
MEMORANDUM

FROM: The New Jersey Institute for Social Justice
TO: Newark Police Division Consent Decree Planning Unit
RE: Complaint Intake & Investigation Process Policy Community Feedback
DATE: July 27, 2018

Introduction

This memorandum provides a summary of community feedback concerning the Newark Police Division's (NPD) draft *Complaint Intake & Investigation Process* policy. All community feedback received is also attached to this memorandum.

The NPD held a community policy review forum on July 19, 2018, at the Stephen N. Aduato Sports Complex. At this meeting, the New Jersey Institute for Social Justice (NJISJ) conducted facilitated discussions with community members to receive their input on the draft policy. The community feedback received from this forum is attached to this memorandum.

NPD and the Independent Monitoring Team also requested written feedback on the draft policy on their respective websites.

The community feedback below is grouped by policy section. Space has been provided to aid NPD in providing a response to the public on why certain community feedback will be/will not be incorporated into the finalized policy.

POLICY
(Policy Section II)

1. General Comments

Feedback and Recommendations:

- The discussions opened up many complaints from community members regarding police conduct, including officers who failed to introduce themselves, escalated violence, were disrespectful, and used violent language. One community member shared an incident where he tried to file a complaint, it went nowhere, he was subject to violence, and his complaint was ultimately ignored.
- These sharing of stories resulted in the following suggestions from community members:
 - A desire to see NPD members who repeatedly ignored the rules demoted or even removed.
 - An effective early warning system for flagging problematic officers.
 - The creation of a robust and effective witness protection program for citizens and officers who make complaints.
- Many felt the policies should be in more laymen's terms, making it more readable for ordinary folk, citizens and officers alike.
- The use of apt examples was commonly noted as a useful way to help people understand the policies, a technique that was largely absent.
- Another suggestion was to give each numbered section a page number on the first page of the general order, to make it easier to access.
- There was also criticism regarding the timeline of publishing the policies for community review prior to the community forums and publicizing so that the community has the time to review before engaging in discussion.
- Community members had concerns about training, monitoring, and accountability, and worried how complaint intake would actually play out in practice.

NPD Response:

>To open, simply put, many of the listed complaints are why we are under a Consent Decree. We recognize these concerns and complaints, and are making proactive strides to improve our operating systems. And this effort (writing of policies, ensuring personnel are properly trained on policy, and finally compliance) is to move the agency forward with positive change for the community.

>Discipline will have a progressive component, where officers who repeatedly ignore rules will be dealt with more harshly as rule violations increase.

>We presently have an existing Early Warning System with the IAPro computer database. We also have a Performance Monitoring component that is to be significantly enhanced under the Consent Decree (CD).

>From the perspective of resources, feasibility, logistics and coordination, a traditional witness protection program may be significantly above the operating ability of NPD. A protection service may most likely occur on very high profile matters or other extraordinary incidents with the assistance of the Essex County Prosecutor's Office, (ECPO). One avenue for officers is the "anonymous" type of complaint made to Professional Standards or the ECPO with only those entities being aware of the officer identity. It is incumbent on the OPS to ensure the "sanctity" of the processes, which includes protecting the identity of officers when a given situation presents itself.

>I believe the Complaint Intake & Investigation Process policy, (CI&IP) is in plain, readable language. We will review for any unclear or jargon like language.

>There are examples for major offenses, (section X) and some for minor in the policy, however perhaps not specific incidents. But the overall examples should provide the reader with an idea of what types of incidents are considered major and minor offenses.

>In regards to the timeline for publishing the policies, the CI&IP policy was originally posted in draft on June 20th and periodically updated as recommendations for revisions came down from the SME, DOJ and finally the Monitor. Final Draft w/ Monitor approval went up July 9th. The policies are evolving Drafts until final completion.

>In regards to training, monitoring and accountability and how it would play out with complaint intake, the NPD has existing policies in place which include many aspects of what we are required to do under the CD. The CD has required (significant) policy revisions and has required additional language for procedural change.

The policies and procedures are about the responsibilities of the members of this agency, no matter where they are assigned, to effectively carry out the mission of complaint intake & investigation. Once the new policy is enacted, the members of the agency are then trained to know and understand all facets of the policy and their

individual responsibilities in carrying it out. Employees will be held accountable for failing to abide by policy and procedure. Compliance checks are part of the process as well to ensure that the mission is being carried out.

We recognize the community concern that the Office of Professional Standards do not take Internal Affairs complaints seriously, and/or that Internal Affairs matters are simply “swept under the rug”. To be clear, there are several hundred, (between 400 to 500) external (public) complaints taken by the agency every year. A few years back, this number was even significantly larger-in the 800/year range. This information is cited in the hopes that some community members gain an understanding that complaints from members of the public are accepted in the NPD.

