

VOLUME: 1

SUBJECT:

EFFECTIVE DATE: December 16, 2013

REVISION DATE : June 1, 2018

BY THE ORDER OF:

Mark Hafner

Chief of Police

SUPERSEDES ALL OTHER ORDERS:

Foreword - This Directive is intended for internal Departmental use only; it has no application to any criminal or civil proceeding. As an internal operations document, the Directive should not in any way be construed as creating substantive legal rights, setting higher legal standards of safety or care, or setting standards of police legal liability for the benefit of litigants who pursue police officers in courts. This Directive has not been promulgated to be a litigation measuring stick for police conduct. By itself, an officer's violation of any provision contained herein serves only as the basis for Departmental administrative sanctions.

**A. PURPOSE**

The purpose of this Written Directive is to define and establish the responsibilities and procedures for the Internal Affairs function of the Keyport Police Department, and to improve the quality of the law enforcement services it provides. Citizen confidence in the integrity of the law enforcement agency increases through the establishment of meaningful and effective complaint procedures. This confidence engenders community support for the law enforcement agency. Improving the relationship between the officers and the citizens they serve facilitates cooperation vital to the department's ability to achieve its goals. An effective disciplinary framework also permits law enforcement officials to monitor officers' compliance with department policies and procedures. Adherence to established policies and procedures assists officers in meeting department objectives while a monitoring system permits managers to identify problem areas requiring increased training or direction. Finally, this Directive will ensure fairness and due process protection to citizens and officers alike in the handling of complaints against this Department and our Officers.

**B. POLICY**

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CHAPTER: 3

INTERNAL AFFAIRS

REFERENCE(S):

NJ AG Guidelines-Internal Affairs Policy

KPD Early Warning Written Directive

KPD NO. OF PAGES: 24

Written Directive

It is the policy of the Keyport Police Department to accept and investigate all complaints of alleged officer misconduct or wrongdoing from any citizen, employee, or any other source, including anonymous sources. Following a thorough and impartial examination of the available factual information, the officer shall be either exonerated or held responsible for the alleged misconduct. Discipline shall be administered according to the degree of misconduct.

The Keyport Police Department is committed to providing law enforcement services that are fair, effective, and impartially applied. Officers are held to the highest ethical standards of official conduct and are expected to respect the rights of all citizens. Officers' adherence to these standards, motivated by a moral and professional obligation to perform their job to the best of their ability, is the ultimate objective of the Keyport Police Department.

The effectiveness of a law enforcement agency is dependent upon public approval and acceptance of law enforcement authority. This Department must be responsible to the community by providing formal procedures for the processing of complaints from the public regarding individual officer performance. The internal affairs process shall also be used to identify and correct unclear or inappropriate agency procedures. In addition, it will highlight organization conditions that may contribute to any misconduct, such as poor recruitment and selection procedures or inadequate training and supervision of officers. It is the policy of the Keyport Police Department that officers conducting the investigation of any allegation of misconduct shall 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 called upon to do an internal investigation must be familiar with the Department's Internal Affairs Written Directive.

Prevention is the primary means of reducing and controlling misconduct. To that end, it is the policy of the Keyport Police Department to discover and correct organizational conditions which permit misconduct to occur. Special emphasis is placed on recruitment, selection and training of officers and supervisors, community outreach, and the analysis of misconduct complaints and their outcome.

### **C. PROCEDURE**

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 any other law or ordinance 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 a lawful instruction, order, or command of a superior officer or supervisor. Disciplinary action in all matters will be determined based upon the merits of each case.

In order for the Keyport Police Department to be able to effectively carry out its mission it must have the public's trust and confidence. For this reason and in consideration of the awesome authority that a police department has over its citizens, the ability of any such agency to effectively investigate the conduct of its employees is of critical importance. 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 additionally, in lieu of discipline, counseling, retraining, enhanced supervision, oral reprimands and performance notices can be used as instructional or remedial devices to address deficiencies or inadequate performance.

