



JUNE 2009

The Crisis Inside Police Internal Affairs

A Report of the American Civil Liberties Union of New Jersey



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I. Executive Summary

The American Civil Liberties Union of New Jersey (ACLU-NJ) regularly receives complaints and concerns about local police internal affairs (IA) practices — from people who are afraid to file a complaint, from people who have filed a complaint but received no response and from police officers themselves who say they were mistreated by an unfair process.

When we took a closer look at the police agencies' records and at those agencies' responses to our questions, we found significant evidence that the process for citizen complaints against police officers in New Jersey is broken. Across the state, local departments violate the law by denying people a full and fair review of their complaints:

- **The majority of New Jersey police agencies regularly violate state law by failing to follow the statutory requirements on internal affairs.**
- **The majority of police agencies violate the law by limiting the time, place and manner in which citizens can file complaints. Many agencies also create an intimidating environment for complainants.**
- **The majority of police agencies do not provide the training and resources that are critical to maintaining a professional internal affairs operation that complies with state law and is consistent with evolving national standards.**
- **The tracking of internal affairs complaints, investigations and resolutions is a morass of inaccurate data that stems from inattention and confusion over how to properly track and record cases.**
- **The Office of the Attorney General does not provide sufficient oversight of internal affairs to ensure implementation of state law or its own policies.**

This report makes recommendations that if adopted will put internal affairs back on the robust course the state envisioned nearly two decades ago when it established a comprehensive complaint and investigation process and made training, oversight and prevention top priorities. If our recommendations are followed, internal affairs can be an effective system that serves citizens and law enforcement professionals alike.

II. Introduction

The police play a central role in the administration of justice. We entrust police officers with extraordinary powers, including the power to detain people, and even the power, in certain circumstances, to take a life. With these powers comes a responsibility to use them wisely. While most police officers act with integrity and respect for the rules and responsibilities of their jobs, inevitably some do not. The abuse of power by even one officer hurts credibility for all police and contributes to community distrust. Because of the extraordinary power we grant police officers, an adequate and fair complaint and investigative process is critical to deter and, when necessary, punish misconduct and abuse.

An impartial complaint process that allows citizens to air grievances about police conduct and completely and fairly investigates complaints will improve law enforcement throughout New Jersey. How can a complaint process improve policing? Grievances contain information that can alert police executives that something is amiss that needs prompt attention. Effective police executives use information from complaints to correct poor performance or misbehavior and to put in place systems to prevent future problems. By improving police practices and policies, good internal affairs systems can head off expensive litigation and free resources for police priorities.

Each complaint should be handled professionally and with sensitivity, and should result in a thorough and fair investigation. Investigators should keep complainants informed about the progress of the investigation. At the conclusion, complainants should feel that their concerns were adequately addressed and, when appropriate, that officers were held accountable. This is the way to maintain public trust.

III. A Little History

Recognizing the importance of having strong internal affairs (IA) practices, in 1991, the state attorney general first issued Internal Affairs Policy and Procedures (IAPP). The IAPP outlines best practices for police IA operations. The IAPP was updated in 1992 and 2000, and then codified as N.J.S.A. 40A:14-181. This statute requires county, local and specialized police departments throughout the state to adopt IA procedures consistent with the IAPP.

The statute requires that each police agency, regardless of its size, establish an IA function. It sets out a model policy for agencies to adopt, and lays down minimum standards. It includes procedures for the acceptance, investigation and disposition of citizen complaints against police officers and emphasizes fair and thorough investigations to maintain public confidence. The

statute requires that IA units issue quarterly reports of complaints to the chief executive of each police agency. Complaints must be analyzed for patterns that may be rooted in “systemic or bias-motivated misconduct.” The statute mandates that an annual report of total complaints and outcomes be forwarded to county prosecutors and made available to the public.

IV. The Current State of Internal Affairs

Despite the requirements of the law, many departments do not meet even basic standards for handling complaints. The many intake complaints and cases of the American Civil Liberties Union of New Jersey (ACLU-NJ) that involve IA practices reflect the inadequacy of the current system. For example:

- **The ACLU-NJ represented three Manalapan boys, aged 11, 16 and 17 at the time, who were victims of racial profiling. When Randall Yorker, the father of one of the boys, went to file an IA complaint, he experienced hostility from the department. The officer who was supposed to accept the complaint described him as “negro” on the complaint form, then rolled up the form and stuffed it in his back pocket.**
- **The ACLU-NJ currently represents three young men who were mistreated by the Newark police. When the mother of one of the boys, Cassandra Jetter-Ivey, called to follow up on her IA complaint, she was told that it was transferred to the gang unit because the matter involved “three black males.”**
- **The ACLU-NJ currently represents a woman who was stopped, harassed, and arrested by two Newark Police officers in May 2009. The officers appear to have stopped the woman only because they had just wagered on whether she was male or female and wanted to resolve the bet. They arrested her for not having identification. After she was released without charges, she was threatened with retaliation if she filed a complaint with Internal Affairs. When she attempted to file a complaint with both precinct and internal affairs, she was repeatedly turned away. Following her calls to IA, she received a summons and two tickets for disorderly conduct, charges believed to be fabricated in retaliation for her efforts to file a complaint against the officers.**



Sean Anderson, Randy Reina, Diamond Yorker were victims of racial profiling in Manalapan. When father Randall Yorker went to file a complaint, he was treated disrespectfully.



