

	WEST ORANGE POLICE DEPARTMENT WRITTEN DIRECTIVE SYSTEM	2:6
	INTERNAL AFFAIRS	
	Effective Date: 12-07-06	Supersedes: 2:6 (01-01-06)

2:6-1 PURPOSE

The purpose of this directive is to codify this agency's policy and procedures regarding the internal affairs function.

2:6-2 POLICY

- a. It is the policy of this department to accept and investigate all complaints of alleged employee misconduct or wrongdoing from any citizen including prisoners, juveniles, anonymous sources, agency employees or other sources at any time. Following a thorough and impartial examination of the available factual information, the appropriate disposition will be determined. When applicable, positive and/or negative discipline shall be administered according to the degree of misconduct.
- b. It is further the policy of this department that sworn officers and employees, regardless of rank or assignment, shall be subject to disciplinary action for violating their oath and trust. Committing an offense punishable under the laws of the United States of America, the State of New Jersey, or any county or municipal ordinances constitutes a violation of that oath and trust. Employees are also subject to disciplinary action for failure, either willfully or through negligence or incompetence, to perform the duties of their rank or assignment. In addition, employees may be disciplined for any violation of the Written Directive System or for failure to obey any lawful instruction, order, or command of a supervisor. Disciplinary action in all matters will be determined based upon the merits of each case.
- c. It is further the policy of this department that personnel conducting the investigation of any allegation of misconduct must strive to conduct a thorough and objective investigation without violating the rights of the subject employee or other employee, and show proper respect to all members of the public. Accordingly, all personnel who may be called upon to conduct an internal affairs investigation must be thoroughly familiar with this directive and the guidelines established by the Attorney General of the State of New Jersey.
- d. 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 that permit misconduct to occur. Special emphasis shall be placed on recruitment, selection and training of officers, supervisors and civilian members, community outreach, and the analysis of misconduct complaints and their outcomes.

- e. It is also the policy of this department that all personnel shall be provided with ready access to an official, agency-written directive manual that contains specific directions to conduct all aspects of police work. Categories of misconduct shall be clearly described and defined, and the disciplinary process shall be thoroughly explained in this manual.
- f. It is also the policy of this department to utilize the New Jersey Attorney General's Policy on Internal Affairs to guide personnel investigations.

2:6-3 GENERAL

- a. This agency is committed to providing policing services that are fair, effective, and impartially applied. Toward that end, employees of all ranks and assignments are held to the highest standards of official conduct and are demanded to respect the rights of all citizens and co-workers. Employees' adherence to these standards, motivated by an ethical and professional obligation to perform their job to the best of their ability, is the ultimate objective of this agency.
- b. The effectiveness of this agency is dependent upon public approval and acceptance of police authority. This department must be responsive to the community by providing formal procedures for the processing of complaints from the public regarding individual employee and agency performance.
- c. The overall goals of the Internal Affairs function are to ensure the public trust and improve agency performance through specific and general deterrence to misconduct.
- d. Positive and negative disciplines are not necessarily incompatible. The term progressive discipline does not infer that all discipline begins with counseling. The level of discipline applied will be based on the facts and circumstances of each case, including the seriousness of the misconduct and the employee's disciplinary history.
- e. For purposes of this directive, the term "complaint" shall be liberally construed to include allegations of employee conduct that may be unconstitutional, unlawful, inappropriate, or a possible violation of this agency's written directives.
- f. The Chief of Police shall be notified of all complaints made against the agency and/or its employees. The Internal Affairs Commander is responsible for making the notification by the next business day. The Chief shall be immediately notified in the following instances:
 - When the complaint alleges criminal activity on the part of an employee
 - When the complaint has the potential to disrupt the operations of the agency
 - When the complaint may result in immediate suspension of an employee
 - When the complaint has the potential for media attention