Moreover, the notion that the NPD and its Internal Affairs Units (now the Office of Professional Standards) does not or did not hold their officers and supervisors accountable is also not wholly accurate. There are hundreds of cases per year (derived from both internal and external sources) in which officers are administratively charged and disciplined.

Please do not misunderstand the aim here. There clearly have been issues within the NPD concerning Internal Affairs matters and with IA investigations, specifically related to external (public) complaints.

We are moving forward in an attempt to ensure all personnel are equipped with the knowledge and skills necessary to improve, not only the work of investigating internal affairs complaints, but all aspects of the agency to gain community respect, trust and support.

DEFINITIONS (Policy Section IV)

1. Complaint Against Personnel (C.A.P.)

Draft Policy:

- Complaint Against Personnel (C.A.P.) is defined as “[f]ormal Division charges made against an employee that have been investigated and sustained and that result in the filing of a complaint against personnel report.”

Feedback and Recommendations:

- Community members suggested a shift in the language to call it a “formal charge,” after seeing no reason to call it a “complaint.”

NPD Response:

Complaint Against Personnel (CAP) report – The definition of Complaint Against Personnel is a ‘formal administrative charge’.

2. Internal Complaint

Draft Policy:

- Internal Complaint is defined as “[c]omplaints that are initiated from within the Division that involve violations of Division rules, regulations, policies, procedures or performance deficiencies.”

Feedback and Recommendations:

- There were numerous concerns from the community regarding retaliation against police officers who report misconduct. One recommendation was to establish a robust witness protection program which allows officers to more freely report misconduct and increase overall accountability.

NPD Response:

Internal Complaint – We respect and understand community concerns regarding “retaliation”. I will defer to the earlier comments regarding a traditional witness protection program citing the level of resources it would take and the feasibility of a protection program especially considering the significant logistical concerns.

We understand the concerns, and the policies we put in place need to be enacted, understood, employed and enforced. We have had past cases and some recent cases where officers have made complaints against superiors and/or colleagues. So, in effect, officers are displaying that they are comfortable in making these complaints. It may never be a perfect science, but the notion of “retaliation” may

present itself in certain situations, and when/if it does, officers/supervisors will face significant consequences.

3. *Misconduct*

Draft Policy:

- Misconduct in the current draft policy is “[d]efined as a commission of a crime, offense or violation of Division Rules, Regulations, Policies, Procedures or conduct that adversely reflects upon the Division.”

Feedback and Recommendations:

- There was confusion over who defined and decided what qualified as misconduct and how they would do so.
- Community members thought it would be helpful if included in the definition were citations to a document that referenced proper conduct. That document should also be easily accessible to the public.
- It was felt that examples articulating some behaviors that fall under misconduct would help the definition.

NPD Response:

Misconduct - The definition of misconduct is consistent with NJ Attorney General Guidelines. Our definition is a concise explanation for the overall term of “misconduct”, in other words “breaking the rules”. So, for example, if the rules for my son are for him to be home at 8pm, and he came at 9pm, he committed “misconduct”. If the rules for my son are to clean his dinner plate and throw garbage in the trash, but he left it on the table, he committed “misconduct”. If the rules for my son are to be respectful of other people, and he wasn’t, he committed “misconduct”. If my son did something more serious (which I really hope he doesn’t) then it is “misconduct”. And based on the level and severity of “misconduct”, so too are the consequences. The NPD breaks misconduct down into Major and Minor categories. It is not feasible to account for every situation of misconduct that arises, and therefore the policy lists general topics of what is major misconduct and what is minor.

>Citations to a document that referenced proper conduct: All of our various policies which cover just about all police activity explain the “do’s and don’ts” for officers or

supervisors to follow. We will post our *Rules and Regulations manual* to our website which would explain proper vs. improper conduct.

>Examples of behaviors: As noted above, the policy lists several examples of major misconduct offenses and lists some for minor. Keep in mind, this is only a Definition section, further information occurs in the policy, (Section X-major). In other words, the policy cites excessive or unreasonable/unnecessary force, but not specifically that an officer shall not “punch a handcuffed suspect”. The policy also lists “tardiness”, but not specifically that “Officer Jones” was late to roll call. The aim is to present the policy information in a concise and understandable manner.

4. Major Offense

Draft Policy:

- Major Offense is defined as “[s]erious violation/s of Division rules, regulations, policies, or procedures which shall include any criminal violation of Federal or State Laws. Serious violations of City Ordinances or Motor Vehicle violations shall also be considered major offenses. Major offenses shall be the subject of a Trial Board. Multiple minor offenses, or a pattern of committing similar minor offenses, can be used to upgrade a minor offense to a major offense. This process shall be properly documented. A penalty for a Major Offense violation is more than five (5) working days at any one time.”

