

CLAYTON POLICE DEPARTMENT	
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REVISED: Internal Affairs Policy updated to comply with Attorney General Directive 2019-05 and New Jersey Attorney General Guidelines on Internal Affairs Policy and Procedures (IAPP) August 2020 version	

PURPOSE: The purpose of this directive is to maintain a high quality of law enforcement services. Improving the relationship between employees and the public facilitates cooperation vital to the department's ability to achieve its goals. The Clayton Police Department is committed to providing law enforcement services that are fair, effective, and impartially delivered. Employees are held to the highest standards of conduct and are expected to respect the rights of all citizens. This police department must be responsive to the community by providing formal procedures for the processing of complaints regarding individual employee performance. An effective disciplinary framework permits police department personnel to monitor employee compliance with department directives, assist employees in meeting department objectives, enhance performance, and permit managers to identify problem areas, which require increased training or direction. Finally, this directive shall ensure fundamental fairness and due process protection to citizens and employees alike.

POLICY: It is the policy of the Clayton Police Department to accept and investigate all complaints of agency and employee's alleged misconduct or wrongdoing from any citizen, office employee or any other sources, including anonymous sources. Following a thorough and impartial examination of the available factual information, a conclusion will be determined and the employee shall be either exonerated or held responsible for the alleged misconduct. Discipline shall be administered according to the degree of misconduct. All employees, regardless of rank/title, shall be subject to disciplinary action for violating their oath and trust. Committing an offense punishable under the laws of the United States, the State of New Jersey, or municipality constitutes a violation of that oath and trust. Employees are also subject to disciplinary action for the willful or negligent failure to perform the duties of their rank or assignment.

In addition, employees may be disciplined for violation of any rule or regulation of the office or for failure to obey any lawful instruction, order, or command of a superior officer or supervisor. Disciplinary/corrective action in all matters will be determined based upon the merits of each case. Investigators conducting the investigation of any allegation of misconduct shall strive to conduct a thorough and objective investigation respecting the rights of the principal, any other law enforcement officer, and all members of the public. Accordingly, any supervisor and any officer who may be called upon to conduct an internal investigation must be thoroughly familiar with the office's Internal Affairs policy. *This policy has been developed in accordance with the revised New Jersey Attorney General Guidelines on Internal Affairs Policy and Procedures (IAPP) August 2020 version, and Directive 2019-5.*

PROCEDURE:

I. Definition of Terms

A. The following forms/reports shall be used in accordance with this directive:

1. **Request for Extension of Investigation:** This form shall be used to seek approval from the Chief of Police when additional time, beyond the Forty-Five day period, is needed to complete the internal affairs investigations.
2. **Investigation Report:** This report shall be used to memorialize the investigation of any internal affairs matter or performance deficiency.
3. **Supplemental Internal Investigation Report:** This report shall be used to supplement the initial investigation report.
4. **New Principal/Allegation Identification Form:** This form shall be used when an employee shifts from a witness to a principal. This form shall also be used to document perceived violations of policy and procedure not relevant to the complaint or the alleged misconduct being investigated.
5. **Administrative Advisement Form:** This form shall be used during an internal affairs investigation interviews when interviewing the principal in an internal affairs investigation.
6. **Miranda and Waiver Form:** This form shall be used in an internal investigation when interviewing an employee accused of committing a crime after consultation with the County Prosecutor's Office.

7. **Witness Acknowledgment Form:** The form shall be used during internal affairs investigation interviews when interviewing a witness in an internal affairs investigation.
 8. **Weingarten Representative Acknowledgement Form:** This form shall be provided to the Weingarten representative present during an internal affairs interview.
 9. **Reportable Incident Form:** This form shall be utilized by department employees to document a reportable incident on any department employee.
 10. **Complaint Form:** This form shall be offered to any citizen who wants to complain about an employee of the police department. The employee receiving the complaint form shall complete the reportable incident form and submit it along with the citizen's complaint to Internal Affairs.
 11. **Performance Notice:** This form shall be completed by a supervisor to memorialize the corrective action taken to address an employee's performance deficiency. This form shall also be used to commend an employee for positive performance.
 12. **Annual Report:** This report shall be submitted to the Gloucester County Prosecutor's Office annually, detailing all internal affairs investigations investigated by the office during the previous year.
 13. **Internal Affairs Information Sheet:** This form, which explains the police department's internal affairs procedures, shall be provided to all citizen complainants.
 14. **Notice of Charge Form:** This form shall be used to notify formally, the principal of charges approved by the Chief of Police in connection with the completed internal affairs investigation. This disciplinary form shall only be used for charges that exceed a written reprimand.
 15. **Reprimand Notice:** This form shall be used to notify formally the principal of discipline approved by the Chief of Police in connection with the completed internal affairs investigation. This disciplinary form shall be used for discipline that does not exceed a written reprimand.
- B. **Reportable Incident:** is any behavior, performance, or non-performance that may violate department rules, regulations, procedures, applicable criminal and civil laws, and violations against the United States or New Jersey Constitutions. All reportable incidents shall be carefully and thoroughly reviewed by the Chief of Police and the Internal Affairs Unit to determine the manner of response that best serves the public, the department, and the employee. Reportable incidents classified as misconduct will result in an internal investigation conducted in accordance with the New Jersey Attorney General's Internal Affairs Guidelines and this policy. Reportable incidents include, but are not limited to the following:

1. A complaint that an employee has engaged in any form of misconduct, as defined in this policy, whether on or off-duty;
2. An alleged violation of any of the Police Department Rules and Regulations;
3. An alleged violation of any written directive issued by this department or appropriate authority as defined by ordinance;
4. A refusal to or a failure to comply with a lawful written or verbal order, directive, or instruction;
5. The filing of a civil suit by a civilian alleging any misconduct by an employee while on duty or acting in an official capacity;
6. The filing of a civil suit against an employee for off-duty conduct while not acting in an official capacity that alleges racial bias, physical violence, or threat of physical violence;
7. Criminal arrest of or filing of a criminal charge against an employee;
8. Allegation(s) that an employee has engaged in an act of domestic violence.

C. **Classification:** There are three classifications of a reportable incident. All reportable incidents shall be forwarded to the Chief of Police and the Internal Affairs Unit to screen, record, and classify the incident as one of the following (**See Figure #1**):

NOTE: All allegations of **misconduct** regardless of the source of the allegation shall result in an internal investigation.

1. Criminal Misconduct - Reportable Incidents classified as criminal misconduct will result in immediate notification to the Gloucester County Prosecutor's Office upon the receipt of the complaint by the Internal Affairs Unit. No further action shall be taken, including the filing of charges against an employee, until directed by the Prosecutor's Office.
 - a. Criminal Misconduct is defined as a reportable incident where there is an allegation of a crime or a disorderly, petty disorderly offense, and or local ordinance violations.
2. Administrative Misconduct - An incident may be classified as administrative misconduct, in which case an investigation shall be conducted in accordance with this directive.
 - a. Administrative Misconduct is defined as a reportable incident where there is a serious violation of office rules and regulations, written directive; or, conduct which adversely reflects upon the employee or the office.
 - b. Repeat performance deficiencies may be classified as administrative misconduct.
3. Performance Deficiency - An incident, which is classified as a performance deficiency, shall be referred to the supervisor for addressing through non-

disciplinary corrective actions, (corrective action shall be training or counseling only).

- a. A performance deficiency is defined as a reportable incident of any minor rule infraction that can be addressed at the supervisory level of an employee. This department recognizes that not all reportable incidents constitute misconduct and certain reportable incidents are more effectively handled outside of the disciplinary process.