PROCEDURES**a. The Internal Affairs Unit:**

1. The Chief of Police shall select the internal affairs unit staff members. Personnel assigned to the internal affairs unit shall serve at the pleasure of and report directly to the Chief of Police, or designee, through their own chain of command.
2. The goal of the unit 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.
3. The internal affairs unit is responsible for the investigation and review of all allegations of misconduct by members of this department. Misconduct should be liberally construed to include:
 - Commission of a crime or offense; or
 - Violation of department directives or policies; or
 - Conduct that adversely reflects upon the officer or the department.
4. In addition to investigations concerning allegations of misconduct, internal affairs shall be responsible for the coordination of investigations involving the discharge of firearms by agency personnel.
5. Internal affairs shall be responsible for the administration of urine testing as delineated in Directive 1:11.
6. Internal affairs shall be responsible for any other investigations as directed by the Chief of Police, or designee.
7. Internal affairs staff members may conduct internal affairs investigations on their own initiative, upon notice to, or at the direction of the Chief of Police or designee.
8. Internal affairs staff members may refer investigations to the employee's supervisor for action, including conclusions and recommendations.
9. Internal affairs staff members, including those temporarily assigned to the I.A. function shall have the authority to interview any member of this agency, and to review any record or report of the department relative to their assignment. Requests from I.A. personnel, in furtherance of their duties and responsibilities, shall be given full cooperation and compliance as though the requests come directly from the Chief of Police.
10. The Internal Affairs Unit shall maintain a comprehensive central file on all complaints received by this department whether investigated by I.A. or assigned to the employee's supervisor(s) for investigation and disposition. This central file shall be accessible only to unit personnel and the Chief of Police. Other personnel may be granted access based upon a specific need,

such as the Deputy Chief of Police in the Chief's absence. Files will be maintained in a securely locked filing cabinet.

11. Computers used to maintain internal affairs records of any kind must be protected with special security measures.
12. The Internal Affairs Commander shall prepare monthly reports that summarize the nature and disposition of all personnel complaints received by the agency and submit it to the Chief of Police.
13. Copies of these reports shall be distributed to all command personnel, the Director, the Essex County Prosecutor, or as required by law.
14. An annual report summarizing the types of complaints received and the dispositions of the complaints should be made available to any employee or member of the public, upon request. The names of the complainants and the subject employees shall not be published in the report.

b. Accepting Reports Alleging Employee Misconduct

1. All department personnel are directed to accept reports of employee misconduct from all persons who wish to file a complaint regardless of the hour or day of the week. Citizens are to be encouraged to submit their complaints in person as soon after the incident as possible. If the complainant cannot file the report in person, an agency representative preferably a member of the Internal Affairs Unit shall visit the complainant at their home, place of business, or at another location in order to complete the report, if feasible.
2. Complainants shall be referred to the Internal Affairs Unit if an I.A. Officer is immediately available.
3. If an I.A. Officer is not immediately available, all supervisory personnel are directed to accept the report of misconduct. If either an I.A. Officer or supervisor is unavailable, any employee shall accept the complaint.
4. The officer receiving the complaint will:
 - i. Provide the person making the complaint with the internal affairs brochure that explains the agency's internal affairs procedures.
 - ii. Advise the complainant that they will be kept informed of the status of the complaint and its ultimate disposition.
 - iii. Complete the Internal Affairs Intake Form according to the instructions provided. (See attached)
 - iv. Have the complainant sign the completed form. If the complainant will not sign the form, the officer receiving the complaint will so note that fact. However, the failure of a citizen to sign a complaint will in no way preclude the investigation of the allegations.

5. All personnel are directed to accept reports of employee misconduct from anonymous sources. If the anonymous complainant is talking to an officer, the officer should encourage them to submit the complaint in person. In any case, the complaint will be accepted. As much information as possible should be placed on the Internal Affairs Report form.
6. Complaints shall be handled as follows:
 - i. All complaints will be forwarded to the Internal Affairs Unit for screening and entry into the record keeping system.
 - ii. Complaints of demeanor and minor rule infractions will usually be forwarded to the subject employee's supervisor.
 - iii. All other complaints shall be retained by the Internal Affairs Unit, including complaints of:
 - Criminal activity;
 - Excessive force;
 - Improper arrest;
 - Improper entry;
 - Improper search;
 - Differential treatment;
 - Serious rule infractions;
 - Repeated minor rule infractions.
7. The Internal Affairs Unit shall notify the complainant in writing that the complaint was received. A copy of the written notification shall be part of the IA file. The written notification shall include any other pertinent information to proceed with the investigation, if warranted.
8. The subject employee shall be notified in writing of the complaint as soon as possible, unless the nature of the investigation requires secrecy.

c. Suspension Pending Disposition or Investigation

1. The Chief of Police, Division or Bureau Commanders, or supervisors may immediately suspend an employee from duty if they determine that one of the following conditions exists:
 - i. The employee is unfit for duty;
 - ii. The employee is a hazard to any person if permitted to remain on the job;
 - iii. An immediate suspension is necessary to maintain safety, health, order or effective direction of public services;
 - iv. The employee has been formally charged with a 1st, 2nd, or 3rd degree crime;
 - v. The employee has been formally charged with a 1st, 2nd, 3rd, or 4th degree crime while on-duty or the criminal act related to their employment.