Feedback and Recommendations:

- The definition should specify “five (5) working days *suspension* at any one time.” This would mirror the Minor Offense definition – community members believed there should be consistency in the language use.
- Again, it was said examples would help the definition.
- There should also be a clearer articulation of what is meant by “properly documented.”

NPD Response:

Major Offense - The language “more than five (5) working days” for major offense is specific language taken from Civil Service rule, NJ Administrative Code: 4A:2-2.2, #3.

>Properly Documented - This specific reference taken from the Definition section is in regards to the “proper documentation” in situations where multiple minor offenses may upgrade a complaint to be considered major. Proper documentation occurs through officer disciplinary histories via the IAPro computer program and the actual investigations and investigative documents to maintain an accurate account of officer infractions and allegations, both sustained and not.

5. *Minor Offense*

Draft Policy:

- Minor Offense is defined as “[l]ower level violations of Division rules, regulations, policies or procedures. Examples of Minor Offenses include demeanor untidiness, tardiness and other low-level rule violations. Minor offenses shall be the subject of a Disciplinary conference, and a penalty may include a maximum of five (5) working days’ suspension.

Feedback and Recommendations:

- There was concern regarding whether multiple minor offenses (of the same offense) would be subject to the same 5-day suspension. Community members believed repeat offenders should face escalating penalties.
- Also, some were confused about whether “tardiness” referred to internal or external conduct.

NPD Response:

Minor Offense - Multiple minor offenses are categorized as a major offense thereby creating that escalating scale which is listed in the definition of Major offense. This language is only listed in the Major Offense definition to eliminate redundancy.

NOTE: The Definition of Minor Offense was altered to include additional examples, but the list is not all inclusive.

>Tardiness most often would be considered an internal complaint as in an officer showing up late for work, documented by a supervisor. But if a civilian came forward to complain that an officer was showing up late for work- then in fact it would be considered “external”.

COMPLAINT INTAKE PROCESS
(Policy Section IX)

1. General Comments

Feedback and Recommendations:

- In addition to the avenues listed for complaint intake, there should be community institutions listed, like places of worship or community centers where Complaint of Employee Misconduct forms are made available.
- There was also a desire to include the Civilian Complaint Review Board in the process, at the very least with complaint numbers and dates of completion to ensure that any investigation is finished in a timely manner.
- Another recommendation from the community was for a status tracker for complaints, be it a phone number or an online portal where a complainant can check the status of their complaint using an assigned complaint number.
- Again, community members believed there was a real need for a witness/complainant protection program for complainants who are officers or members of the public.
- There was a desire to have systems in place to prevent information from being freely circulated in the Division about complainants.
- Community members also wanted a way to see how many complaints an individual officer had against them.

NPD Response:

>**The policy does include that employee misconduct forms will be available at (in addition to police facilities) City Hall/Council offices, public libraries and community centers. The forms will be dispersed throughout the city with reasonable accommodation, both for the public and agency logistical concerns.**

>**CCRB - As it stands now, the CCRB may review Internal Affairs data consistent with Chapter 13 of the Consent Decree. The CCRB duties and responsibilities will include independent reviews of internal investigations, procedures for resolution of civilian complaints, monitoring trends in complaints, reviewing findings of misconduct and the imposition of discipline. The city is appealing the state court decision regarding civilian oversight of the NPD.**

>**Status Tracker for complaints - Generally, the only information that would be available regarding open investigations would be a “Pending” status. Administrative**

Investigations have either a 30 day (OPS) or 45 day (outside Commands) due date. However, some investigations for a host of reasons, may run longer. And at the completion of an investigation, investigators are required to send a letter to the complainant advising of the outcome. In matters that were Not Sustained, Exonerated or Unfounded, the investigator is required to provide the complainant with an explanation of facts as to why one of the above dispositions was reached. In matters of Sustained complaints, the letter will only advise that the officer will be disciplined according to policy.

The new policy includes language that an investigator will provide at least monthly updates to the complainant if an investigation will be a long-term matter. Criminal matters are usually long-term matters, but are investigated by the Prosecutor's Office, not the NPD. In these matters, it is generally the ECPO's responsibility to make update notifications. The NPD investigator will only be able to advise a complainant that the matter is "under criminal review". When the investigation is forwarded back to the NPD for administrative investigation, the OPS investigator will provide, at a minimum, monthly updates. This is an area we recognize as a frequent area of concern in the NPD IA process, and we will ensure that our investigators keep the complainants aware of the investigative progress, (as long as the investigation is in the hands of the NPD).

>Information from being freely circulated - Internal Affairs matters are confidential matters and NO information should be disseminated through the PD or elsewhere. Confidentiality is a serious matter, and will result in significant discipline if it is discovered that an officer, involved in the incident or otherwise, or investigator disseminated any information without just cause and authorization. Language has been added to the policy for clarification:

- *Definition: added 'Confidentiality' to the definition section;
- *Section VIII: OPS: Letter 'S';
- *Section IX: Complaint Intake: added to opening, paragraph 5.
- *Section XII: Complaint Investigation: #26 added.

