



State of New Jersey

PHILIP D. MURPHY
Governor

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO BOX 080
TRENTON, NJ 08625-0080

GURBIR S. GREWAL
Attorney General

SHEILA Y. OLIVER
Lt. Governor

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2021-6

TO: All Law Enforcement Chief Executives

FROM: Gurbir S. Grewal, Attorney General

DATE: June 9, 2021

SUBJECT: Directive Regarding Public Disclosure of the Identities of Officers Who Commit Serious Disciplinary Violations

On June 15, 2020, I issued Law Enforcement Directive No. 2020-5, known as the “Major Discipline Directive,” to promote a culture of transparency and accountability in policing across the state. Shortly afterward, implementation of the Major Discipline Directive was stayed pending a legal challenge. On June 7, 2021, the Supreme Court of New Jersey upheld the validity of the Major Discipline Directive, clearing the way for all law enforcement agencies in the state to begin complying with its public-disclosure requirements. In light of that decision, today’s supplemental Directive provides (1) guidance to all law enforcement agencies about how to fully comply with the Major Discipline Directive, and (2) additional clarification regarding law enforcement agencies’ authority over the confidentiality and publication of internal disciplinary information and records.

The Major Discipline Directive serves a number of important interests. As I explained last year, for decades New Jersey treated law enforcement agency internal disciplinary files—generally known as “internal affairs” records—as confidential. This policy of blanket secrecy undermined public trust in law enforcement officers and public confidence in the system of police discipline that is essential to holding officers accountable for misconduct. So to promote trust, transparency, and accountability, I concluded that the public interest would be served by periodically disclosing the identities of law enforcement officers disciplined for serious violations, as many jurisdictions across the country do. Accordingly, the Major Discipline Directive instructed law enforcement agencies to begin to publish, at least once a year, a brief synopsis of all complaints resulting in major discipline—defined as termination, reduction in rank or grade, and/or suspension of more than five days—including the names of the officers sanctioned. And it revised the statewide rules



for internal affairs investigations, known as *Internal Affairs Policy & Procedures* (IAPP), to reflect these policy changes.

In light of the extended stay of the Major Discipline Directive, additional guidance is now warranted. As an initial matter, Directive 2020-5 instructed law enforcement agencies to publish their first reports identifying the officers subject to major discipline “no later than December 31, 2020.” However, the stay prevented law enforcement from complying with that publication date. As a result, this Directive establishes a new date for initial reports: law enforcement agencies must publish their first public report required under IAPP no later than August 9, 2021, which is 60 days after the date of this Directive. Because the Major Discipline Directive applies prospectively, this initial report should cover those complaints where a plea or settlement was reached or a sanction imposed from June 15, 2020—the date the Major Discipline Directive was issued—until December 31, 2020. In the future, reports detailing all major discipline should be published no later than January 31 of the following calendar year.

This supplemental Directive also makes revisions to IAPP in order to clarify the scope of law enforcement agencies’ authority regarding the confidentiality and publication of internal affairs information and records.

First, under the longstanding IAPP, while internal affairs information and records are by default confidential, Section 9.6.1 establishes that a County Prosecutor or Attorney General may direct their disclosure. During the litigation challenging both Directive 2020-5 and Administrative Executive Directive No. 2020-6, the question arose whether law enforcement agencies may enter into binding confidentiality agreements with officers that preclude a County Prosecutor and/or the Attorney General from later exercising their authority to direct disclosure. This Directive clarifies that agencies have no such authority. As IAPP’s language makes clear, the power to direct sharing or release of internal affairs information is possessed by the relevant County Prosecutor and the Attorney General—and that power cannot be nullified by individual law enforcement agencies. Agencies, including those housed within the Department of Law and Public Safety, thus may not enter into agreements limiting the authority of the County Prosecutor or Attorney General to direct disclosure at a later date, even where that information is not currently subject to publication. Were the rule otherwise, a law enforcement agency would be able to shield disciplinary records from disclosure simply by stipulating to do so in a settlement agreement, in turn subverting the important ends the Major Discipline Directive seeks to achieve. As a result, this Directive adds a provision, Section 9.6.6, to expressly codify that law enforcement agencies cannot waive, restrict, or otherwise limit the power of the County Prosecutor or the Attorney General to subsequently request or direct the disclosure of internal affairs related information.