3. Critical Performance Standards: The Attorney General of NJ has identified key performance standards related to Internal Affairs and as such the foregoing

Directive will comply with the following:

- a. The Department must establish a written Internal Affairs Written Directive
- b. The Department must accept reports of officer misconduct from any person, including anonymous sources, at any time.
- c. Where a preliminary investigation reveals the possibility of a criminal act on the part of the subject officer, the county prosecutor must be notified immediately. No further action should be taken, including but not limited to the filing of charges or interviewing the subject officer, until directed by the county prosecutor.
- d. The Department must immediately notify the county prosecutor of any use of force by an officer that results in death or serious bodily injury.
- e. The Department must thoroughly and objectively investigate all allegations against its officers.
- f. The Department must notify its officers of complaints and their outcomes.
- g. The Department must notify complainants of the outcome of their complaint.
- h. The Department must establish and maintain an internal affairs records system, and additionally, must establish a protocol for monitoring and tracking the conduct of all officers.
- i. The Department must submit periodic reports to the county prosecutor summarizing the allegations received and the investigations concluded for that period.
- j. The Department must periodically release reports to the public summarizing the allegations received and investigations concluded for that period. These reports shall not contain the identities of the officers or complainants. In addition, the Department shall periodically release a brief synopsis of all complaints where a fine or suspension of ten days or more was assessed to a member of the agency. This synopsis shall not contain the identities of the officers or complainants.
- k. The Department shall ensure that officers assigned to the internal affairs function complete training as mandated by the Division of Criminal Justice.

#### 4. Prevention of Misconduct

a. Prevention is the primary means of reducing and controlling inappropriate behavior and misconduct. The Department makes every effort to eliminate the organizational conditions which may foster, permit, or encourage inappropriate behavior by employees. Special emphasis is placed in Recruitment and Selection, Training, Supervision, Inspections, and Community Outreach.

b. Regarding Recruitment and Selection, appointing only the highest quality individuals to serve as Holmdel officers is a priority for the Department. As such, the Department conducts an exhaustive selection process to include; written tests, psychological tests, background investigations, and individual interviews to identify those best suited for law enforcement employment.

#### 5. Responsibility for Discipline

a. The responsibility for discipline requires the Chief of Police to delegate responsibility directly to individual units and supervisors within the Department.

b. Every supervisor must be familiar with the agency's disciplinary process, and must also understand how to implement specific disciplinary procedures when called upon to deal with inappropriate behavior or misconduct. Supervisors not following these procedures are avoiding his or her responsibility, are not conforming to investigations, the subject officer may choose an attorney as their representative. Nonetheless, the attorney or other chosen representative cannot interfere with the interview. If the representative is disruptive or interferes, the investigator at his discretion may discontinue the interview documenting the reasons the interview was ended.

#### 6. Administrative Investigation: Officer is Witness

a. When interviewing a law enforcement officer as a witness, the Internal Affairs Investigator must make the subject officer aware of the differences between a witness and a subject in an administrative investigation. In addition, the officer shall be made aware by the Internal Affairs Investigator that they are not the subject of an administrative investigation. (See AG IA Policy Appendix G).

b. Officers who are witnesses have an obligation to cooperate. They must truthfully answer questions that are narrowly and directly related to the performance of their

duty. Performance of duty includes actions, observations, knowledge, or any other factual information whether it concerns their own performance of duty or that of other officers. If the officer feels his or her answers would incriminate he or she in a criminal matter, the officer must assert his or her Miranda rights.

c. If the officer asserts their Miranda Rights the investigator will cease the interview and confer with (county prosecutor for the best course of action.)

#### 7. Interview Procedures

a. Interviews should take place in the Internal Affairs Investigator's office or some similarly appropriate place.

b. In the case of potential criminal conduct interviews of subject officers, they shall be recorded consistent with Attorney General Directive 2006-2.

c. With respect to serious disciplinary infractions, the Department shall either audio or video record the interview. If that is not feasible, a stenographic record shall be made.

d. Questions asked during an internal investigation must be narrowly and directly related to the performance of their duties and the ongoing investigation. Officers cannot be compelled to answer questions having nothing to do with their performance as law enforcement officers, questions that do not implicate a rule or regulation violation or questions unrelated to the investigation.

e. At the conclusion of all interviews the Internal Affairs Investigator shall review the information obtained from the officer in question to ensure the record is accurate and to prevent any misunderstandings and controversies during a later hearing or trial.

#### L. REQUIREMENT : INTERNAL AFFAIRS RECORDS

1. Requirement Defined: The Department must establish and maintain an internal affairs record system consisting of, at least, an internal affairs index and a filing system for all documents and records. Access to these records shall be restricted.