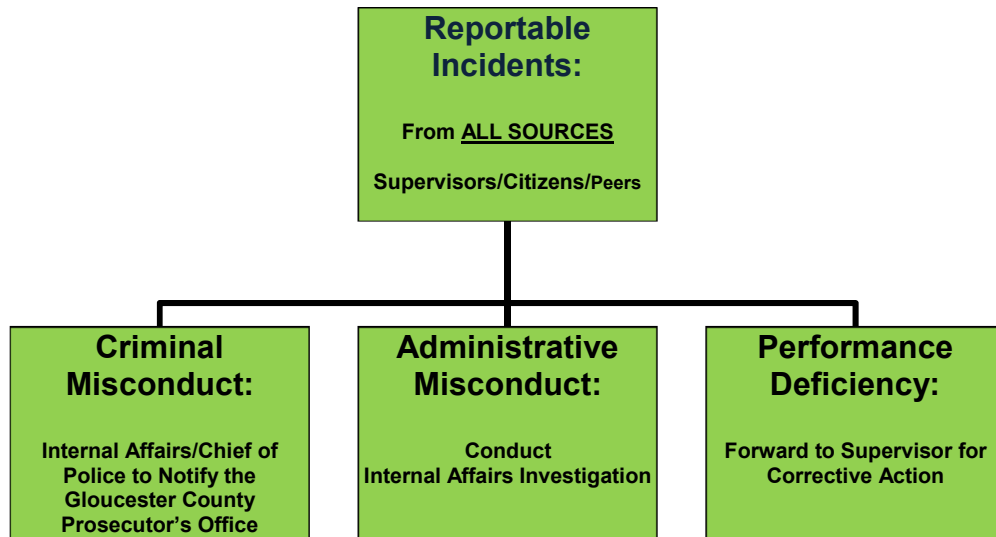


Figure #1 (Classification Process)

II. Guiding Principles

- A. The investigative process should seek to locate and identify all evidence available to either prove or disprove allegations made against an employee.
- B. With the exception of internal investigations that are part of an ongoing or potential criminal investigation, the majority of internal investigations are administrative in nature. Unlike criminal investigations where the burden of proof is beyond a reasonable doubt, the standard for administrative cases is a preponderance of the evidence. The Chief of Police is responsible for ensuring that when a matter is declined for criminal prosecution, that a prompt and comprehensive Internal Affairs administrative investigation is nonetheless completed. Under no circumstances shall an internal affairs administrative investigation be closed merely because a criminal investigation was declined or terminated.
- C. Also important is that strict rules of evidence and certain constitutional protections that apply in criminal cases do not attach to these investigations. In accordance with established case law, the investigator, reviewing authority and the Chief of Police can rely on types of evidence that would be inadmissible in a criminal proceeding, providing there is some indication of reliability.
- D. Furthermore, unlike criminal investigations, certain specific legal protections that arise in employment & labor matters and in police discipline matters apply to employee's subject to an internal investigation. These include rights and practices commonly referred to as Weingarten, Loudermill, and Garrity rights, as well as contractual rights or those based on state or federal statutes.

- E. Investigators and reviewers shall scrupulously adhere to the principles that all employees shall be afforded all rights to which they are entitled. At the same time, investigative and review personnel will also be aware of their obligations to determine the facts of each case utilizing investigative methods, which are consistent with acceptable practices in employee discipline cases.
- F. Internal Affairs investigations shall not rely solely on the outcome of related criminal matters or traffic matters. The conviction of a citizen complainant shall not be dispositive as to the citizen's complaint regarding the employee's conduct related to the incident. However, the court proceedings will be relevant and should be reviewed. Unless otherwise determined by the investigative plan, most cases involving a court action will require the collection and analysis of court records and transcripts of court appearances by the principal, complainant, or critical witnesses. The investigator should make every attempt to attend court proceedings, to monitor the progress/outcome of the case. As a monitor, the investigator need not notify the prosecutor, judge, or other court personnel of his/her presence and should not have any input in the proceedings.
- G. If a civilian signs criminal or traffic complaints, in addition to making an internal affairs complaint against an employee, a not guilty disposition of the court shall not automatically determine the outcome of the internal complaint. However, it will be relevant and part of the investigation.
- H. The investigator and reviewing authority shall consider that administrative charges have a different threshold of proof, as well as less restrictive rules of evidence.
- I. As internal affairs investigators, a tendency to automatically grant more credibility to statements given by employees of the office and other law enforcement officials than to statements given by civilian complainants and witnesses must be carefully avoided. In certain situations where the credibility and motive of the complainant is reasonably suspected, a credibility determination may be made as provided for in this policy. However, investigators, unless otherwise authorized, will investigate the relevant facts of the allegations and not the background or motive of the complainant, unless relevant to the investigation.
- J. It is the policy of this office that personnel conducting internal investigations deal with complainants, witnesses, and principals in a professional manner. This includes being prepared for interviews, promptly responding to telephone calls, and handling all related contacts during an investigation to leave citizens and employees alike with the impression that a thorough, fair, and impartial investigation of the allegation(s) will be conducted.
- K. Discovery of additional allegations and identification of additional principals:
 - 1. In conducting investigations, the propriety of all conduct by the employee relating to the subject matter of the investigation shall be reviewed.
 - 2. If during the course of an investigation, the investigator has reason to believe that misconduct occurred, other than that alleged, the investigator shall:
 - a. Document the information on a New Principal/Allegation Identification Form and forward it to the Internal Affairs Unit

Supervisor and/or Chief of Police to determine the appropriate response. Upon completion of the review, the form, which shall include all appropriate endorsements, will be returned to the investigator, and maintained as an attachment to the investigation.

- b. Unless otherwise directed, the investigator shall investigate the additional allegation to its logical conclusion.
- 3. If during the course of an investigation, the investigator has reason to believe that another employee may have been involved in alleged misconduct and should be interviewed as a principal, the investigator shall:
 - a. Report the information on a New Principal/Allegation Identification Form to the Internal Affairs Unit Supervisor and/or Chief of Police, and await further instructions. Other aspects of the investigation should continue.

III. Internal Affairs Unit

- A. The Internal Affairs Unit is herein established. Personnel assigned to the Internal Affairs Unit shall serve at the pleasure of and be directly responsible to the Chief of Police. The Chief of Police shall not assign any person responsible for the representation of employees of the collective bargaining function to the Internal Affairs Unit.
- B. Personnel assigned to the Internal Affairs Unit should have sufficient experience and rank to handle sensitive investigation effectively.
- C. Personnel assigned to the Internal Affairs Unit shall complete training as mandated by the Division of Criminal Justice.
- D. Personnel assigned to the Internal Affairs Unit with conflicts of interest must recuse from certain cases, and under no circumstances shall an Internal Affairs investigatory function be contracted or delegated to a private entity.
- E. The goal of the Internal Affairs Unit is to ensure that the integrity of the office is maintained through a system of internal discipline where fairness and justice are assured by objective, impartial investigation and review.
- F. The Internal Affairs Unit Supervisor shall be responsible for:
 - 1. The management of the Internal Affairs Unit;
 - 2. The coordination and review of all internal affairs investigations;
 - 3. The review of all allegations of misconduct by employees of this department;
 - 4. The immediate notification to the Chief of Police of any allegation of wrongdoing on the part of an employee that would constitute a criminal offense or has the potential to have a significant negative impact on the operation or reputation of the department.