>Complaints on individual officers - Information is available on the NPD website, posted monthly; however, this information describes aggregate data such as the number of complaints, types of complaints, number of sustained complaints etc. There is also information posted in regards to disciplinary penalties. There is no specific information naming individual officers. This is consistent with NJ Attorney General Guidelines.

2. Avenues for Complaint Intake

Feedback and Recommendations:

- There was concern regarding how a complaint taken over the phone would be documented accurately, leading to recommendations that there be accurate recording of complaints that are phoned in.
- Many community members noted the need to reach the community where they were, which means expanding the locations where reporting can be done. In the meeting an officer cited a lack of resources as an obstacle in the way of adding many more complaint drop boxes, however, ensuring that community institutions like schools, places of worship or community centers have Complaint of Employee Misconduct forms easily available would go far.
- There was a suggestion to add the link for online reporting within the policy.
- There was also a desire to include the Civilian Complaint Review Board in the process, at the very least with complaint numbers and dates of completion to ensure that investigation is finished in a timely manner. Some even suggested a copy of the complaint form for community review.
- Community members expressed concerns with the logistics of an anonymous submission, posed the following questions:
 - How will there be follow-up with anonymous submissions?
 - How can anonymous complainants submit evidence along with the form?
- Some saw a need for accountability at drop box locations to ensure all complaints are properly picked up and entered into the system.
- Accessibility of the process was another concern: there was a desire to see language in the policy tailored to allowing those with physical and mental disabilities gain access to the process.
- It was also suggested that there be the creation of promotional materials with all the complaint intake avenues on a single page made available to the community.

NPD Response:

>Complaints are accepted over the telephone, and will be forwarded to the OPS for investigation. In the event that the complaint intake officer/supervisor did not document all of the information precisely as it was provided over the phone, this would be addressed during the investigation phase, when the investigator contacts the complainant and goes over the details of the complaint. If anything were missing, the complainant can advise the investigator. Complete, thorough and

impartial investigations should capture all pertinent details, so anything missed at the outset should be caught in the investigation process.

>Complaint Drop Boxes - For logistical purposes, having the drop boxes on a somewhat more controllable means was in the feasibility of having boxes in numerous locations may cause issues in terms of retrieval and processing of the complaints. The police precincts, including the Emergency Division and OPS office would provide a dispersed citywide environment. Secondly, City Hall and Council Offices are included as off-site law enforcement locations.

>The ability to report online is listed in the Complaint Intake Section, however the actual site name is NewarkPD.org.

>CCRB- see above in regards to CCRB.

>Anonymous Complaints - Anonymous complaints are accepted and will be investigated. That said, an investigator is only as good as the information which is provided and/or discovered. The reality is, there may be impediments to a thorough investigation without complainant assistance. However, an investigator is required to explore all avenues before concluding he/she doesn't have necessary information to sustain a complaint. With today's technologies (body worn cameras, other surveillance cameras, computer tracking, etc.), it is very possible to move forward without specific complainant assistance.

As to a complainant being able to drop off evidence without police assistance, that is a fair point and a good question. It would not be practical to have evidence receptacles throughout the city for drop off without proper police oversight. So a complainant in this situation will have to take a common sense approach and either drop the items off at a designated police facility or indicate on the submitted form that they are in possession of evidence, and that later arrangements can be made for investigator pick up. Investigations at any level, for any investigator, will never be a perfect science. That said, to conduct a sound investigation the best approach is a common sense approach. And this is what would be advisable and suggested for an individual in possession of evidence.

>Accountability at drop box locations - Each Command is responsible for ensuring complaints are processed on a daily basis. The OPS is responsible for ensuring off site location complaints are retrieved and processed. On the accountability side, this is where actual compliance checks come into play.

As we move forward from issuing policy and training the agency, the next component is ensuring that the policies are being adhered to. If it is discovered that a command is not performing these tasks, the Commander is held accountable.

>Mental and Physical Disabilities - The policy states that any and all complaints from any persons must be accepted (including immigration status, 3rd party, juvenile etc.). The training component will provide further explanation and guidance.

>Promotional Materials - The NPD presently uses a 2 sided flyer which lists the multiple avenues for complaint intake.

3. Minimum Standards for Complaint Intake

Feedback and Recommendations:

- Some members were confused as to whether complainants received a copy of the complaint upon filing one or whether there was a period of time they had to wait.
- Other community members voiced the need for assurances of confidentiality, especially in the light of a troubled history, to ensure community buy-in into the complaint. They did not see the confidentiality assurances they needed.