2. The supervisor imposing the immediate suspension must conduct a Loudermill hearing that includes the following:
 - i. Advise the employee in writing of why an immediate suspension is sought and the charges and general evidence in support of the charges
 - 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.
 - ii. Provide the employee with sufficient opportunity to review the charges and the evidence to respond either orally or in writing.
 - iii. Advise their immediate supervisor in writing of the suspension and the facts and circumstances requiring the suspension.
3. Within five days of the suspension, the department must complete and file a Preliminary Notice of Disciplinary Action against the suspended employee.

d. Investigation and Adjudication of Minor Complaints

1. Complaints of demeanor and minor rule infractions shall normally be forwarded to the subject employee's commanding officer. The commanding officer shall cause an investigation into the allegation of misconduct. Investigations shall ordinarily be completed within 30 days after being received by the commanding officer. Requests for extensions shall be forwarded to the Internal Affairs Commander for consideration. All requests and replies must be in writing.
2. The investigating officer shall interview the complainant, all witnesses and the subject employee, as well as review relevant reports, activity sheets, audio/video tapes, or dispatcher forms. The investigating officer shall then prepare a report summarizing the matter, indicating the appropriate disposition. Dispositions include:
 - i. Exonerated. The alleged incident did occur, but the actions of the officer were justified, legal, and proper.
 - ii. Sustained. The investigation disclosed sufficient evidence to prove the allegation, and the actions of the officer violated provisions of rule(s) and regulation(s) or agency procedure(s).
 - iii. Not Sustained. The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.
 - iv. Unfounded. The alleged incident did not occur.
 - v. Administratively Closed. Examples include situations when a complainant voluntarily requests that a complaint be withdrawn or does not cooperate in the investigation and their cooperation is necessary. (Note: Investigations may still proceed without complainant cooperation.)
3. If the investigating officer determines that the disposition of the complaint is unfounded, not sustained, or exonerated, the investigative report is to be forwarded to Internal Affairs for review, and entry into the index file and filing.

4. The subject employee shall be notified in writing of the outcome of the investigation.
5. Complainants shall be kept advised of the case status by the Internal Affairs Commander. Protracted investigations shall require notification every 90 days. These notifications may be telephonic or by letter, but telephone contact shall be so noted in the case file. Upon final disposition of the complaint, the Chief of Police shall send a letter to the complainant explaining the outcome of the investigation. It is not necessary to specify the discipline imposed, if any.
6. Initiation of disciplinary action for sustained minor complaints
 - i. The supervisor issuing the performance notice, oral reprimand or written reprimand shall complete the appropriate disciplinary document.
 - ii. The employee shall be advised of the discipline and provided a copy of the disciplinary document.
 - iii. The supervisor will forward copies of the disciplinary document to the Chief of Police for review, and the Internal Affairs Unit for filing.
 - iv. A copy of the disciplinary document will be placed in the employee's personnel file.
 - v. Retention of oral reprimands or performance notices is as follows:
 - Six months after the date of approval, the disciplinary report shall be removed from the personnel file and destroyed, provided no other breach of discipline has occurred.
 - The subject employee shall notify the Chief's Office in writing that the oral reprimand or performance notice should be purged.
 - vi. Retention of written reprimands is as follows:
 - Written reprimands will remain permanently in the employee's personnel file.

e. Investigation and Adjudication of Serious Complaints

1. All serious complaints shall be investigated by the Internal Affairs Unit, including complaints of:
 - Criminal activity;
 - Excessive force;
 - Improper arrest;
 - Improper entry;
 - Improper search;
 - Differential treatment;
 - Serious rule infractions;