- a. All other notifications shall be made on the next business day.
5. The maintenance of a comprehensive central file and recordkeeping system on all complaints received by this unit, whether investigated by Internal Affairs Unit personnel or assigned to an employee's supervisor for investigation and disposition. The Internal Affairs filingsystem and records shall be accessible only to the following agency personnel: the County Prosecutor's Professional Standards Unit Personnel, Chief of Police, and personnel assigned to theInternal affairs function.
- a. Index File: An Index File or Log Book will be maintained to ensure an orderly control of event assignments. The Index File or recording system shall contain the following information:
 - 1) Date event received;
 - 2) Event number;
 - 3) Principal(s) name(s);
 - 4) Complainant(s);
 - 5) Allegation(s);
 - 6) Investigator(s) assigned; and
 - 7) Date and Disposition for each allegation.
6. The preparing and mailing of a Complaint Acknowledgement Letter to all civilian complainants.
- G. The Internal Affairs Unit shall have the following responsibilities:
- 1. The investigation and review of all allegations of misconduct by employees of this department.
 - 2. All initial investigations of firearms discharges are subject to AG Directive 2019-4 and are generally conducted by the County Prosecutor or, in cases of discharges resulting in fatalities, the Attorney General. All on-duty and off-duty firearms discharges by a law enforcement officer, except in certain limited circumstances, must be documented and reviewed by Internal Affairs to determine whether additional investigation is necessary.
 - a. Internal Affairs Unit shall document all firearms discharges by office personnel that are not related to training, all use of force incidents that result in injury to a defendant or a third party, all vehicular pursuits undertaken by department personnel and all collisions involving department vehicles. Once notification has been received, internal affairs will determine whether additional investigation is necessary.

- b. Personnel assigned to the Internal Affairs Unit shall not release any public statements regarding the conduct of officers involved in such a discharge unless approved by the Chief of Police, County Prosecutor or the Attorney General.
3. In accordance with the Early Warning System (AG Directive 2018-3), Internal Affairs Unit shall conduct a manual or computerized audit of its records on a quarterly and annual basis to determine if an employee exhibits a pattern, practices, or trend of inappropriate behavior or misconduct. Such criteria may include, but is not limited to, citizen complaints, scheduled and unscheduled sick time, tardiness, use of force incidents, on duty injuries, on duty vehicle collisions, unexplained dismissal of court cases, etc. The Early Warning System policy outlines the process to be followed if it is determined that formal follow up intervention is necessary.
4. The Internal Affairs Unit may conduct an internal affairs investigation on its own initiative upon notice to, or at the direction of the Chief of Police.
5. The Internal Affairs Unit may refer reportable incidents classified as a performance deficiency to an employee's supervisor for investigation and corrective action.
6. The Internal Affairs Unit investigators or personnel temporarily assigned to that function shall have the authority to interview any employee of the department and to review any record or report of the department relative to their assignment. Requests from the Internal Affairs Unit personnel, in furtherance of their duties and responsibilities, shall be given full cooperation and compliance as though the requests came directly from the Chief of Police. Employees assigned to the Internal Affairs Unit come under the direct authority of the Chief of Police.
7. Background investigations for new recruits must include a review of the internal affairs files of any candidate who previously worked for another law enforcement agency. Candidates with out-of-state law enforcement experience must sign waivers of confidentiality regarding their internal affairs files so that the prospective employer may review them, where legally permissible. New Jersey law enforcement agencies are now generally required to disclose the entire internal affairs file of a candidate to prospective law enforcement employers, and a candidate with out-of-state law enforcement experience must waive confidentiality for their internal affairs files.
8. Personnel assigned to the Internal Affairs Unit shall handle alleged violations of directives issued by the Attorney General or relevant County Prosecutor through the Internal Affairs process.
9. Notification to the Gloucester County Prosecutors Office
 - a. The Internal Affairs Unit Personnel shall notify the Gloucester County Professional Standards Unit of the receipt of a complaint of any allegation involving criminal wrongdoing by a law

enforcement officer that may lead to charges of a criminal nature.

- b. The Internal Affairs Annual Report and Quarterly Reports shall be completed and returned to the Gloucester County Prosecutor Office at the appropriate designated times.
10. Pursuant to AG Directive 2020-5, the Clayton Police Department shall publish on its public website an annual report summarizing the types of complaints received and the dispositions of those complaints. This report should be statistical in nature. The Annual Internal Affairs Policy Reporting form (included in the IAPP August 2020 version) may be used to satisfy the requirements of this Section.
11. The Clayton Police Department shall on a periodic basis, and at least once a year, publish on its public website a brief synopsis of all complaints where a termination, reduction in rank or grade, and/or suspension of more than five days was assessed to an agency member. This synopsis shall include the identity of each officer subject to final discipline, a brief summary of their transgressions, and a statement of the sanction imposed. This synopsis shall not contain the identities of the complainants.
12. The internal affairs function should prepare periodic reports for the law enforcement executive that summarize the nature and disposition of all misconduct complaints the agency received. This report should be prepared at least quarterly, but may be prepared more often as directed by the executive. The report should include the principal officer; the allegation; the complainant; the age, sex, race and other complainant characteristics that might signal systematic misconduct by any member of the agency; and the investigation's status.
13. Internal Affairs Unit shall be responsible for any other investigation as directed by the Chief of Police.

IV. Accepting Complaints

A. Duty of Employees to Self Report

1. All employees shall immediately self-report, to the Internal Affairs Unit and the Chief of Police through the chain of command as soon as possible within four hours after the event or becoming aware of the incident:

- a. Whenever the employee is arrested or criminally charged for any conduct.
 - 1) The report must be made immediately, and in all cases prior to release or leaving the law enforcement agency. In the case of service of criminal charges, the notification must be made immediately upon the receipt of the charges.
 - b. Whenever the employee is named as a party in any civil suit involving their conduct while on duty or otherwise while acting in an official capacity.
 - c. Whenever the employee is named as a party in any civil suit regarding off-duty conduct while not acting in an official capacity that alleges racial bias, physical violence, or threats of physical violence by the employee.
 - d. Whenever the employee is alleged to have committed an act of domestic violence.
2. When employees report this information to a supervisor, the supervisor shall directly and immediately report the information to the Internal Affairs Unit, in no case more than four hours after receipt of the notification. The Internal Affairs Unit shall notify the County Prosecutor's Office of the receipt of this information.
- B. Duty of Employees to File a Reportable Incident Form for Actions of Other Employees
1. An employee who receives information defined as a reportable incident shall report such information to the Internal Affairs Unit Supervisor/Chief of Police through the chain of command.
 2. All employees must report directly to the Internal Affairs Unit, or the Chief of Police through the chain of command, any conduct by another employee that reasonably appears to constitute any of the following:
 - a. Prohibited discrimination;
 - b. An unreasonable use of force or a threat of force;
 - c. A constitutional violation;
 - d. Failure to follow any of the documentation requirements, including documentation of civilian complaint filing procedures;
 - e. Providing false information in an investigation of an employee for misconduct or in any report, log, or transmittal of information to the Gloucester County Emergency Response Center.
 - f. Any violations discovered during a supervisory review (staff inspection, review of Body Worn Camera, etc..) of personnel. Supervisors conducting such review shall be held accountable for their failure report violations observed.

3. Retaliation against any employee for reporting misconduct shall constitute a serious disciplinary offense and may lead to a severe penalty up to and including termination.

C. Complaints from the Public

1. All department personnel are directed to accept reports of agency or employee misconduct from all persons who wish to file a complaint regardless of the hour or day of the week. Citizens are to be encouraged to submit their complaints in person as soon after the incident as possible. If the complainant cannot file the report in person, a representative from the Internal Affairs Unit shall visit the individual at their home, place of business, or at another location in order to complete the report, if possible. Telephone, e-mail, web-based reporting, and facsimile complaints shall also be accepted.
 - a. Complaints from undocumented immigrants must be accepted.
 - b. Officers are prohibited from affirmatively warning complainants that they may face consequences for filing a false report.
2. If a member of the Internal Affairs Unit is immediately available, they shall take the complaint.
 - a. If a member of the Internal Affairs Unit is not immediately available, the complainant will be referred to a supervisor. In the absence of a supervisor, any department employee shall accept the report of employee misconduct.
3. Department personnel receiving the complaint shall:
 - a. Explain the department's disciplinary procedures to the person making the complaint and provide the person making the complaint with the Internal Affairs Information Sheet, which explains the department's Internal Affairs procedures.
 - b. Advise the complainant that he or she will be kept informed of the status of the complaint, if requested, and its ultimate disposition.
 - c. Complete as much of the Internal Affairs Complaint Form as possible before forwarding it to the Internal Affairs Unit Supervisor.
 - d. Have the complainant sign the completed form. If the complainant will not sign the form, the employee receiving the complaint will so note that fact. However, the failure of a citizen to sign a complaint will in no way preclude the investigation of the allegations.