NPD Response:

>Complainants do not receive a copy of the complaint. Complainants will receive an Event number at the time they initiate their complaint. Complainants will also receive a Professional Standards pamphlet which will have the Event number written down. Complainants can use this Event number to access their complaint when calling OPS. In addition, once the investigation is assigned, an investigator is required to send a contact letter (via certified U.S. mail) identifying themselves, and advising the complainant that the complaint was received, and will be investigated. The letter is sent promptly after the investigation is assigned. The letter should be received a few days after the complaint is made.

However, the complainant should be contacted by the investigator even before the letter is received.

>Confidentiality - As noted previously, all matters concerning IA are confidential. Confidentiality is taken very seriously. Any officer found to have purposefully disseminated IA information without authorization would be dealt with swiftly and

harshly. To address these concerns, we have added Confidentiality language to several areas of the policy consistent with community suggestions:

- *Definition: added ‘Confidentiality’ to the definition section;
- *Section VIII: OPS: Letter ‘S’;
- *Section IX: Complaint Intake: added to opening, paragraph 5.
- *Section XII: Complaint Investigation: #26 added.

COMPLAINT INVESTIGATION (Policy Section XII)

1. General Comments

Feedback and Recommendations:

- Community members expressed a need for the CCRB to be involved, to have the citizens tracking complaints to increase accountability.
- Something that was heard multiple times was a fear of retaliation among potential complainants. Two recommendations were made to address this:
 - The designation of certain community members as individuals who would accompany complainants through the complaint process.
 - Another recommendation was that the NPD should allow individuals to make a complaint on someone else’s behalf.
- There was confusion regarding the procedure for anonymous complaints as it referred to Paragraphs 2 & 5 under Section B of Complaint Investigation. It would be helpful if the policy articulated what the procedure for anonymous complaints will be.
- Community members believed the “Misconduct Complaint Flow Chart,” would be more useful with footnote definitions below the chart.

NPD Response:

>CCRB info as noted previously.

>Fear of retaliation - In regards to designating community members to assist in the IA process, perhaps that is something the CCRB should consider for inclusion in the process. This may not necessarily come directly from within the PD, however if we work together to develop a viable plan and it is presented to the PD, it may have a positive impact. This would generally be done for support purposes only, as the independent civilian would not be able to participate in the investigation process.

>3rd Party Complaints: The NPD does allow 3rd party complainants. It is in the policy; Complaint Intake, Letter I. Language added for clarification.

>Paragraphs 2 & 5 of Section B - As noted previously, anonymous complaints are handled with any information provided and/or discovered. As far as making contacts and submitting letters, this would only be completed in situations where the identity is known. If an anonymous person does not wish to provide any identifying information or contact information, he/she simply would not be contacted. This would be the conscious choice of the complainant.

An investigator's actions should be guided by a good common sense approach. The investigation would continue, and the investigator will be responsible for exploring all avenues or leads to form a logical conclusion of facts. Anonymous complaints will not simply be dismissed because a civilian does not wish to come forward. Furthermore, if the complaint was sustained by means other than complainant assistance, (e.g. video, other technology, witnesses) then the complainant would not be a necessary party to the disciplinary hearing.

>Misconduct Complaint Flow Chart - The Flow Chart is a basic, visual explanation of how the internal affairs process runs. It provides the reader with basic understanding of the process and is supported by the NJ Attorney General Guidelines on 'Internal Affairs Policy and Procedures', revised November 2017.

Questions Received from Individuals in Attendance at the Community Input Forum for the “Internal Affairs: Complaint Intake” policy and the “AFIT – All Force Investigation Team” policy

2

What is the process for determining whether

force &/or misconduct is racially motivated?

Is that process open to the public?

Ultimately, the investigation into a given incident can determine if police action was predicated on racial motivation. If a complainant alleges he/she was stopped by police because of race, then the investigator will have to look at all of the factors leading up to the incident, and can also look into the officer’s history of stops/arrests/summonses, etc. Is the significant majority of stops/arrests/summonses from one race? Are the officer’s stops/arrests/summonses dispersed over racial lines?

But one factor is not all determining because if an officer’s police actions are predominantly of one racial group, perhaps the area he/she polices comprises a significant population of that given racial group. At the end of the day, a good investigator will have to make a ‘totality of the circumstances’ determination based on facts.

In addition, an Early Warning System will also be instrumental in tracking officer behaviors and conduct.

The investigative process would not normally be open to the public as the Internal Affairs processes are considered confidential. However, statistical information and synopsis’ of complaints are available on the PD website, NewarkPD.org.

2)

How do you address Supervisors & officers who are out sick, on vacation, otherwise not available.

What technology will be available to assist in recording & maintaining records.