2. A separate Internal Affairs file system shall be maintained in a secure file cabinet under the strict control of the Chief of Police and Internal Affairs Supervisor. Access shall be

restricted to those approved by the Chief of Police and who possess a legitimate need related to Department business.

a. Physical security measures shall be taken to ensure Internal Affairs files are only accessible to authorized individuals. Any Internal Affairs files placed on the Departments computer server shall be protected by both a firewall and passwords thereby limiting unauthorized or inadvertent access by unauthorized individuals.

3. The filing system shall contain all investigative files resulting from Internal Affairs complaints and original copies of the following reports:

a. Vehicular Pursuit reports.

b. Motor Vehicle Accident reports involving Department Vehicles.

c. Use of Force reports.

d. Firearms Discharge reports.

4. Internal Affairs investigation files shall consist of the date the incident occurred, or if that date is not known, the date the incident was reported.

a. For example, if we know the IA incident occurred on March 3rd, 2009, the case will be numbered, "IA2009-0303".

5. An Internal Affairs Index File shall be maintained as a record control device. It will serve as an inventory of Internal Affairs case files and provide an overview of case status to authorized personnel. An index card file or computerized database shall be used.

6. All Internal Affairs complaints shall be recorded in the aforementioned index. Entries shall include the following basic information:

a. Subject officer/employee

b. Allegations

c. Complainant information

d. Date received

e. Investigator assigned

7. Upon completing a case, the Internal Affairs Investigator will be responsible for submitting a written investigation report which recounts all of the facts of the case, a case summary, and a conclusion for each allegation as well as a recommendation for

further action.

a. The Internal Affairs Investigator is also responsible entering the disposition into the index file and notifying the complainant and subject officer of the disposition.

b. The investigator shall provide a conclusion of fact for each allegation that shall be recorded as exonerated, sustained, not sustained, or unfounded.

c. If the conduct was found to be improper, the report must cite the Department rule, regulation, S.O.P. which was violated. Additionally, any aggravating or mitigating factors surrounding the situation shall be included, such as, unclear Directives, inadequate training, or lack of supervision etc.

8. Personnel records are separate and distinct from Internal Affairs investigation files. Internal Affairs investigation reports shall never be placed in personnel files/records.

9. When a complaint has a disposition of exonerated, not sustained, or unfounded, there shall be no indication in the employee's personnel file that a complaint was ever made.

10. When a complaint is sustained and discipline imposed, the only items to be placed in the employee's personnel file are a copy of the Preliminary Notice of Disciplinary Action and a copy of the Final Notice of Disciplinary Action.

11. Investigative records created during an Internal Affairs investigation are included in the Records Retention and Disposition Schedule for Local Police Departments issued by the New Jersey Division of Archives and Record Management.

a. Files concerning a criminal homicide must be permanently maintained

b. Files involving a criminal matter that resulted in the arrest of the subject officer must be maintained for 75 years.

c. All other criminal or administrative Internal Affairs investigative files shall be maintained for five years after the subject officer's retirement.

12. Confidentiality

a. The progress of Internal Affairs investigations and all supporting materials are considered confidential information. All Department employees are required to keep all aspects of any Internal Affairs case and/or investigation in strict confidence, whether involved in the investigation OR NOT. This shall be construed



to prohibit any employee from revealing any information whatsoever, including but not limited to:

- An employee's participation in an Internal Affairs review;
- The existence of an Internal Affairs investigation;
- The subject matter of an Internal Affairs investigation; The target of an Internal Affairs investigation;
- The identities of complainants and/or witnesses; and
- Any other information related to an Internal Affairs investigation.

b. The contents of internal investigation case files will be retained in the Internal Affairs Office. The files shall be clearly marked as confidential. The information and records of an internal investigation shall only be released under the following circumstances:

☐ In the event administrative charges have been brought against an officer, 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 officer and the hearing officer in advance of the hearing.

☐ In the event that the subject officer, Department, or Township has been named as a defendant in a lawsuit arising out of the specific incident covered by an internal investigation, a copy of the internal investigation reports may be released to the attorney representing the subject officer, Department, or Township.

☐ Upon a request or at the direction of the County Prosecutor or Attorney General.