- e. The Reportable Incident Form shall be completed by the employee taking the complaint and shall accompany the Internal Affairs Complaint Form. Both forms shall be forwarded to the Internal Affairs Unit for recording in the master Internal Affairs recordkeeping system and classification by the Chief of Police/Internal Affairs Unit Supervisor.
- 4. All department personnel are directed to accept reports of agency or employee misconduct from anonymous sources. If the anonymous complainant is talking to an employee, the employee should encourage them to submit their complaint in person. In any case, the complaint will be accepted.
 - a. An employee of the office who interferes with or delays the reporting or investigation of such complaints may be subjected to disciplinary action.
- 5. If a complainant wants to make a complaint against an employee of another law enforcement agency, he/she will be referred to that agency. If the complainant expresses fears or concerns about making the report directly, he/she will be referred to the respective county prosecutor's office.
- 6. If a complaint is received from another law enforcement agency, the complaint will be forwarded to the Chief of Police/Internal Affairs Unit Supervisor for classification.
- 7. Request for Assistance from Other Law Enforcement Agencies: All requests for investigative assistance on Internal Affairs matters from any outside law enforcement agency must first be approved by the Chief of Police.
- 8. Complaints Regarding Senior Law Enforcement Personnel
 - a. All complaints against a law enforcement executive, or a member of the executive's senior management team shall be documented and referred to the County Prosecutor for review.
 - b. The County Prosecutor is directly responsible for Internal Affairs investigations of municipal law enforcement executives under their jurisdiction and the members of those executives' senior management teams, regardless of the type of alleged misconduct. If the subject of the Internal Affairs investigation is the Police Chief, Police Director, or Head of Internal Affairs, the County Prosecutor or the Attorney General's Office shall handle the investigation. The investigation may involve any type of alleged employee misconduct. The County Prosecutor or the Attorney General's Office also may determine that it is appropriate to handle other internal affairs investigations of high-level officials in their discretion.
 - c. Whenever a matter involving possible charges against the police chief or executive officer of any municipality or any county law enforcement agency is under investigation by the County Prosecutor, such matters are to be called to the attention of and discussed with the Director of the Division of Criminal Justice.

V. Immediate Suspensions

A. Suspension Pending Disposition or Investigation

1. The Chief of Police or a supervisor may immediately suspend an employee from duty if it is determined that one of the following conditions exists:
 - a. The employee is unfit for duty; or
 - b. The employee is a hazard to any person if permitted to remain on the job; or
 - c. An immediate suspension is necessary to maintain safety, health, order or effective direction of public services; or
 - d. The employee has been formally charged with a first, second or third degree crime; or
 - e. The employee has been formally charged with a first, second, third or fourth degree crime or a disorderly persons offense while on-duty or the act touches upon his or her employment.
2. The supervisor imposing the immediate suspension must:
 - a. Advise the employee why an immediate suspension is issued and the charges and general evidence in support of the charges. This information shall be memorialized in writing and forwarded to the Chief of Police and made available to the suspended employee no later than 24 hours after the suspension.
 - b. The suspended employee will have sufficient opportunity to review the charges and the evidence and to respond either orally or in writing.
 - c. The Chief of Police will review the supervisor's report and if available the suspended employee's report. A meeting will be scheduled by the Chief of Police as soon as reasonably possible (normally on first business day after suspension). The meeting will be with the suspended employee and the supervisor if needed. The Chief of Police will decide at that time to either uphold the supervisor's suspension of the employee, assign Internal Affairs to conduct a formal investigation, or override the suspension. The Chief of Police depending on the circumstances may impose any other number of additional options including but not limited to; Fitness for Duty Exam, Drug Testing, Referral to Resiliency Officers, or Employee Assistance Program.

VI. Investigation and Adjudication

- A. All internal affairs investigations shall be conducted in accordance with the Department's Internal Affairs Investigation Policy and Attorney General's Guidelines. When a conflict exists, the Attorney General's Guidelines shall supersede department policy.
- B. Criminal Misconduct Complaints
 - 1. Where preliminary investigative data indicates the possibility of a criminal act on the part of the employee, or the investigation involves an allegation of the excessive use of force, differential treatment, bias, the Chief of Police shall be notified immediately.
 - a. Whenever conduct or alleged conduct of members of the Clayton Police Department may be criminal in nature, the Gloucester County Prosecutor's Office, shall be contacted immediately, so that the Prosecutor's office may determine if it will conduct the investigation of the matter. All communication with the Prosecutor's Office shall be documented in writing.
 - b. The Chief of Police shall be immediately notified when an employee is accused of a crime, domestic violence violations, any incident that attracts media attention, and any incident that would affect the efficient and effective operation of the office. In addition, the duty supervisor shall take any immediate action necessary to preserve the integrity of the department until directed otherwise by the Chief of Police or designee.
 - c. All other notifications shall be made on the next business day.
 - d. The Internal Affairs Unit shall interview the complainant, all witnesses, as well as review relevant reports and records, and obtain other relevant information and materials.
 - e. A principal shall not be compelled to answer any questions in the absence of a grant of use immunity as conferred by the County Prosecutor in conjunction with the Attorney General's Office.
 - f. The Internal Affairs Unit investigator shall consult with the County Prosecutor or designee regarding the advisability of giving a Miranda Warning Form to the principal.

C. Administrative Misconduct Complaints

1. When preliminary investigative data indicates an administrative misconduct offense, which may result in disciplinary action:
 - a. A supervisor must notify the Internal Affairs Unit, who will conduct a full investigation of the matter; and
 - b. The Internal Affairs Unit will notify the Chief of Police of the offense; and
 - c. The Internal Affairs Unit will forward copies of the appropriate disciplinary documents and investigation reports to the Chief of Police for review; and
 - d. The Internal Affairs Unit will be responsible for the final case disposition and implementation of discipline, as determined by the Chief of Police or designee.

D. Performance Deficiency Complaints

1. When a complaint has been classified as a performance deficiency, the complaint shall be forwarded to the employee's supervisor for investigation. The supervisor shall interview the complainant, all witnesses, and the principal, as well as review relevant reports. The supervisor shall then prepare a report summarizing the matter, recommending the appropriate corrective action.
2. The supervisor shall forward the completed investigation report to the Internal Affairs Unit for review, and entry of the disposition in the Internal Affairs record keeping system.

E. Interview Procedures

1. Preparation
 - a. All principals and witnesses shall be interviewed after careful preparation, including the review of the investigative file and all documents, evidence, and interviews conducted up until the interview. The investigator, in consideration of the investigative plan, should have pre-formulated goals to be accomplished with each interview.