Confidentiality? —
How can one ensure that the recipient of a complaint — keeps it confidential —

The Medical Services Unit maintains all records regarding sick time/long term sick, etc. The unit is governed by existing NPD policy. Vacations are maintained by Precincts and individual units within the NPD. Vacations also are regulated by NPD policy to ensure that there is a fair and equitable distribution of personnel out at in any given time frame. Personal days are also maintained by individual Commands and precincts and it is up to the given Commander to ensure that if he/she is approving a day off, that there is ample coverage within the precinct/unit.

The NPD utilizes a Records Management System (RMS) for police reporting, investigations, dispatch assignments, etc. In addition, a Blueteam database will soon be implemented to record/track internal complaints, police pursuits, use of force etc.

Currently, the Office of Professional Standards utilizes the IAPro computer system for reporting, tracking and monitoring purposes. IAPro will be incorporated with the BlueTeam program once it is fully implemented.

To specifically address your question of “how can one ensure that the recipient of a complaint keeps it confidential”, There can never be a 100% guarantee that information would not be leaked or passed along. However, we can input directives into policy to ensure that our

employees are fully aware that any violation of confidentiality will be taken with the utmost seriousness, and anyone who violates this confidentiality will face significant consequences.

The following information was added to policy concerning the 'confidentiality' issue:

*Definition: added 'Confidentiality' to the definition section;

*Section VIII: OPS: Letter 'S';

*Section IX: Complaint Intake: added to opening, paragraph 5.

*Section XII: Complaint Investigation: #26 added.

3) When are answers to all of
those questions going to
be posted?

As we review the forum questions and NJ Institute for Social Justice information, we will respond accordingly. There is no firm date for response, however we are working diligently to get this completed and posted.

5)
If complainants or witnesses
are not Mirandized, will their
statements be used against them
later if criminal proceedings
occur? If not, will you be
informing interviewees of this
possibility?
(if not, that is very concerning)

re complaint + investigation process

The Dept of Justice (DOJ) investigation found that civilians were being discouraged from filing complaints because they were being given Miranda Warnings prior to providing statements. Thus, civilians were feeling dissuaded from going forward with their IA complaints. Secondly, Miranda is only applicable to situations where a person is IN CUSTODY and will be INTERROGATED for a crime. Therefore, a willing civilian coming forward voluntarily for an IA complaint does not trigger the need for Miranda.

The Consent Decree (CD) directs investigators to not provide Miranda warnings prior to or during non-custodial interviews. It further directs investigators to consult with a complainant's criminal defense attorney.

I am in agreement relative to your concerns, as my thoughts and concerns as a former IA investigator were in taking a formal sworn statement from a civilian complainant whom had previously been arrested for a crime, and not providing that person with some manner of advisory that possibly his/her statement may be later subpoenaed in criminal court, ("used against them"). Please do not misunderstand me, the aim was not to interrogate a civilian

complainant about why he/she was arrested. However, if an investigator is required to take a complete statement, in other words, to gain a complete picture of what occurred, to understand and evaluate the events, then without question the interview statement will undoubtedly touch on events which led up to the arrest, and what occurred during the arrest. It simply must, because an investigator needs to be able to weigh all of the events to conduct a fair and thorough investigation.

Taking this into consideration, we understand that IA matters are distinct and separate entities from criminal matters, and IA matters are considered confidential. But what if a prosecutor, assigned to the complainant's criminal matter, learned there was a statement from an IA complainant? More importantly, what if the prosecutor discovered there were conflicting statements? What if the complainant denies any involvement with the given criminal incident, yet provides culpable information in the IA statement? The chances may be remote, but I will always maintain there is always a possibility in that IA statement being later subpoenaed to court.

At the end of the day, investigators must follow best practices of Internal Affairs procedures including those from the NPD, the NJ Attorney General Guidelines and the Consent Decree.

6) How is ACADEMY training changing to incorporate ^{the} consent decrees? (3)

A significant component to the Consent Decree requirements revolves around training. There are training mandates the NPD must comply with. The NPD has consulted with outside vendors with expertise in law enforcement training, (the Virginia Center for Policing Innovation, VCPI is one example used for Community Policing training) and we will continue to do so. In addition, the NPD has hired an outside contractor and attorney to assist with CD training matters.

7)

To anyone:

Beyond the policy, what is the sentiment within NPD regarding these policy changes? Are officers concerned, engaged, resistant to these changes?

The Consent Decree (CD) mandates to the agency will require deep and significant change. The change will not occur overnight. Police officers are generally resistant to change, but resistance to change is not completely unique to law enforcement. Any employee, in any line of work, if they are comfortable in what they are doing day in and day out would prefer to maintain their status quo. What is unique about law enforcement is what we do. The authority to take liberties and freedoms is what makes our job different.

Many, (not all) of the policies we are changing already contain information consistent with the CD. In other words, the existing IA policy we have advises personnel to take any and all complaints; it also advises investigators to conduct a thorough and impartial investigation. It's a matter of changing the information in a manner which meets the standards and spirit of the CD. But the new policy does make significant structural change and adds some new language consistent with CD mandates.