☐ Upon a court order.

c. Only the Chief of Police, or his designee, is empowered to release publicly the details of an internal investigation or disciplinary action.

d. If the release of internal affairs documents is appropriate, The Internal Affairs Investigator subsequent to consulting with the Chief of Police shall release said reports and obtain a signed release indicating the documents released, the name of the person receiving the reports, and the date and time of the release.

## M. REQUIREMENT 9: SUMMARY REPORTS TO COUNTY PROSECUTOR

1. Requirement: The Department must submit to the county prosecutor a report summarizing its internal affairs activity on a form established by the county prosecutor for that purpose,

2. The Department shall report internal affairs activity to the County Prosecutor on the form provided by the county Prosecutor and according to the method specified by the County Prosecutor.

## 3. Honesty

a. Honesty is an essential job function for every police officer in New Jersey. Police officers who are not committed to the truth, and who cannot convey facts and observations in an impartial manner, and whose credibility can be impeached in a court of law cannot advance the interests of the State of New Jersey in criminal matters. In addition, defendants in criminal matters may be entitled to certain evidence in the possession of the prosecutor concerning the credibility of prosecution witnesses including police officers. Prosecutors are considered to be in possession of such evidence when information concerning the honesty of individual officers is created and maintained by law enforcement agencies. Furthermore, prosecutors may be required to provide such evidence to the court. Therefore, it is imperative that the internal Affairs Investigator assist prosecutors with their legal duty to review, and, if necessary, disclose evidence that may impact the credibility of police officers. Thus, the following matters shall be reported to the county prosecutor by the Department's Internal Affairs Investigator so that he or she may evaluate the relevance of the material:

☐ A finding that a police officer has filed a false report or submitted a false certification in any criminal, administrative, employment, financial, or insurance matter in his or her professional life.

☐ A pending court complaint or conviction for any criminal, disorderly persons, petty disorderly persons, municipal ordinance, or driving while intoxicated matter.

- ☐ A finding that undermines or contradicts a police officer's educational achievements or qualifications as an expert witness.
- ☐ A finding of fact by a judicial authority or administrative tribunal that is known to the Department which concludes that a police officer did not tell the truth in a matter.
- ☐ A sustained finding that a police officer intentionally mishandled or destroyed evidence, and;
- ☐ A sustained finding that a police officer is biased against a particular gender or ethnic group.

#### N. REQUIREMENT 10: REPORTS REQUIRED TO BE RELEASED TO THE PUBLIC

1. Requirement: Each agency must release reports to the public summarizing the allegations received and the investigations concluded for that period. In addition, the agency shall periodically release a brief synopsis of all complaints where a fine or suspension of ten days or more was assessed to a member of the agency.
2. The Internal Affairs Investigator shall prepare an annual report summarizing the types of complaints received and the dispositions of the complaints. This report shall be made available to the public.
  - a. The report shall be statistical in nature.
  - b. The report shall not contain the names of the complainants and subject officers.
3. Additionally, the Internal Affairs Investigator shall create a brief synopsis report of all complaints where a fine or suspension of ten days or more was assessed to a member of the Department.
  - a. The report shall briefly outline the nature of the incident or transgression and the fine or suspension imposed.
  - b. The synopsis shall not contain the identities of the complainants or subject officers.

#### O. RISK MANAGEMENT PROCEDURES

1. In an effort to enhance its integrity and provide an optimal level of service to the community and reduce its exposure to civil liability the Department hereby establishes the following procedures to act as an early warning system to identify and deal with

problem employees. The procedures contained herein are designed to provide information helpful in preventing patterns, practices, trends of inappropriate behavior or conduct from developing.

a. It must be noted that the purpose of an early warning system is to detect patterns or trends before the conduct escalates into more serious infractions. The intent here is to address potential problems by using appropriate management and supervisory strategies before formal discipline is warranted.