Second, this Directive adds a new section to IAPP, Section 9.11.3, clarifying that no law enforcement agency may enter into binding agreements with law enforcement officers concerning the precise content of a public report concerning major discipline. In other words, law enforcement agencies may not reach any agreement—as a condition of a plea or settlement agreement in an internal affairs investigation, or otherwise—specifying whether and how that agency will describe

the misconduct or sanction in future public reporting. This provision ensures that information subject to public disclosure under the Major Discipline Directive is not withheld because of agreements between law enforcement agencies and officers; reports disclosed to the public reflect a law enforcement agency's independent, good-faith assessment of the information appropriate to be disclosed under the Directive; the County Prosecutor and Attorney General retain discretion to require additional disclosure as necessary; and each law enforcement agency takes a uniform approach to public disclosure, regardless of any agreements a particular officer seeks to obtain. Moreover, by clarifying that agencies may not reach agreements respecting the content of a public disclosure, the provision ensures that disagreements about the content of a prospective disclosure do not impede the ability of agencies and officers to otherwise reach agreements resolving internal affairs charges. Indeed, this provision of IAPP only prohibits agreements concerning the content of public reports required to be published under IAPP Section 9.11.2; it does not otherwise limit the authority of an agency to reach an agreement with an officer resolving, for example, the administrative charges at issue or associated disciplinary consequences.

Third, because the purposes animating the Major Discipline Directive—accountability, transparency, and the promotion of trust in law enforcement—require disclosure of the identities of officers, not those harmed by officer misconduct, this Directive amends IAPP to clarify that public reports concerning major discipline shall not disclose the identities of the victims of officer misconduct. And where officer discipline relates to domestic violence, this Directive makes clear that public reports will not disclose the relationship between an officer and a victim of domestic violence (such as whether the victim was a spouse, child, or former household member of the officer) in order to avoid the indirect disclosure of a victim's identity.

Finally, this Directive makes a range of additional amendments to IAPP concerning the conduct of internal affairs investigations and coordination between law enforcement agencies.

For the reasons stated in this Directive and in the Major Discipline Directive, and pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, 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 law enforcement and prosecuting agencies operating under the authority of the laws of the state of New Jersey to implement and comply with IAPP as revised by this Directive, and to take any additional measures necessary to update their guidelines consistent with IAPP, as required by N.J.S.A 40A:14-181.

I. Revision to *Internal Affairs Policy & Procedures*

A. ***Confidentiality of internal affairs records.*** IAPP Section 9.6 is amended to include the following addition:

9.6.6 Law enforcement agencies may not waive, restrict, or otherwise limit the power of the County Prosecutor or Attorney General to direct that the information or records of an internal investigation be released or shared pursuant to Section 9.6.1(c).

B. ***Confidentiality of victim identities.*** IAPP Section 9.11 is amended in part to read:

9.11.2 On a periodic basis, and ~~at least once a year~~ **no later than January 31 of the following year,** every agency shall submit to **the Attorney General and** the County Prosecutor, and publish on the agency's 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 **follow the format provided in Appendix L and 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 **or any victims. Where discipline relates to domestic violence, the synopsis shall not disclose the relationship between a victim and an officer. Whenever practicable, notice shall be given to victims of domestic violence in advance of an agency's disclosure. In rare circumstances, further redactions may be necessary to protect the identity of a victim. An example of a synopsis is found in Appendix L.**

C. ***Publication of public reports.*** IAPP Section 9.11 is amended to include the following addition:

9.11.3 Agencies may not, as part of a plea or settlement agreement in an internal affairs investigation or otherwise, enter into any agreement concerning the content of a synopsis subject to public disclosure under Section 9.11.2, including any agreement regarding the identities of officers subject to final discipline, summaries of transgressions, or statements of the sanctions imposed.

D. ***Reporting.*** Each law enforcement agency shall publish its first major discipline report in compliance with Section 9.11.2 no later than August 9, 2021, which is 60 days from the date of this Directive. The first report shall cover those substantiated major disciplines in which a plea agreement was reached or final sanction was imposed from June 15, 2020 to

December 31, 2020. In the future, reports corresponding to the substantiated major discipline in a calendar year shall be published no later than January 31 of the following year. The relevant County Prosecutor shall be responsible for ensuring agencies timely comply with these public disclosure responsibilities. Agencies shall electronically transmit a copy of each public report—formatted as provided in a revised Appendix L and submitted in a manner prescribed by the Attorney General or their designee—to the relevant County Prosecutor or their designee, as well as to the Executive Director of the Office of Public Integrity & Accountability (OPIA) or their designee.

