearly identified and stored in the department’s evidence vault.
- B. With respect to radio tapes, the original tape 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. Tapes should be monitored to reveal the totality of the circumstances.
- C. Photographs
  - 1. In the event of a complaint involving excessive use of force, the following photographic documentation shall be obtained when appropriate. Whenever possible, color photography should be used.
    - a. Photographs of the complainant at the time of arrest or following the alleged incident of excessive force, any photographs that were taken prior to the alleged

incident and photographs that may have been taken several days after the incident occurred.

- b. Photographs of the subject officer in the event that the officer was a victim.
- c. A recent photo of the officer in the event a sequential photo array will be used for identification purposes. The photo array must be properly retained for possible evidentiary purposes.
- d. Photographs of the scene of the alleged incident, if necessary.

D. Physical Tests

1. Police officers who are the subjects of internal investigations 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. Refusal to comply with an order to submit to physical tests may result in further disciplinary action.
2. No person has a constitutional right or privilege to refuse to submit to an examination to obtain a record of his physical features and other identifying characteristics of his 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:
  - a. Breath sample
  - b. Blood sample
  - c. Requiring suspect to speak
  - d. Voice recordings
  - e. Participation in a suspect lineup
  - f. Handwriting samples
  - g. Hair and saliva samples
  - h. Urine Analysis
3. Generally, a person cannot be physically forced to produce this evidence or submit to such tests, although a Court order may be obtained to legally compel him to do so.
4. Refusal to comply with the order can result in a contempt of court action and may also result in a second disciplinary action for failure to comply with a lawful Court order.

E. Polygraph

1. While a police officer who is subject of an internal investigation may request a polygraph examination, the department will not influence, request or require a member or employee to take or submit to a lie detector test as a condition of employment or continued employment (N.J.S.A. 2C:40A-1).
2. An officer 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).
3. If a polygraph is used, a qualified police polygraph operator must be used.

F. Search and Seizure

1. All agency assigned storage space, desks or lockers are subject to a search and employees shall have no expectation of privacy for these areas.
2. Personal brief cases shall not be searched without a warrant.

**XI. FILE MAINTENANCE**

- A. A separate and secure internal affairs filing cabinet shall be maintained in the Chief's office. All cases involving internal affairs investigations and disciplinary action shall be maintained in separate case files under each employee's name within the Internal Affairs Filing cabinet.
1. Each investigation will be assigned an internal affairs case number from the administrative database.
  2. The file shall contain the internal affairs investigation report and any associated statements, notices, dispositions, computer discs or other documentation.
- B. During the evaluation process, the disciplinary file will be reviewed by the Operations Division Commander and if there have been no other disciplinary actions, any oral reprimands that were present for longer than six months shall be removed from the employee's file.

**XII. YEARLY REPORTS**

- A. The Operations Division Commander shall complete the County Prosecutor's Internal Affairs Report on at least a quarterly basis for that period. The report shall be submitted to the Chief of Police and the County Prosecutor and shall include the number and type of cases received and the status of investigation or charges during the reporting period. Additionally, the Chief of Police will advise the prosecutor of trends in the department, goals for the next reporting period, and outcomes from past periods.
- B. 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 report shall contain 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 names of the complainants and the subject officers shall not be published in this report.
- C. This EW system policy shall be made available to the public upon request and shall be posted on the department website. All reports created or submitted pursuant to the EW system that identify specific Officers are confidential and not subject to public disclosure.

**XIII. NOTIFICATION OF THE COUNTY PROSECUTOR**

- A. Immediate notification to the Investigative Division Commander, the Chief of Police and to the Sussex County Prosecutors Office shall take place when the following occurs whenever information is received:
1. Pertaining to allegations of criminal misconduct, criminal activity on the part of any public employee or official acting within their official capacity.

2. Pertaining to any effort on the part of a private citizen to improperly influence the actions of a public official.
  3. Use of force by an officer which results in serious bodily injury or death also requires immediate notification to the county prosecutor, and, pending a decision of the prosecutor, the agency will withhold further investigation and the filing of any criminal or administrative charges.
  4. Cases of domestic violence involving an officer, (either as alleged perpetrator or victim) require immediate notification by the officer and the investigating agency to the employing agency's internal affairs officer. In cases where the officer was the alleged perpetrator, the officer's service weapon and all other weapons that the alleged perpetrator, the officer's service weapon and all other weapons that the office may possess must be seized. If preliminary investigation indicates the possibility of a criminal act, the County Prosecutor must immediately be notified, and the agency will await further direction.
- B. The Sussex County Prosecutor's Office will evaluate the allegations and make one of the following determinations:
1. Sussex County Prosecutor's Office will assume responsibility for the active direction of the investigation, or
  2. Assist the reporting agency with an investigation, or
  3. Direct the reporting agency to conduct an investigation.
    - a. Periodically, reports relevant to the progress of that investigation will be forwarded to the Sussex County Prosecutor's Office.
    - b. Upon completion of the investigation, the investigative file will be forwarded to the Sussex County Prosecutor's Office.

**Attachments:**

1. (DPF-31A) Preliminary Notice of Disciplinary Action
2. (DPF-31B) Final Notice of Disciplinary Action
3. Notice of Minor Disciplinary Action
4. Internal Affairs Complaint Report
5. Citizen Complaint Information Brochure
6. Witness Acknowledgment Form
7. Notice of Immediate Suspension
8. Subject of Investigation – Interview Advisement Form
9. Use Immunity Grant Advisement Form
10. Final Disposition Report
11. Citizens Complaint Intake Checklist