2. The following information shall be reviewed by the Chief of Police and the Internal Affairs Investigator in order to determine if any negative trends or patterns are developing by any member of the Department:

- a. Motor vehicle stop data
- b. Search and seizure data
- c. Internal complaints, regardless of outcome
- d. Civil actions filed, regardless of outcome
- e. Incidents of force usage, including firearms discharges and use of non-deadly force
- f. Claims of duty related injury
- g. Arrests for resisting arrest
- h. Arrests for assault on a law enforcement officer
- i. Criminal investigations or complaints made against the officer
- J. Incidents of injury to arrested persons
- k. Vehicular pursuits
- l. Vehicular accidents
- m. Cases rejected or dismissed by the prosecutor
- n. Evidence suppressed by the court

3. The Internal Affairs Investigator shall collect and preserve the aforementioned data in order to perform the required analysis. Should a negative trend come to light prior to the yearly review by the Investigator and Chief of Police, the Internal Affairs Investigator shall make the Chief of Police aware of his findings.

4. If the review points toward the emergence of a trend or pattern of inappropriate behavior

the Chief of Police shall be so advised and a course or remedial or corrective action be implemented.

5. If the review reveals that an officer has violated the Department's rules, regulations, or standard operating procedures an internal affairs investigation shall be initiated.

P. CLOSING

1. This Written Directive shall become effective immediately.

2. All Directives, Orders, Regulations, Policies and Procedures previously issued that conflict with this Directive are hereby rescinded.

3. Violations of this Directive shall subject members to disciplinary action.

4. Supervisory personnel shall be held accountable for review, discussion, application, and enforcement of this Directive.

5. Members shall acknowledge receipt and understanding of this Directive by digitally signing for it in the Department's computerized document management and distribution system.

6. This Directive shall be reviewed annually and will be updated, revised or rescinded as necessary.

The Internal Affairs Unit of the Keyport Police Department operates in accordance with the New Jersey Attorney General's Guidelines on Internal Affairs Policy and Procedures. A copy of the guidelines can be found on the [New Jersey Attorney General's website](http://mcponj.org/wp-content/uploads/2020/09/IA-Guidelines-Revised-Aug-2020.pdf).

<http://mcponj.org/wp-content/uploads/2020/09/IA-Guidelines-Revised-Aug-2020.pdf>

Our Internal Affairs Unit accepts and documents all citizen complaints against law enforcement personnel employed by the Borough of Keyport.

Monmouth County Profession Responsibility Unit is responsible for investigating allegations of criminal acts committed by police officers. If a citizen's complaint about a police officer does not rise to the level of a crime or there is insufficient evidence to prove a crime was committed, the complaint is referred back to the officer's employer, the municipal police department, for an administrative investigation by the police department's internal affairs unit. If a police officer is found by his or her employer to have violated a department policy or rule during the administrative investigation, then the employer may discipline the officer. However, discipline rests solely with a law enforcement officer's employing agency. The Monmouth County Prosecutor's Office does not have the legal authority to impose administrative punishment on a municipal police officer. See N.J.S.A. 40A-118; *Borough of Stone Harbor v. Wildwood Local 59, Policemen's Benev. Ass'n of New Jersey*, 164 N.J. Super. 375 (App. Div. 1978); *New Jersey Attorney General's Internal Affairs Policy and Procedures, revised July 2014*.

Any citizen wishing to file a complaint may do so by downloading, filling out the Citizen Complaint Form electronically and submitting it online through email to the Chief of Police [mkhafner@keyportpd.org](mailto:mkhafner@keyportpd.org). A link to the form is on this website. A complaint may also be submitted in person or via telephone by calling 732-264-0706.

#### **The 4 A's of Internal Affairs**

- 1. ANYONE** – Any individual must be permitted to file an Internal Affairs complaint. It can be a victim, a friend of the victim, a parent, a juvenile (with or without parents), an illegal alien (we are not permitted to ask about immigration status) or it can be anonymous. ANYONE means ANYONE.
- 2. ANY WAY** – An Internal Affairs complaint can be filed in ANY WAY. It could be filed by phone, by letter, written on a napkin, in person... Whatever is best for the person filing. We cannot make someone show up in person or swear the statement to initiate the complaint process.
- 3. ANY TIME** – A complaint must be taken regardless of the hour or day of the week. At no time should a complaint be told to return later, even if the IA officer is unavailable. ANY law enforcement officer or civilian employee must take a complaint.
- 4. ANYTHING** – As long as a complaint has sufficient factual information, the complaint must be investigated. It is predicated upon the victim's view of the situation.

**\* \* \* LAW ENFORCEMENT MUST AVOID ANY LANGUAGE THAT IS DESIGNED TO DISSUADE SOMEBODY FROM FILING A COMPLAINT.**