E. ***Additional changes to IAPP.*** IAPP is further amended as follows:

2.2.3(b) *Unfounded.* A preponderance of the evidence shows that the alleged ~~mis~~conduct did not occur.

2.2.3(c) *Exonerated.* A preponderance of the evidence shows the alleged conduct did occur, but did not violate any law; regulation; directive, guideline, policy, or procedure issued by the Attorney General or County Prosecutor; agency protocol; standing operating procedure; rule; or training. **(For example, at the conclusion of an investigation into an excessive force allegation, the agency finds that the officer used force (alleged conduct) but that the force was not excessive (alleged violation).)**

4.2.5 Law enforcement executives shall not assign to the internal affairs function any person responsible for representing members of a collective bargaining unit. The conflict of interest arising from such an assignment would be detrimental to the internal affairs function, the subject officer, the person so assigned, the bargaining unit and the agency as a whole. **Also, a bargaining unit representative should not be permitted to represent more than one witness or subject in a single investigation, in part to avoid potential conflicts of interest. Although a witness/subject is entitled to a representative, he/she is not necessarily entitled to a particular representative.**

5.1.14 Once a complaint has been received, the subject officer shall be notified in writing that a report has been made and that an investigation will commence. **Such notification shall not include the name of the complainant.** This notification is not necessary if doing so would impede the investigation. An example of a notification form is found in Appendix C.

- 6.0.1 All allegations of officer misconduct shall be thoroughly, objectively, and promptly investigated to their logical conclusion **in conformance with this policy, regardless of whether the officer resigns or otherwise separates from the agency.**
- 6.2.1 Following the principle that the primary goal of internal affairs and discipline is to correct problems and improve performance, management in the subject officer's chain of command should handle relatively minor complaints. Complaints of demeanor and minor rule infractions should be forwarded to the ~~supervisor~~ **commanding officer** of the subject officer's unit because it is often difficult for an immediate supervisor to objectively investigate a subordinate. In addition, that arrangement might obscure the possibility that part of the inappropriate conduct was the result of poor supervision **by the immediate supervisor.** While the structure of each law enforcement agency is different, it is recommended that minor complaints be assigned to and handled by a commanding officer at least one step removed from the officer's immediate supervisor. **This includes complaints from within the agency.** Often Human Resources may need to be notified and involved.
- 6.2.3(b) *Unfounded.* A preponderance of the evidence shows that the alleged ~~misconduct~~ did not occur.
- 6.2.3(c) *Exonerated.* A preponderance of the evidence shows the alleged conduct did occur, but did not violate any law; regulation; directive, guideline, policy, or procedure issued by the Attorney General or County Prosecutor; agency protocol; standing operating procedure; rule; or training. **(For example, at the conclusion of an investigation into an excessive force allegation, the agency finds that the officer used force (alleged conduct) but that the force was not excessive (alleged violation).)**
- 9.8.2 Accordingly, in any case where a law enforcement agency has reason to believe that a candidate for employment was previously a sworn officer of another law enforcement agency, the hiring agency has an affirmative obligation to identify all such former employers. The hiring agency shall

then request all internal affairs files for cases where the candidate was the subject officer, regardless of the ultimate disposition or status of the complaint. **If requested, the hiring agency shall provide a written acknowledgement to the releasing agency that it will maintain the confidentiality of said files in accordance with this policy.**

- 9.8.3 If a law enforcement agency receives such a request regarding a former employee, then it shall immediately share copies of all internal investigative information related to that candidate with the hiring agency, **in accordance with N.J.S.A. 52:17B-247**. Confidential internal affairs files shall not be disclosed to any other party.

II. **Other Provisions**

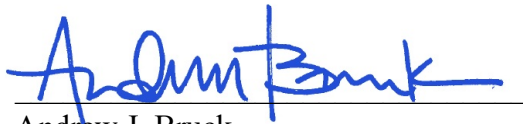
- A. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. This Directive imposes limitations on law enforcement agencies 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 and IAPP shall be severable. If any phrase, clause, sentence or provision of either this Directive or IAPP is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of either document shall not be affected.
- C. ***Questions.*** Any questions concerning the interpretation or implementation of this Directive, the Major Discipline Directive, or IAPP shall be addressed to the Executive Director of OPIA, or their 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. Accompanying this Directive is an updated version of IAPP and Appendix L that reflects the changes made by this Directive.



Gurbir S. Grewal
Attorney General

ATTEST:



Andrew J. Bruck
First Assistant Attorney General

Dated: June 9, 2021