



State of New Jersey

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ATTORNEY GENERAL ADMINISTRATIVE EXECUTIVE DIRECTIVE NO. 2020-10

TO: All Division Directors, Department of Law & Public Safety

FROM: Gurbir S. Grewal, Attorney General

DATE: October 8, 2020

SUBJECT: Directive Codifying Protocols for Communications with the Office of the Governor and the Legislature

For decades, Attorneys General and those serving under their supervision have adhered to institutional norms and procedures designed to ensure the criminal and civil laws of New Jersey are enforced evenhandedly, with integrity and independence. This Directive codifies those norms with two goals in mind: to bolster confidence in public institutions, and to affirm the centrality of clear ethical safeguards to a well-functioning government. It does so by establishing additional protocols governing contacts between, on the one hand, the Attorney General and those operating under the Attorney General's authority, and on the other hand, the Governor, the State Legislature, and individuals serving either entity.

Historically, at the federal level, the U.S. Department of Justice (DOJ) has sought to preserve its institutional integrity by establishing guidelines governing contacts with the country's elected officials—that is to say, the President and Members of Congress. Starting in the 1970s, U.S. Attorneys General of both parties have issued memoranda outlining what is known colloquially as the "White House Contacts Policy," which have outlined when and under what circumstances DOJ employees could communicate with elected officials and their staffs. Although the policy evolved over time, the basic goal remained the same: to insulate career attorneys and law enforcement officers from political pressure by funneling communications with elected officials to a small number of senior DOJ leaders. By limiting contacts in this way, the policy made it easier for DOJ leadership to identify if elected leaders were making improper requests. The policy also served as a useful management tool, by ensuring that proper requests for legal advice or other information were appropriately vetted and routed within DOJ.



Here in New Jersey, the Attorney General, the Governor, and the Legislature have developed their own practices that in many ways resemble the White House Contacts Policy as historically practiced. By all accounts, the relevant parties in New Jersey government respect the unique role of the Attorney General and share a commitment to preventing political interference in apolitical institutions. But as recent events outside New Jersey have demonstrated, the norms that protect our system of justice are susceptible to erosion if they are not clearly and continually reaffirmed. That is exactly why it is so important to codify these practices in New Jersey now—when our norms of non-interference are strong and well-established.

The role of Attorney General is unlike any other in State government. The occupant of the office serves not simply as an appointed member of the Governor’s cabinet, but also as a constitutional officer responsible for upholding the rule of law and ensuring the fair administration of justice. Broadly speaking, the Attorney General’s statutory role includes three distinct but related responsibilities:

- To be the State’s “chief law enforcement officer,” responsible for the general supervision of criminal justice in New Jersey, N.J.S.A. 52:17B-98;
- To be the “sole legal advisor” for all officers, departments, boards, bodies, commissions and instrumentalities of State Government, except as specifically provided by statute, N.J.S.A. 52:17A-4(e); and
- To be the “head” of the Department of Law & Public Safety (LPS), with oversight of the Department’s thousands of employees and its various divisions, offices, and commissions. N.J.S.A. 52:17B-2.

The general principle of this Directive is that communications about matters within the Attorney General’s jurisdiction should be coordinated through the Attorney General’s Executive Leadership Team, except where the Attorney General has authorized contacts as described in this Directive. In addition, consistent with longstanding practice, any communication with legislators or their staffs must be cleared through the Attorney General’s Director of Legislative Affairs.

The Directive outlines specific procedures for different types of communications, with the guidelines depending in part on whether the Attorney General is acting in the capacity of chief law enforcement officer, legal advisor to client agencies, and/or department head. To be clear, these procedures are not intended to wall off LPS personnel from appropriate communication with the Governor’s Office and the Legislature, or to limit employees’ ability to exercise their constitutional or statutory rights, including by contacting their elected representatives in their personal capacity as constituents. Instead, these protocols are designed to route communications to the proper officials so they can be adequately reviewed and considered, free from either the reality or appearance of improper influence.