2. Memorializing of the Interview

- a. The interview of the complainant, principal, and any other witness with critical information shall be documented or memorialized in one of the following ways:
 - 1) Formal statements from a civilian, including a complainant shall be video- or audio-recorded according to the same protocols that would apply if the civilian were being interviewed in connection with a criminal investigation. If a witness objects to the recording of the interview, the investigator may proceed with the interview without recording, but must document in writing the reasons for doing so. In addition, when taking a formal statement from an officer, the investigator shall video- or audio-record the statement, except that in cases that did not arise from a civilian complaint, the investigator need not record the statement unless the officer being interviewed requests it. A synopsis of the recorded statement will be included in the narrative of the Internal Investigation Report. All statements of Department personnel will be audio recorded. (When directed by the Internal Affairs Unit Supervisor or Chief of Police, the pertinent portions of this statement will be transcribed.)
 - 2) Video recorded statement.
 - 3) Handwritten statements taken by the investigator shall be reduced to writing and signed on each page by the person making the statement.
 - 4) A summary of the substance of the interview will be incorporated in the body of the appropriate internal investigation report.
- b. Investigators must remain cognizant at all times that civilian witnesses who are not employees of the Department cannot be compelled to provide a statement in any manner. However, all reasonable efforts should be made to obtain a statement when warranted from non-law enforcement personnel in the order of priority as is listed above.
- c. All persons submitting to such a recorded or written statement, including the complainant, witnesses, and the principal(s), will, upon request, be provided with a copy of same by the investigator, as authorized by the Chief of Police, unless by doing so, it could compromise the investigation.
- d. Other than investigators authorized by the Department, employees of this Office shall not electronically record nor cause any interview to be electronically recorded. The copy of the official statement shall be produced and provided within a reasonable amount of time. The employee receiving the copy of the statement shall be reminded of the absolute requirement that same not be copied, shown, or

revealed to anyone other than the employee's attorney, if any.
Violation of this provision will result in serious disciplinary action.

- e. All recorded statements will be summarized in the body of the appropriate internal investigation report. (When directed by the Internal Affairs Unit Supervisor or Chief of Police, the pertinent portions of the statement will be transcribed and the transcript itself also included as an attachment to the case.)
- f. The interview of any non-department person shall document the following identifiers:
 - 1) Full name;
 - 2) Address;
 - 3) Home Telephone;
 - 4) Race;
 - 5) Sex;
 - 6) DOB;
 - 7) Place of Employment;
 - 8) Work Telephone;
 - 9) Names of all persons present during interview; and
 - 10) Date, time, and location of interview.
 - 11) Further identifiers such as Social Security number or SBI or FBI numbers shall not be requested or utilized unless directly relevant to the investigation.
- g. Upon obtaining an audio-recorded statement, investigators will then label the medium, protect against re-record loss, and include it in the case file.
- h. The investigator will label the recording medium in the following manner:
 - 1) Statement of: Officer J. Smith;

- 2) Investigator and badge number;
- 3) Date and time of interview; and
- 4) Case number.

3. Secondary Investigator as a Witness

- a. The utilization of a second investigator as a witness to any interview or written statement is not required; however, it may be authorized in certain circumstances.

4. No Right to Legal Representation in Administrative Internal Investigations

- a. During the course of the administrative interview, an employee may be represented by a union representative of their choosing to include an attorney, so long as the availability of the attorney does not in any way hamper or impede the on-going investigation. This is not a sixth amendment right. If the investigation is criminal in nature the employee's union representative is prohibited from attending the interview.
- b. Complainants and witnesses who are not employees of the agency cannot be precluded from having a legal representative present while being interviewed by investigators.

5. Interview of Complainant

- a. After the preparation detailed above, all efforts must be made to interview a complainant in person.
- b. The investigator shall arrange a convenient time and place, including by telephone (or TDD), to interview civilians for misconduct investigations. The investigator shall reasonably accommodate a civilian's circumstances to facilitate the progress of an investigation. This may include holding an interview at a location other than the Clayton Police Department or at a time other than regular business hours.
- c. Interviews of civilian complainants, which take place over the telephone, must be recorded, unless the witness objects to the recording.
- d. Investigators must treat the person being interviewed with dignity and respect and demonstrate interest and concern in dealing with the complainant. Employees shall not attempt to dissuade any person from making a complaint. Employees shall conduct themselves in such a manner as to facilitate the citizen's confidence in the internal investigative process.

- e. Complainants and witnesses shall not be questioned about any matters that are not directly relevant to the allegations of the investigation. Any questioning intended to challenge the credibility of a complainant or witness must be approved beforehand by the Internal Affairs Unit Supervisor and/or Chief of Police. Investigators shall make every effort not to ask questions that may demean, ridicule, or cause embarrassment to the complainant.
- f. Questions must be carefully thought out and absolutely relevant to the investigation. Any questionable issues should be discussed with and approved by the Internal Affairs Unit Supervisor and/or Chief of Police before conducting the interview.
- g. Group interviews shall not be conducted.
- h. Complainants should be interviewed outside the presence of other complainants and witnesses. A parent, or adult relative or guardian in the absence of a parent, shall be present during the interview of a minor. In the event a parent cannot be located, the investigator must document the efforts taken to contact same. If a civilian insists that another potential witness be present during an interview, the interview must continue with the potential witness present and the report must note the circumstances.
- i. Structure of Interview
 - 1) Complainants should be initially asked to explain in their own words, in detail, the facts forming the basis of the complaint. The investigator should then clarify any questions or issues regarding the complainant's statement.
 - 2) After the complainant has provided a statement, the narrative of the Reportable Incident Form, Citizen Complaint form, recorded telephone complaint, or correspondence from the complainant should be reviewed with the complainant.
 - 3) The investigator shall seek to rectify or identify any discrepancies and identify other investigative requirements.
 - 4) The complainant should be asked to identify any witnesses and state what they believe the witness may have knowledge of; turn over any evidence in their possession; and identify what other types of evidence they know.
 - 5) Every relevant fact known to the complainant should be identified and explored thoroughly.
 - 6) In addressing the allegations, questions utilized in the basic investigative process, namely: **who, what, when, where, why, and how,** should be precisely addressed.

- 7) The complainant and or witnesses have no automatic right to view any department video recordings. It shall be up to the discretion of the investigator to decide whether utilizing any department video recordings during an interview will enhance or clarify the investigative process.
- 8) If a complainant refuses to be interviewed, or cannot be located or contacted, a letter should be immediately forwarded on department letterhead, via certified mail, authorized and signed by the Internal Affairs Unit Investigator and/or Chief of Police, advising that he/she should respond within ten days or the investigation will proceed without his/her input.

6. Interview of Witness

- a. Every effort should be made to interview all witnesses. The full identity of the witness should be obtained. If the witness refuses to be interviewed, or cannot be contacted after a reasonable attempt to locate, a certified letter should be sent on Department letterhead advising that he/she should respond within ten calendar (10) days.
- b. Specific and detailed questions should be asked including: **who, what, when, where, why, and how** the incident or event occurred. The investigator should have a clear purpose in identifying relevant witnesses and selecting what questions to ask them. These issues should be established in the Investigative Plan.
- c. The aforementioned techniques outlined in the complainant interview should be applied to the interview of witnesses.
- d. Witness interviews shall be conducted formally resulting in a statement secured in accordance with the provisions enumerated under Interview Procedures.

7. Interview of Employees

- a. Generally, the interview of an employee is accomplished after the complainant and all witnesses are interviewed. However, this is determined by the character of the inquiry and remains a choice of the investigator. Such interviews are a critical step in the investigation and should be carefully planned. Investigators shall not accept a written statement from any employee in lieu of an interview. The investigator shall video- or audio-record the statement, except that in cases that did not arise from a civilian complaint, the investigator need not record the statement unless the officer being interviewed requests it.

b. Employee as: **WITNESSES**

- 1) It is required that a formal audio recorded statement be taken from each employee considered a witness. Statements need not be transcribed, but must be summarized in the appropriate internal investigation report. The key elements of the statement may be transcribed if necessary. A sworn law enforcement employee who is considered a witness is entitled to union representation if he/she reasonably believes that he/she may be subject to disciplinary action as a result of the investigation.
- 2) Advise the employee that he/she is a witness, explaining the difference between a witness and principal.
 - a) A witness is a person reasonably believed to have information concerning the event under investigation, but whose own conduct is not the focus of the investigation.
 - b) A principal is a person whose conduct is the focus of the investigation.
- 3) Before any questioning takes place, the employee shall be apprised of the identity of the investigator conducting the interview, including his/her rank, name, and assignment. This notice shall also include the identity of all persons present during the interview.
- 4) The investigator may require the employee to submit a report detailing relevant facts in the investigation. If a report is required, the investigator will provide the employee with the background information regarding the nature and time frame of the complaint. The employee should be encouraged to review any of his or her own reports. **(NOTE) Not to be used in lieu of an audio recorded statement.**
- 5) A formal statement will be obtained from the witness after he/she has been given their Witness Acknowledgment Form. The investigator shall further verbally confirm the employee's obligation for candor throughout an internal investigation, pointing out the specific provision of the acknowledgment form denoting such.