- Repeated minor rule infractions.
2. Where preliminary investigative data indicates the possibility of a criminal act on the part of the subject employee, or the investigation involves the use of force by an officer that results in serious bodily injury or death, or involves the use of a firearm by an officer that results in injury or death, the appropriate County Prosecutor shall be immediately notified. No further action shall be taken, including the filing of charges against the employee, until directed by the County Prosecutor.
 3. Once approved by the Prosecutor, the Internal Affairs Investigator shall interview the complainant, all witnesses, and the subject employee, as well as review relevant reports and records, and obtain relevant information and materials. Investigations should ordinarily be completed within 90 days following receipt. Complex investigations may require more time. Requests for extensions shall be documented and forwarded to the Internal Affairs Commander preferably by email or memorandum. The Internal Affairs Commander may grant extensions in 30 day increments.
 4. Interviewing the employee:
 - i. Depending upon the circumstances, employees being interviewed fall into four general categories:
 - Employee is the subject of the investigation-criminal matter;
 - Employee is a witness in the investigation-criminal matter;
 - Employee is the subject of the investigation-administrative matter;
 - Employee is a witness in the investigation-administrative matter.
 - ii. The Internal Affairs Investigator shall schedule an interview with the employee. Interviews should take place at the Internal Affairs office or at a reasonable and appropriate location designated by the investigator. The subject employee's supervisor should be made aware of the time and place of the interview so the employee's whereabouts are known. Interviews shall be conducted at a reasonable hour when the employee is on duty, unless the seriousness of the matter requires otherwise. The session must be of reasonable duration, taking into consideration the complexity and subject matter of the investigation. The employee must be allowed time for meal breaks and to attend to personal physical necessities.
 - iii. If there is a potential for discipline, one person of the employee's choosing may attend the interview. This option should be offered to the employee or may be requested by the employee. While the 6th Amendment right to counsel does not extend to administrative investigations, an employee shall be permitted to choose an attorney as their representative if desired.

- In investigations of criminal allegations, it is not appropriate for a union representative to be present. However, the employee shall be given the opportunity to consult with a union representative.
 - iv. Before questioning begins, inform the subject employee of
 - The nature of the complaint;
 - The name of the person in charge of the interview, and names of all persons who will be present during the interview;
 - Whether the employee is being interviewed as a subject of the investigation or as a witness;
 - Whether the investigation is criminal in nature or administrative.
 - v. If the matter under investigation involves an administrative allegation, the subject employee will be advised of their duties and obligations to answer using the Administrative Advisement Form. If the employee refuses to answer questions based upon their right against self-incrimination, the Internal Affairs Investigator shall stop the interview and notify the Prosecutor's Office and follow procedures pursuant to the Garrity Decision.
 - vi. If the matter under investigation involved a possible criminal violation, the Internal Affairs Investigator shall consult with the County Prosecutor. Miranda warnings are required in criminal investigations.
 - vii. Questioning sessions may be audio or video recorded. A transcript or copy of the recording shall be made available to the employee, if applicable, at the appropriate stage of a criminal or disciplinary proceeding.
 - viii. If the subject employee wishes to make a recording of the interview, they may do so, but must inform the Internal Affairs Investigator beforehand. A copy of the recording shall be made available to the department upon request, at the agency's expense.
 - ix. 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 County Prosecutor.
 - x. Matters referred to the County Prosecutor shall still be under the supervision of the Internal Affairs Unit.
- 5. Upon completion of all possible avenues of inquiry, the Internal Affairs Investigator shall complete the following reports:
 - i. Investigative report: This is the objective report of all of the investigative activity, including all of the information obtained during the course of the investigation.

- ii. Summary report: This report, in memorandum format, will summarize the matter and will provide recommended dispositions for each allegation. See 2:6-4d(2)
6. Forward the completed reports through the Internal Affairs Commander to the Chief of Police.
7. The Chief of Police, upon review of the report, supporting documentation, and information gathered during any supplemental investigation, shall direct whatever action is deemed appropriate.
8. Upon completion of an investigation with a finding of exonerated, not sustained, or unfounded, the Chief of Police shall notify the subject employee in writing of the disposition without undue delay.
9. If the complaint is sustained and it is determined that formal charges should be preferred, the Chief of Police shall direct Internal Affairs to prepare the Preliminary Notice of Disciplinary Action and have it served upon the subject employee. The Chief of Police will sign and file these charges.
10. The Preliminary Notice of Disciplinary Action shall direct that the employee charged must enter a plea of guilty or not guilty, in writing, on or before the date set forth in the notice for entry of plea. The date will be listed on the notice and must provide a reasonable time, at least 5 days after the date of service of the charges to enter a plea and request a hearing, if applicable.
11. If the employee charged enters a plea of guilty, the Chief of Police shall permit the employee to present factors in mitigation prior to assessing a penalty.
12. Conclusion of fact and the penalty imposed will be noted in the employee's personnel file after he or she has been given an opportunity to read and sign it. Internal Affairs will cause the penalty to be carried out and complete all required forms. Note: the Final Notice of Disciplinary Action must be filed within 20 days of disposition.