Pursuant to the authority granted to me under the New Jersey Constitution; the Law and Public Safety Act of 1948, N.J.S.A. 52:17B-1, et seq., which provides for general responsibility of the Department's operations and the supervision of the organization of the Department; and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97, et seq., which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, I hereby direct all Department personnel operating under the authorities of the laws of the State of New Jersey to implement and comply with the following directives.

I. Communication Protocols

A. Criminal and law enforcement matters.

Decisions about criminal prosecutions and investigations are—and must be—made free of political or partisan considerations. Such law enforcement decisions are often discretionary, and this discretion must be exercised without regard to partisanship or the social, political, or ideological position of either the individuals involved in the particular cases or those who may seek to intervene against them or on their behalf.

LPS personnel involved in law enforcement activity shall not communicate with any representative of the Governor's Office or the Legislature regarding a pending or contemplated criminal matter.¹ This includes members of the Attorney General's Executive Leadership Team, except as noted below; prosecutors employed by the Division of Criminal Justice, Office of Public Integrity & Accountability, and Office of the Insurance Fraud Prosecutor; and law enforcement officers employed by LPS.

Prohibited communications include those involving:

- The nature or scope of a criminal investigation;
- The identity of any targets, subjects, witnesses, or victims;
- Any investigative step taken or contemplated, including witness interviews, the collection of evidence, or the issuance of grand jury subpoenas; and
- Any prosecutorial step taken or contemplated, including decisions regarding charging, plea bargaining, or sentencing.

¹ Of course, in situations where a representative of the Governor's Office or the Legislature is believed to be a victim or a witness to a crime, the law enforcement officers and prosecutors investigating the matter can and should communicate with the individual as they would with any other victim or witness. The investigating personnel should exercise caution to ensure that the victim or witness receives neither preferential nor disfavored treatment on account of their political or partisan associations. Prior to contacting a victim or witness employed by the Governor's Office or the Legislature, the investigating personnel should notify the First Assistant Attorney General through their supervisory chain.

If a prosecutor or a law enforcement officer receives a request for a prohibited communication, the individual should decline to answer and immediately elevate the matter through their supervisory chain to the First Assistant Attorney General.

The Attorney General may, in their discretion, determine that communication with the Governor's Office regarding a specific law enforcement matter is critical to the performance of the Governor's duties. Such communications should happen rarely, and only when the Attorney General concludes that failure to communicate about a pending criminal matter would present a significant risk to public health or public safety. In such situations, the initial communication should be transmitted by the Attorney General or First Assistant Attorney General, and should be directed to the Governor's Chief Counsel. If continuing contact is required, the officials may designate others to carry on such contact, provided that the designating official continues to monitor the contact. During such communications, the parties should take extra care to ensure that the Governor's Office is provided no more information than is necessary for the performance of the Governor's duties, and that the Governor's Office does not seek to direct or influence any aspect of a pending or contemplated criminal investigation or prosecution.

As a general matter, law enforcement officers and prosecutors are permitted to discuss information about criminal matters that is contained a public filing or has otherwise been made public by the Attorney General. If a representative of the Governor's Office or the Legislature requests such information, the officer or prosecutor may provide it, but should nonetheless promptly report the contact to the First Assistant Attorney General, through their supervisory chain. In addition, nothing in this Directive is intended to prevent communication between the Attorney General's Executive Leadership Team and the Governor's Office regarding general enforcement priorities or policy objectives, provided that the parties are discussing matters generally (e.g., strategies for reducing violent crime, or resource allocations for prosecuting white collar offenses), rather than identifying specific targets for investigation or prosecution.