- 6) If, during the interview, the status of an employee shifts from a witness to a principal, the employee shall be advised accordingly. The investigator shall contact the Internal Affairs Unit Supervisor and/or Chief of Police to secure permission to proceed. If approval is granted to proceed, the investigator will execute a Principal Acknowledgment Form. Upon completion of the interview, the investigating officer will complete a New Principal/Allegation Identification Form, and forward same to the Internal Affairs Unit Supervisor and/or Chief of Police for the purpose of updating the case. A copy of the completed form, incorporating all required endorsements must be secured and submitted as an attachment to the investigation.

c. Employee as: **PRINCIPAL**

- 1) No employee shall be designated a principal without the approval of the Internal Affairs Unit Supervisor and/or Chief of Police.
- 2) Each employee of the Department is required to answer pertinent questions regarding the matter, which is the subject of investigation. All employees of the Department are obligated to answer questions and provide full and complete information to the investigator(s) during internal investigations. Less than complete candor during any statement may lead to serious disciplinary sanctions, which may include suspension or termination.
- 3) The investigator shall not automatically provide the principal with the Citizen's Complaint Form or the Reportable Incident Form. Principals shall be advised of the specific nature of the complaint, the time period involved, any allegation(s) or violation(s) of rules, regulations, and orders involved, and if applicable, the name or names of the complainant(s) and/or witnesses, in writing. The addresses of the witnesses or complainants need not be disclosed.
- 4) In cases where these documents are shown to the principal, the investigator shall redact from the letter of complaint, Reportable Incident Form, or any other relevant document provided to the principal during the interview, any information that may compromise the investigative process by providing same to the principal. Redacted documents utilized during the investigation for any purpose shall be properly referenced in any interview and included as an attachment to the Investigation Report.

- 5) As an employee of the Department, the Weingarten

Representative shall be advised of the obligation of confidentiality and the requirement not to discuss any information obtained during an interview with any other person. (Weingarten Rights)

- 6) The principal may produce records of his/her own or suggest names of witnesses he/she requests to be interviewed.
- 7) A recorded audio statement, and if practical, a video recording will be obtained from the principal after he/she has been advised of their Administrative Advisement. The investigator shall further verbally confirm the employee's obligation for candor throughout an internal investigation.
- 8) The following guidelines will be followed when union representation is requested.
 - a) Any employee designated as a principal or witness, who reasonably believes that the investigation may result in disciplinary action against him/her, is entitled, upon request of the interviewee, to have a union representative accompany the interviewee to the interview.
 - b) Any employee who is a potential principal or witness in the investigation may not act as a Weingarten representative.
 - c) The exercise of the interviewee's right to union representation may not interfere with the investigation. However, a reasonable period should be allowed for the representative to appear for the interview.
 - d) An interviewee is not entitled to the representative of his/her choosing. Any union officer or representative or other person designated by the union will satisfy the representation requirement.
 - e) The principal and his/her representative shall be informed of the subject matter of the investigation and given a reasonable period to confer prior to the interview. The union representative may be present during the interview, and once the interview has begun, they may not leave the room for purposes of further consultation. If the principal refuses to make a statement or answer any questions, he/she will be informed that such refusal may result in discipline/dismissal and the interview shall be terminated.

- f) The investigator shall not negotiate with the representative. The representative may be permitted to clarify facts or make suggestions (e.g., other potential witnesses) after the investigator's questioning of the principal. The investigator is free to insist that he/she is only interested in hearing the interviewee's own account of the matter under investigation. In other words, the representative shall not be permitted to answer for the principal or conduct their own interview.
- 9) The interview shall be conducted at a reasonable hour in a non-coercive manner, without threat or promise of reward, and preferably when the employee is on duty. No "off the record" questions will be asked and no "off the record" statements will be permitted. If the urgency of the investigation requires that the employee is questioned while off duty, such time will be recorded and treated as hours worked in accordance with the collective bargaining agreements, where applicable.
- 10) The interview shall be conducted at a location designated by the investigator, usually at headquarters.
- 11) The questioning shall be of a reasonable duration and rest periods allowed. Time shall be provided for personal necessities, meals, and telephone calls as are reasonably needed.
- 12) If at any time during the questioning session the employee becomes a suspect in a criminal act, the employee shall be so informed and the questioning shall end. Promptly notify the Gloucester County Prosecutor's Office. Should the employee be afforded be granted the use of immunity by the County Prosecutor ,the Internal Affairs Unit investigator shall schedule an interview with the employee.

F. Investigative Avenues

1. Physical Evidence

- a. Investigators should obtain all relevant physical evidence. All evidence, such as clothing, hair or fabric fibers, stains, and weapons should be handled according to established evidence procedures.
- b. With respect to an audio file, they should be secured at the outset of the investigation. Transcripts or copies of the original recordings can be used as investigative leads. Audio files should be monitored to reveal the totality of the circumstances.

c. Sworn statements from all parties.

2. Photographs

a. In the event of a complaint involving excessive force, the following photographic documentation shall be obtained when appropriate. Whenever possible, color photography shall be used.

- 1) Photographs of the complainant at the time of arrest or following the alleged incident of excessive force.
- 2) Photographs of the principal in the event that employee was a victim.
- 3) A recent photo of the employee in the event a sequential photo display will be used for identification purposes. The photo display must be conducted in accordance with the New Jersey Attorney General's guidelines and retained for possible evidentiary purposes.
- 4) Photographs of the scene of the alleged incident, if necessary.

3. Physical Tests

a. Principals may be compelled to submit to various physical tests or procedures to gather evidence. Such evidence may be used against them in a disciplinary proceeding.

b. No person has a constitutional right or privilege to refuse to submit to an examination to obtain a record of his or her physical feature and other identifying characteristics of their physical or mental condition. Evid. R. 503(a). Evidence that may be obtained or procedures that may be used to obtain evidence under this rule include:

- 1) Breath samples;
- 2) Blood samples;
- 3) Buccal Swabs;
- 4) Requiring employee to speak;
- 5) Voice recordings;
- 6) Participation in suspect lineups;
- 7) Handwriting samples;
- 8) Hair and saliva samples;
- 9) Urine analysis;

- 10) Videotaping;
- 11) Field sobriety tests.
- c. Generally, a person cannot be physically forced to produce this or other evidence or submit to such tests, although a court order may be obtained to legally compel them to do so. Refusal to comply with the order can result in additional criminal, civil, and/or administrative sanctions.

4. Polygraphs

- a. While an employee who is the subject of an Internal Affairs investigation may request a polygraph examination, an employer shall not influence, request or require an employee to take or submit to a polygraph examination as a condition of employment or continued employment (N.J.S.A. 2C:40A-1).
- b. An employee cannot be required to submit to a polygraph test on pain of dismissal. Engel v Township of Woodbridge, 124 N.J. Super. 307 (App. Div. 1973).
- c. If a polygraph is used, the test must be administered by a qualified law enforcement operator.