The information and policy directives are not new and shouldn't be new to our personnel. It is perhaps a newer, different manner of delivery with some additional information which requires a training component. The training component will ensure our personnel receive and understand the new policy information, and will ensure they are aware that it must be carried out.

Additionally, as newer, younger officers continue to join the ranks, the installation of the CD mandates should become smoother because new officers will be instilled with the ideals and responsibilities of modern policing from the time they start policing, and not years later.

10) Is there an appeals process,
both for officers + for
complainants?

re complaint + investigation

If an officer is administratively charged through the NPD, not criminally charged, then the officer either goes through an internal grievance process (under 5 days' suspension) or he/she can appeal to the Office of Administration of Law (OAL) court, (over 5 days' suspension).

A grievance is where the respective collective bargaining unit (Unions- FOP-police officers/detectives or SOA-supervisors up to Captain) submits documentation to the Department of Public Safety challenging either the actual sustained charges or the severity of the penalty. This is a formal Civil Service process. The Unions/officer/supervisor may disagree with the charges suggesting they were improperly sustained and why, or perhaps they disagree with the harshness of the penalty. The Public Safety Director makes the final determination which will either be agreed upon by the parties or challenged by the Unions through the Civil Service process.

OAL court is a formal court setting with an actual Judge (assigned for Civil Service matters). And there is an actual court hearing where both sides lay out their respective cases appealing/defending the NPD findings and/or penalty. The Judge will make the determination on the facts and decide. The Judge's determination will go to the Civil Service Merit Board, who in turn will either uphold or change the Judge's findings.

Generally, there is no formal appeal process for civilian complainants. Complainants can contact Professional Standards and speak with the investigator, and gain an explanation for a given disposition. If they are not satisfied they may speak with the Executive Lieutenant or Captain, or contact the County Prosecutor. They may offer new information or evidence as well. All investigations will be subject to internal reviews and compliance checks. Investigators should be, and certainly will be made aware that their investigations will be reviewed for fairness, thoroughness and impartiality. Investigators who demonstrate a lack of investigative skill will be re-trained, and disciplined if appropriate for continuing sub-standard investigations.

ii) Newark is not in a vacuum
Coordination with other
Police Agencies - what
do you do. i.e. state, County,
Other municipalities -
witness protection?
How do you handle
Judgment Calls
i.e. - Age, gender, orientation,

As it concerns the Complaint Intake & Investigations Process; (on Internal Affairs matters) the NPD is in regular contact with the Essex County Prosecutor's Office, (ECPO). The coordination with the ECPO is in regards to criminal IA investigations & reviews of investigations for possible criminal conduct. If an investigation crosses lines with another agency, then an NPD investigator would make contact with that agency. So for instance, if we have an officer on a task force with another agency and a complaint is made on a particular task force assignment, then the investigator would consult with the other agency or agencies.

A witness protection program, to the extent of a traditional witness protection program, would require extremely significant resources far above the regular operating ability of the NPD. Witness protection would be used in the extraordinary cases (I believe the ECPO has used it on very select matters, criminal investigations of officers are handled by the ECPO, not NPD).

The NPD must take internal complaints (arising from within the agency) very seriously, and if an officer makes a complaint against a higher up or colleague, the complaint and concern for the officer must be taken seriously. But this seriousness must come from all entities within the agency, top to bottom. Everyone must take their given responsibility with the utmost seriousness. This specific language was included in the policy so it is known that retaliation will not be tolerated.

I am not 100% certain what you meant by "age, gender, orientation" as far as judgement calls are concerned. But as far as internal investigations are concerned, judgment calls are a fact of life for IA investigators. Often times, the investigator is left to make a "judgement call" on whether an officer's actions were in violation of policy or procedures. In other words, often times, evidence may not clearly and decisively point to an officer's "guilt", but an investigator must weigh all of the facts and evidence he/she has gathered. There may not be that "smoking gun" or video to clearly show the event and officer actions. Investigators are required to make a final judgement determination based on the standard of "preponderance of the evidence", which is that the facts and evidence reveal that it is more probable than not that an act occurred.

1121
What is the status of the
Disciplinary Matrix that administers
consequences when officers are found
to have been abusive, ^{misconduct} etc.
1

The Matrix was sent back to the Dept of Justice on August 2nd with additional revisions. There has been back and forth commentary, questions & revisions in the preceding few weeks prior to August 2nd. The Monitor will then review for commentary and revisions. Once we are finalized, the Matrix will more than likely be challenged by the PDs collective bargaining units the FOP & SOA.

(4)
When is this policy going to be finalized
when will this policy be implemented into
the communities?
How will the individual precincts hold
themselves ~~at~~ accountable in complying
with this policy?