B. *Affirmative civil enforcement matters.*

The Attorney General also exercises considerable enforcement authority in non-criminal matters. For example, the Attorney General has the statutory authority to investigate and pursue civil and administrative violations of certain statutes, including but not limited to the Law Against Discrimination, the Civil Rights Act, the False Claims Act, the Consumer Fraud Act, and the Charitable Registration & Investigation Act. In addition, the Attorney General serves as legal counsel for state agencies exercising their own civil or administrative enforcement authority, including but not limited to the Departments of Environmental Protection, Banking & Insurance, and Labor & Workforce Development, as well as units within LPS, including the Divisions of Alcoholic Beverage Control and Gaming Enforcement.

The same guidelines apply to LPS employees when carrying out the Attorney General's civil enforcement authority as when prosecutors and law enforcement officers are performing law enforcement matters. For example, decisions about civil enforcement actions and

investigations shall be made free of political or partisan considerations, and discretion must be exercised to the extent possible without regard to partisanship or the social, political, or ideological position of the individuals or companies involved.

Moreover, LPS employees, including attorneys and civil investigators, should not communicate with any representative of the Governor's Office or the Legislature regarding a specific pending or contemplated civil enforcement matter. If any LPS employee receives a request for a prohibited communication, the individual should decline to answer and immediately elevate the matter through their supervisory chain to First Assistant Attorney General.

The Attorney General may, in their discretion, determine that communication with the Governor's Office regarding a specific civil enforcement matter is appropriate. Such communication may be appropriate when the exercise of the Attorney General's civil enforcement authority is likely to have a significant policy or fiscal impact on the State; for example, if a contemplated settlement is likely to result in a substantial financial recovery for the State, require the funding of new State programs, or involve policy determinations regarding the forms of injunctive relief that would best serve state interests. Similarly, communication often may be appropriate when the Attorney General is contemplating legal action against another government entity, including the federal government, a state agency, or a municipality, or when an action involves the enforcement of the Governor's Executive Orders. Communications regarding civil enforcement matters, if they occur, should be limited to members of the Attorney General's Executive Leadership Team, or their designees, and the Office of the Governor's Chief Counsel (Counsel's Office).

As with criminal matters, LPS employees may disclose information about a civil enforcement matter that is contained in a public filing or otherwise has been made public by the Attorney General. Employees who are contacted by the Governor's Office or the Legislature seeking this information should nonetheless notify the First Assistant Attorney General regarding the contact. Likewise, representatives of the Attorney General and the Governor's Office are not prohibited from discussing general civil enforcement priorities, initiatives, or policy objectives, including the categories of civil cases (e.g., consumer fraud, civil rights, environmental justice) that the Department might prioritize and expend resources on, without discussing specific enforcement targets.

C. Legal representation of state agencies and employees.

Through the Division of Law (DOL), the Attorney General serves as the "sole legal adviser" for all officers, departments, boards, bodies, commissions and instrumentalities of State Government, except as specifically provided by statute. N.J.S.A. 52:17A-4(e); *see also* Florio Executive Order No. 6 (1990). In addition, under the Tort Claims Act, the Attorney General defends current and former State employees for actions brought against them on account of an act or omission in the scope of their employment. N.J.S.A. 59:10A-1.

In such matters, the Attorney General functions as a lawyer representing a client, subject to all the relevant Rules of Professional Conduct, and is ethically obligated to represent the interests of that client. *See, e.g.*, RPC 1.2, 3.1. Letter from Gurbir S. Grewal, Attorney General, to Matthew Platkin, Chief Counsel to the Governor, “Identifying Government Clients for Purposes of Conflicts of Interest,” May 15, 2019, https://www.nj.gov/oag/law/pdf/2019-0515_Conflicts-Letter.pdf. The DOL Director is authorized to establish whatever client communication protocols the Director deems appropriate, although a few general principles apply:

- When representing the Governor’s Office, DOL attorneys can and should communicate with the Office as they would with any other client. Any new request for legal advice from the Governor’s Office should be routed to the DOL Director, a DOL Deputy Director, or the Assistant Attorney General in charge of the relevant Practice Group, and any legal advice provided by DOL in response to such a request should be routed through Counsel’s Office.
- When seeking to ascertain a State agency’s policy objectives, in connection with their representation of a client agency, DOL attorneys may consult with representatives of the agency, the Governor’s Office, or both. All other communications about the matter should be limited to DOL and the client agency.
- When representing a State employee, as a matter of good practice, DOL attorneys should not contact the Governor’s Office regarding the representation without first conducting a conflict analysis to determine whether the interests of the client employee are adverse to the Governor’s Office or any other State agency.