5. Search and Seizure

- a. As a general rule, the Fourth Amendment applies to any action taken by government. Law enforcement employees have the right, under the Fourth Amendment, to be free from unreasonable searches and seizures. Fourth Amendment warrant requirements apply to any search of an office, member's personal property including clothing, car, home, or other belongings to include any computer or digital recordings.
- b. A voluntary consent to a search may preclude some Fourth Amendment problems from developing. A consent search eliminates the need to determine what threshold standard must be met before conducting the search or seizure, either for an administrative or criminal investigation. Under New Jersey law, for consent to be legally valid, a person must be informed that he/she has the right to refuse to permit a search. State v. Johnson, 68 NJ 349 (1975). If a consent search is utilized, the investigator shall follow standard operating procedures and have the principal sign a consent to search form after being advised of the right to refuse such a search and to be present during the search, unless they waive this right.
- c. In a criminal investigation, the standard to obtain a search warrant is probable cause. Generally, a search warrant should be sought to search an area belonging to the principal when the principal

maintains an objective expectation of privacy in that area. Areas and objects in this category include the principal's home, personal car, safe deposit boxes, and personal computers.

- d. Generally, during either administrative investigations or criminal investigations, work place areas may be searched without a search warrant. The critical question is whether the public employee has a reasonable expectation of privacy in the area of property the Internal Affairs Unit investigator wants to search. The determination of a reasonable expectation of privacy must be decided on a case-by-case basis. There are some areas in the person's work place where this privacy expectation can exist just as there are some areas where no such expectation exists. Areas where supervisors or other employees may share or go to utilize files or equipment would present no expectation or diminished expectation of privacy. Included here would be government provided vehicles, filing cabinets, office computers, etc.
- e. If the Department intends to retain the right to search property, which it assigns to employees for their use, including lockers, it should put employees on notice of that fact. This notification will help defeat an assertion of an expectation of privacy in the assigned property by the employee.
 - 1) **The Clayton Police Department reserves the right to search any department owned property assigned to employees. This includes but not limited to; lockers, desks, filing cabinets, vehicles, etc... and the contents found therein. Let this section of the policy act as notice for all employees of this fact.**
- f. In addition, if the Department permits employees to use personally owned locks on assigned lockers and other property, it should be conditioned on the employees to provide the Office with a duplicate key or the lock combination, whichever is applicable.
- g. It is advisable to obtain a warrant whenever there exists probable cause to believe that the Department property to be searched contains contraband or evidence of a crime.
- h. Any search of an office or personal property should be conducted in the presence of another Department member, preferably a supervisor, and should be properly recorded.

VII. Reporting

- A. Upon completion of all possible avenues of inquiry, the Internal Affairs Unit investigator shall complete the following reports:
 - 1. The internal investigation will be memorialized on the reports as are hereinafter identified. The reports will be submitted to the Internal Affairs Unit Supervisor and/or Chief of Police for approval on a regular basis to keep the case current at all times.

2. All approved original reports will be maintained by the investigator until the investigation is concluded at which time the complete case file will be submitted to the Chief of Police through the Internal Affairs Unit Supervisor.
3. The completed report will be submitted in a report folder/envelope. The investigator will include the Internal Investigation, followed by the Reportable Incident Form, the Investigation Report, and the remaining attachments, numbered sequentially. Supplemental Internal Investigation Reports will be placed in the folder/envelope as numbered attachments, in the correct chronological order.
4. All attachments will be marked, unless marking the document in that area would damage or interfere with the content of the attachment.

B. Report Flow

1. Most internal affairs complaints are straightforward and that in many cases an internal affairs investigation will take no more than 45 days from the receipt of the complaint to the filing of disciplinary charges. Authorization for additional time to complete investigations must be received from the Chief of Police, who may take steps to ensure prompt resolution of the matter in accordance with the investigation extension procedure.
 - a. Investigators must provide further notice to the law enforcement executive every additional 45 days that the investigation remains incomplete.
 - b. In the rare cases where the Internal Affairs Unit has not filed disciplinary charges within 180 days of receipt of the complaint, the Internal Affairs Unit must notify the Prosecutor. The Prosecutor or designee will investigate the reasons for the extended investigation and will examine whether the internal affairs function faces any systemic issues that require additional resources or oversight. In such cases, the Prosecutor may take any steps necessary to ensure prompt resolution of the pending matter.
2. The investigator, upon completion of the report, shall forward it directly to the Internal Affairs Unit Supervisor, who will forward it to the Chief of Police.
3. The Internal Affairs Unit Supervisor will review the case and make recommendations to the Chief of Police regarding discipline.
4. The Chief of Police, upon receipt of the recommendation, will review the matter and make the final determination or return the case for further investigation.
5. Once the Chief of Police is provided with "sufficient information" to file a charge, the Chief of Police has forty-five (45) days to do so. **(NJSA 40A:14-147).**
6. Whenever a final determination is reached in an internal investigation, the employee(s) involved as a principal(s) and the complainant(s) shall be notified in writing explaining the outcome of the investigation.

- a. If the allegation was unfounded or the officer was exonerated, this conclusion shall be stated and defined for the civilian complainant.
 - b. If the allegation was not sustained, the letter shall provide the complainant with a brief explanation why the complaint was not sustained (e.g., insufficient proof, lack of witnesses, etc.).
 - c. If the allegation was sustained and discipline was imposed, the letter shall simply state that the allegation was sustained and that the officer has been disciplined according to department procedures. It is not necessary to specify the discipline imposed.
7. If discipline is imposed, a record of such discipline, not including the investigation report or attachments, shall be placed in the employee's personnel file.

C. Internal Investigation Plan

1. The case investigator shall meet with the Internal Affairs Unit Supervisor and/or Chief of Police within five (5) business days of being assigned to conduct the internal investigation, to discuss and formulate an investigative plan.

D. Internal Investigation Report

1. Upon being assigned to conduct an internal investigation, the case investigator must complete an Internal Investigation Report and submit same for approval to the appropriate Internal Affairs Unit Supervisor and/or Chief of Police. The report must include:
 - a. Documentation that the complainant has been contacted by the investigator to advise them of their assignment as the case investigator and to arrange a meeting to conduct an interview. If the investigator is unable to contact the complainant, the report must reflect that the appropriate certified ten (10) day letter, endorsed by the Internal Affairs Unit Supervisor or Chief of Police, has been mailed to the complainant.
 - b. Documentation that the case investigator has contacted the principal(s) and informed them of the nature of the complaint against them.
 - c. An analysis of the allegations to be addressed by the investigation, linked to specific provisions of the Rules and Regulations, and/or any guidelines that govern the behavior of employees of the office.
 - d. A synopsis of each interview and/or evidence collected that is pertinent to the case, with an appropriate chronological timeline of when these events took place.

E. Internal Investigation Allegations and Conclusion Report

1. At the conclusion of the investigation, the investigator will prepare allegations and conclusions.
2. The allegation will set forth, in narrative form, the alleged misconduct and be linked to the specific provision of the Rules and Regulations and/or directive purportedly violated.
3. The conclusion reached by the investigator, based upon the facts developed in his/her investigation, will fall into one of the following five (5) dispositions.
 - a) Sustained - a preponderance of the evidence shows that an employee violated agency rules, regulations, protocols, standard operating procedures, directives, or training;
 - b) Unfounded - a preponderance of the evidence shows that the alleged misconduct did not occur;
 - c) Exonerated - a preponderance of the evidence shows that the alleged conduct did occur, but did not violate rules, regulations, standard operating procedures, directives, or training;
 - d) Not Sustained - based upon the preponderance of evidence standard, there is insufficient evidence to decide whether the alleged misconduct occurred.
 - e) Administratively Closed - In some cases, the complaint or investigation is closed prior to reaching a disposition. These should be counted as "Administratively Closed."
4. The conclusions should be written in paragraph form wherein each piece of evidence that is relied upon in order to reach the conclusion is documented.
5. These paragraphs should be in sufficient detail that standing alone they provide a concise synopsis of the investigation and its findings.
6. The final paragraph in the allegations and conclusions should encompass verbiage that reads, in effect; **"that based upon the preponderance of evidence accumulated in the investigation it is concluded that:**
 - a) There is insufficient evidence that <Officer/Employee> did <alleged behavior>.
 - b) The allegation that <Officer/Employee> did <alleged behavior> is unfounded.
 - c) The allegation that <Officer/Employee> did <alleged behavior> is substantiated.
 - d) The investigation exonerates <Officer/Employee> of the allegation of <alleged behavior>
 - e) The investigation into <alleged behavior> of <Officer/Employee> is administratively closed at this time due to <Officer/Employee> terminating his or her employment prior to disposition of the

complaint.