The Complaint Intake & Investigations Process (CI&IP) policy has been approved by the Monitor. It will be forwarded back to the monitoring team for a review relative to the changes made from the community forum feedback. There are several additional steps including the development of a training program, and then the entire agency must be trained on the policy. At that time, we will implement the policy. We cannot provide an exact timeframe for this, however we are continuing to work diligently with the aim of getting this done for full implementation.

As it relates to the CI&IP, simply put Commanders are responsible for holding their supervisors accountable, while supervisors are responsible for holding the officers and detectives accountable. The NPD has existing policy and procedures covering these issues (Internal Affairs/Use of Force). So to be clear, it is not as if the Precincts/Commands/Units within the NPD are working without directives, policy or procedures. They are, and have been in existence and personnel must abide by the tenets or face consequences.

It is just that now the NPD is required to re-write and re-work the policies specific to language and mandates as per the Consent Decree.

16) What time does a
BLOCK PARTY PERMIT
Expires?

Why are the neighbors
allowed to block the
entrances preventing other
residents to gain access
to their property?

Why are the assigned officers allowed to →

participate in the party? Is
this some new role of the
Police officer in the community?

Residential Block Parties are regulated by the Chief of Police office. They can be contacted at 973.733.6007.

As noted, the Block Parties are regulated by the Chief's Office, but if there are any issues concerning blocked property or access, you may call the non-emergency police/dispatch line at 973.733.6000. You may also advise on scene officer if one is present.

So depending on the Block Party approval, officers may be assigned to the party for security purposes. So if officers are present, they may be assigned there. If someone believes, based on

the circumstances present, that an officer is at the party for any inappropriate reason, or the assigned officers are acting inappropriately, then members of the public are encouraged to contact the police and ask that a supervisor respond to the scene. The regular non-emergency police communications number is 973.733.6000. Or call the local precinct (1,2,3,4,5,6) or the Office of Professional Standards at 973.733.6171.

Also, keep in mind that an officer may reside in the area that a party is being held, or has family ties to the neighborhood. The officer, as a sign of positive community engagement may wish to attend their local block party to say hello to fellow neighbors. Now if the officer is on duty, he/she should be following PD guidelines when in attendance. But as the agency moves further towards community engagement and relationships, these types of positive interactions should be encouraged.

Again, if there is any inappropriate conduct on the part of the attending officer, residents are always encouraged to contact the police.

17)
The Victim and the Complaining Citizen
comes across many undue obstacles
When it comes to obtaining a Police
Report on the incident.
such as Completing an OPE RA
Form, Calling the Professional Standards
or the Prosecutor's office.
Who keep the Victim and the Complaining
Citizen updated of the process of where
the complaint is?
Last, Does the Complaining Citizen or
the Victim will be protected as being
a witness and not be retaliated against
either by the Suspect Officer or other
Officers of Friends of the officer/Police
department.

For regular police reports, (crime reports/motor vehicle collisions, etc.) victims and complainants can respond to 22 Franklin St. (downtown, one block down behind City Hall) and advise the police officer at the desk. You will be directed to the Records Office to obtain your report. There is a fee of \$1.50.

For Internal Affairs complaints, there is no report provided to the complainant. The internal complaint report is accepted and documented by NPD personnel, and forwarded to the Office of Professional Standards for processing and investigation. For Internal Affairs investigations, complainants will receive a formalized letter via U.S. certified mail advising that the complaint has been received and the assigned investigator. Complainants will be contacted for an interview/statement and any additional information they may have regarding a complaint. At the conclusion of the investigation, complainants will receive another formalized disposition letter advising of the investigation findings. In Internal Affairs matters, there will be a brief explanation if the matter was Not Sustained, Exonerated or Unfounded. If the matter was Sustained, the letter will only advise that the officer will be disciplined in accordance with NPD policy.

Complainants may also be subpoenaed to a police Trial Board if the matter was Sustained. If an Internal Affairs investigation is to take an extended period to conclude- due to criminal implications or otherwise, the investigator will be required to make monthly advisories to complainants on the complaint status. Keep in mind that the Essex County Prosecutor's Office takes authority of all criminal (Internal Affairs) investigations, and therefore complainants will be kept updated by their office. In some instances, they may even request that the Newark investigator not contact the complainant/victim due to case sensitivity. The NPD investigator should advise complainants of this information so they are aware that they have not been forgotten, but it is simply a matter of investigatory deference.

As noted on an earlier question, the capacity to develop, implement and maintain a witness protection program is most likely above the scope of ability for the NPD. A protection service may be used on a very select case basis, but will most likely not be the norm.

We have inputted specific language in the new policy to address this specific retaliatory concern. If a complainant or witness feels that they are or may be retaliated against, or has some information to suggest retaliation, they would be highly encouraged to contact their investigator, the ECPO or if it is an immediate threat, they should call 9-1-1 emergency.