It is the responsibility of the DOL Director to keep the Attorney General’s Executive Leadership Team apprised on contacts between DOL attorneys and the Governor’s Office, especially regarding new requests for legal advice.

D. *Review of executive orders.*

Where appropriate, the Governor’s Office requests that the Attorney General’s Office review draft Executive Orders for form and legality. The Attorney General shall designate one or more members of the Executive Leadership Team to serve as the primary point of contact(s) for such requests. Those attorneys shall be responsible for seeking legal advice from DOL, as well as guidance from any other relevant LPS divisions, and conveying that advice to Counsel’s Office. This Directive in no way limits those ongoing conversations.

E. *Personnel decisions concerning positions in the civil service.*

All personnel decisions regarding career employees in LPS must be made without regard to partisan affiliation. Efforts to influence personnel decisions concerning career employees on

partisan grounds should be reported to the Chief of Staff to the Attorney General. Nothing in this section shall be construed to be in conflict with rules of the New Jersey Civil Service Commission or LPS Standard Operating Procedure No. 1-2017.

F. ***Other communications.***

Communications between LPS and the Governor's Office or the Legislature that are limited to policy, legislation, rulemaking, budgeting, political appointments, public affairs, intergovernmental relations, or administrative matters that do not relate to a particular contemplated or pending investigation or case may be handled directly by the parties concerned, subject to the restrictions below:

- *Emergency management.* The New Jersey State Police oversees the Office of Emergency Management (OEM), and OEM personnel may communicate directly with the Governor's Office on non-legal matters when preparing for or responding to an emergency. OEM should advise the Attorney General's Executive Leadership Team on a regular basis about OEM's contacts with the Governor's Office regarding emergency management or response.
- *Legislation.* LPS personnel should not communicate with the Legislature, the Governor's Office or another state agency regarding pending or contemplated legislation without the prior approval of the Attorney General's Director of Legislative Affairs, consistent with LPS Standard Operating Procedure No. 3-2002.
- *Rulemaking.* Draft LPS rulemaking actions, including proposal and adoption notices, are transmitted to Counsel's Office for review before they are sent to the Office of Administrative Law for publication. The Division of Administration manages such correspondence with Counsel's Office for all LPS Divisions, after the Attorney General's Executive Leadership Team has cleared each rulemaking action for transmittal. Other than routine transmittals of draft rulemaking actions between the Division of Administration and Counsel's Office, LPS personnel should not communicate with the Governor's Office regarding pending or contemplated regulations without the prior approval of a member of the Attorney General's Executive Leadership Team.
- *Budgeting and administrative matters.* LPS personnel should not communicate with the Governor's Office regarding budgeting or administrative matters without the prior approval of the Chief of Staff to the Attorney General or the LPS Chief Administrative Officer.


II. Other Provisions

- A. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to supervise LPS operations and ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.
- B. ***Severability.*** The provisions of this Directive shall be severable. If any phrase, clause, sentence, or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the document shall not be affected.
- C. ***Questions.*** Any questions concerning the interpretation or implementation of this Directive shall be addressed to the First Assistant Attorney General, or the First Assistant's designee.
- D. ***Effective date.*** This Directive shall take effect immediately and remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General.



Gurbir S. Grewal
Attorney General

ATTEST:



Andrew Bruck
First Assistant Attorney General
Dated: October 8, 2020