7. If the subject of the Internal Affairs investigation is the Police Chief, Police Director, Sheriff or Head of Internal Affairs, the internal affairs investigator and/or the investigating agency shall make factual findings, summarize the matter, and indicate the appropriate disposition (Sustained, Unfounded, Exonerated, or Not Sustained) as to each allegation of misconduct. In cases involving Police Chiefs, final dispositions and recommendations shall be forwarded to the appropriate authority. While the appropriate authority must make the final decision regarding discipline, the County Prosecutor may make a non-binding recommendation regarding the discipline to be imposed by the appropriate authority.

F. New Principal/Allegation Identification Form

1. During the interview, if the status of an employee shifts from a witness to a principal, the employee shall be advised accordingly. The investigator shall contact the Internal Affairs Unit Supervisor and/or the Chief of Police to secure permission to proceed.
2. If approval is granted to proceed, the investigator will complete a New Principal/Allegation Identification Form and forward same to the Internal Affairs Unit Supervisor and/or Chief of Police, for the purposes of updating the case. A copy of the completed New Principal/Allegation Identification Form, incorporating all required endorsements, must be secured and submitted as an attachment to the investigation.
3. This form will also be used to document perceived violations of policy and procedure not relevant to the complaint or the alleged misconduct being investigated.

G. Request for Extension of Investigation

1. Exceptions to the forty-five (45) calendar day requirement to complete all internal investigations may be granted only in the following cases:
 - a. The investigation is pending criminal prosecution.
 - b. The investigation is undergoing a prosecutorial review to determine if the matter will be prosecuted criminally.
 - c. Circumstances beyond the investigator's control require additional time to collect information and/or evidence that is necessary for the investigation to reach its conclusion.
2. This form must be submitted to the Internal Affairs Unit Supervisor or Chief of Police for approval as soon as any of the foregoing criteria is met.
3. The completed form, including all required endorsements, must be submitted as an attachment to the investigation.

- H. Performance Notice: is the form that must be completed by a supervisor to address the corrective action taken as a result of the performance deficiency.
1. A Performance Notice shall be used when the performance deficiency warrants a corrective action of training or counseling.
 2. The supervisor recommending the issuance of a Performance Notice form (counseling, or training) shall complete and forward the unsigned copy along with the completed investigation report to the Internal Affairs Unit Supervisor and/or Chief of Police for review and approval.
 3. Upon approval, the Performance Notice will be returned to the principal's supervisor for signature and service.
 4. The employee shall be advised of the corrective action by the issuing supervisor. The employee shall sign the Performance Notice and be given a copy of the document. A copy of the document shall be forwarded to the Chief of Police. The original document shall be forwarded to the Internal Affairs Unit Supervisor for filing.
- I. Formal Charge:
1. A Notice of Charge Form shall be used for requested discipline that could result in a discipline exceeding a written reprimand.
 2. If the complaint is sustained, and it is determined that formal charges should be preferred, the Chief of Police or designee shall direct the Internal Affairs Unit Supervisor or designee to prepare the Notice of Charge Form, sign, and serve charges upon the principal.
 3. The Notice of Charge Form shall direct that the employee charged must enter a plea of guilty or not guilty, in writing, on or before the date set forth in the notice for entry of a 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.
 4. Conclusion of fact and the penalty imposed will be noted in the employee's personnel file after he/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. A copy of the disciplinary documents shall be forwarded to the Chief of Police or designee.
- J. If the employee charged waives a hearing and enters a plea of guilty, the Chief of Police shall permit the employee to present factors in mitigation prior to assessing a penalty.

VIII. Hearings

- A. Upon written notice of a request for a hearing from the principal, the Chief of Police or other designated hearing officer / appropriate authority shall designate a hearing date, which shall not be less than ten (10), or more than thirty (30) days from the date of service of the complaint.
- B. The Internal Affairs investigating officer or supervisor shall be responsible to assist the assigned prosecutor in the preparation of the agency's prosecution of charges. This includes proper notification of all witnesses and preparing all documentary and physical evidence for presentation at the hearing.
- C. The hearing shall be held before the Chief of Police or her/his designee.
- D. The Chief of Police or designee is empowered to sustain, modify in whole or in part, or dismiss, the charges stated in the Notice of Charge Form.
- E. The hearing authority will fix punishments that are deemed appropriate under the circumstances in accordance with the Rules and Regulations.

IX. Confidentiality

- A. The progress of Internal Affairs investigations and all supporting materials are considered confidential information.
- B. Upon completing a case, the Internal Affairs Unit will enter the disposition in the Internal Affairs record keeping system.
- C. The contents of investigation case files will be maintained in a secured file cabinet under strict control of the Internal Affairs Unit Supervisor. The files shall be clearly marked as confidential.
- D. Employees shall be mindful at all times of the confidentiality of the matter and shall only disclose information regarding the complaint and investigation as may be required by this policy or when necessary to further the investigation.
- F. No disclosure of the complaint or investigation shall be made to anyone (except the complainant) outside of the Clayton Police Department Internal Affairs Unit and the Gloucester County Prosecutor's Office unless directed by the Chief of Police. Since its inception, IAPP has placed strict confidentiality requirements on records obtained and created during Internal Affairs investigations, to preserve the integrity of the investigative process. These records may only be released under a narrow range of circumstances, including when a police department's law enforcement executive has "good cause." The revised IAPP makes clear that good cause may exist
 - (a) when another law enforcement agency requests records related to a current or former officer that the agency is considering whether to hire; or
 - (b) if a Civilian Review Board that meets certain minimum procedural safeguards has requested access to a completed investigation file; or

- (c) if the information is pursuant to AG Directive 2020-5.

In addition, the IAPP strongly discourages municipalities from entering into non-disclosure agreements that may inhibit the sharing of Internal Affairs information between law enforcement agencies.

- G. If the release of internal affairs documents is appropriate, the agency should inventory the reports they are releasing and obtain a signed receipt.

X. Internal Affairs Files

- A. A separate Internal Affairs file system shall be maintained in a secured file cabinet under strict control of the Internal Affairs Unit Supervisor. Personnel records are separate and distinct from Internal Affairs records. Internal Affairs investigation reports shall not be placed in an employee's personnel records file.
 - 1. When a complaint has a disposition of exonerated, not sustained, or unfounded, there shall be no indication in the employee's personnel file that a complaint was ever made.
 - 2. When a complaint has been sustained, only the disciplinary action imposed shall be filed in an employee's personnel file.
- B. The file system shall contain all investigative files resulting from Internal Affairs complaints and the original copy of the following reports:
 - 1. Vehicular Pursuit Reports;
 - 2. Use of Force Reports;
 - 3. Firearm's Discharge Reports.
- C. Investigative records created during an Internal Affairs Investigation are included in the "Records Retention and Disposition Schedule" issued by the New Jersey Division of Archives and Records Management and shall be maintained as such.

XI. Law Enforcement Resiliency Initiative

- A. The Officer Resiliency Directive (AG Directive 2019-1) identifies resources for law enforcement officers seeking tools to cope with the emotional and mental stresses of their work, and clarifies that an officer shall not face adverse internal affairs consequences for the sole reason that the officer decided to seek medical or psychological treatment for a mental health concern.