f. Hearing

1. The hearing date will be set on the Preliminary Notice of Disciplinary Action in accordance with NJSA 40A: 14-147.
2. Internal Affairs 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.
3. In the event of a hearing, Internal Affairs will be responsible for preparing a discovery package from the Internal Affairs file, and providing it to the Municipal Attorney who will then forward it to subject employee or their representative.

4. The hearing shall be held before the appropriate authority or designee.
5. All disciplinary hearings shall be closed to the public unless the defendant employee requests an open hearing.
6. The hearing authority is empowered to enter a finding of guilty or not guilty, or to modify the charges as deemed necessary. The decision of the hearing authority should be in writing and should be accompanied by findings of fact for each issue or charge in the case.
7. The hearing authority will fix any of the following punishments that are deemed appropriate under the circumstances (Reference NJAC 4A: 2-2.2, NJAC 4A: 2-2.4, NJAC 4A: 2-3.1, and NJSA 40A: 14-147).
 - i. Counseling;
 - ii. Oral reprimand or performance notice;
 - iii. Written reprimand;
 - iv. Monetary fine (*only when suspension would be detrimental to public safety and agreed upon by the employee, see NJSA 11A: 2-20*)
 - v. Transfer/reassignment;
 - vi. Suspension without pay;
 - vii. Loss of promotion opportunity;
 - viii. Demotion;
 - ix. Termination.
8. A copy of the decision or order and accompanying findings and conclusions shall be delivered to the subject employee and the Chief of Police.
9. Upon completion of the hearing, Internal Affairs will complete all required forms including the entry of the disposition in the index file.
10. If the charges were sustained, Internal Affairs will cause the penalty to be carried out. The report shall be permanently placed in the employee's personnel file.

g. Confidentiality

1. The nature and source of internal allegations, progress of internal affairs investigations and all supporting materials are considered confidential information.
2. Upon completing a case, Internal Affairs will enter the disposition in the index file.
3. The contents of internal affairs case files will be retained with the Chief of Police. The files shall be clearly marked as confidential.

4. The information and records of an internal investigation shall only be released under the following limited circumstances:
 - 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 subject employee as directed by 2:6-4f(3)
 - In the event that the subject employee, agency or governing jurisdiction have been named as defendants in a lawsuit arising out of the specific incident covered by an internal investigation, a copy of the internal investigation reports may be released to the attorney representing the subject employee, agency or jurisdiction.
 - Upon request or at the direction of the County Prosecutor or the Attorney General.
 - Upon court order.
 - The Chief of Police may authorize access to a particular file or record for good cause. The request and 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 granted. The authorization should also specify any conditions for access or release, such as one in which the files may be reviewed only at the internal affairs office and may not be removed.
 - Prior to responding to any subpoena directing the production of internal affairs investigative records, the Chief of Police or internal affairs investigator should consult with the law department to determine whether the subpoena is valid and reasonable. Challenges to any subpoena must be filed in the appropriate court having jurisdiction.
 - If the release of internal affairs documents is appropriate, the Chief of Police or internal affairs investigator should inventory the reports being released and obtain a signed receipt.
 - The subject employee and the PBA or SOA (whichever is appropriate) should be notified of the release of internal affairs documents, unless prohibited by law, court order, the Attorney General, or Prosecutor.

2:6-5 SUPPLEMENTAL

- a. It is well settled that only the Attorney General, the Prosecutor, or their deputies and assistants may grant use immunity in internal affairs matters. Officers cannot and shall not grant themselves use immunity.
- b. Personnel are prohibited from including what is referred to as a "Garrity Preamble" on any reports required by this agency.
- c. The New Jersey Attorney General's Internal Affairs Guidelines, Appendix J, is the only acceptable Garrity Warning that can be used, and only upon granting of use immunity by the appropriate Prosecutor or Attorney General representative.