Tony Ivey was mistreated at the hands of the Newark Police, and when his mother, Cassandra Jetter-Ivey, complained, she got the runaround.

Actions like these alienate communities. Because police accountability is such a crucial issue, the ACLU-NJ conducted an analysis of IA throughout New Jersey. We examined the following elements of the system:

- The complaint process
- The investigative process
- Transparency in internal affairs
- The oversight role of various government bodies

This report finds that the IA process statewide has failed fundamentally to fulfill its own mission and is in crisis. While some police agencies have strong internal affairs practices, too many others fall short. This report details statewide deficiencies and the reforms we recommend.

V. How We Gathered Information

To determine how the internal affairs process was working statewide, the ACLU-NJ analyzed more than 500 police IA annual summary reports from New Jersey law enforcement agencies (1996–2005) and conducted a telephone survey of police departments to gather information on their complaint procedures. We also analyzed policies and records obtained from the 21 county prosecutors through the Open Public Records Act (OPRA) to determine how much oversight prosecutors exercise over local police IA functions. This information included the county prosecutors’ “workload” reports, which provide statistical information about cases being handled by each division; policies on handling IA complaints received in the prosecutor’s office; and policies on when IA complaints will be kept in house or sent to the agency that the complaint concerns. We have analyzed complaint statistics and trends from these data. We also looked at the attorney general’s reports, and we interviewed citizens who complained about police abuses as well as law enforcement officials who had concerns about internal affairs practices.

In the spring of 2009, the ACLU-NJ conducted a survey to determine how easy it is for an average citizen to get basic information from police agencies about how to file a complaint against an officer. We wanted to see if police department employees understood their own IA complaint processes and procedures, and whether their responses to citizens’ inquiries complied with the IAPP.

ACLU-NJ volunteers telephoned 503 law enforcement agencies across the state, including all municipal, county, park and transit police departments, as well as most public college police departments. Volunteers stated that they were calling on behalf of someone else who wanted to know how to file a complaint against a police officer. The volunteers asked a number of specific questions about the IA complaint process. Because volunteers were seeking only information — and not filing a complaint themselves — they did not suggest that an actual incident had occurred or give any fictional details about an alleged incident.

The survey consisted of nine multipart questions regarding the IA complaint intake process based on the requirements of the law. Two main areas of inquiry were: 1) How complaints could be filed, including whether they could be filed by telephone, anonymously, by a juvenile or by a third party, and 2) Whether a complainant's immigration status or age would preclude the complaint from being accepted. A limited number of randomly selected agencies were also asked whether translators were available for non-English-speaking complainants. All survey calls were made from the ACLU-NJ office during normal business hours when most, if not all, IA representatives should be available. The volunteers who made the calls varied in age, sex and ethnic backgrounds. The calls were made during the months of February, March and April 2009. Not every agency was asked all parts of the survey because some representatives were unable to answer initial questions.

What New Jersey Law Says

The Attorney General's Internal Affairs Policy and Procedures, codified in N.J.S.A. 40A:14-181, states that critical performance standards for internal affairs include:

- Each agency must establish by written policy an IA function.
- The agency must accept reports of officer misconduct from any person, including anonymous sources, at any time.
- Where preliminary investigation indicates that a subject officer may have committed a criminal act, the agency must notify the county prosecutor immediately. No further action should be taken, including the filing of charges against the officer, until directed by the county prosecutor.
- The agency must notify the county prosecutor immediately of any use of force by an officer that results in death or serious bodily injury.
- The agency must thoroughly and objectively investigate all allegations against its officers.
- The agency must notify its officers of complaints and their outcomes.
- The agency must notify each complainant of the outcome of his or her complaint.
- The agency must establish and maintain an IA records system which, at a minimum, includes an IA index system and a filing system for all documents and records.
- The agency must submit periodic reports to the county prosecutor summarizing the complaints received and the investigations concluded for that period.
- The agency must periodically release reports to the public summarizing the complaints received and the investigations concluded for that period.

VI. Our Findings: Obstacles to Filing a Complaint

If people do not feel comfortable or do not know how to file complaints, the internal affairs process is defeated before it begins. Overall, our telephone testing found that the average citizen encounters numerous obstacles to registering a complaint.

Finding information about how to file a complaint is an immediate barrier. **Then, contrary to the law, many police departments insist that complaints be submitted in person and do not allow juveniles to file reports without a parent present. Most departments surveyed are not able to accommodate non-English speakers.** Many said they would report complainants who were undocumented to U.S. Immigration and Customs Enforcement (ICE). Police employees who fielded our calls too often took on a tone of hostility or defensiveness. These and other obstacles discourage community members from lodging complaints against police officers.

A. Difficulty Getting Information

Our volunteers found that the most difficult aspect of surveying more than 500 police departments was finding someone knowledgeable to answer their questions.

Many law enforcement agencies have instituted multilayered automated answering systems that make it very difficult to reach a “live” person. To make matters worse, these automated systems rarely offer an option for “citizen complaints” or “police complaints,” and few recordings provided an option for Spanish or other languages. While a few departments have an option for “internal affairs,” our volunteers did not necessarily understand if that option was the one they wanted, and average citizens may not know the official name of the unit that handles complaints. **Many of our volunteers reported that they would have given up had they been seeking information for actually filing a complaint themselves.**

Even when our volunteers were able to connect with a police employee, **they had difficulty finding someone able to provide information about the complaint process.**

As our volunteers quickly learned, it can take several tries to reach a person with accurate complaint information.

B. Unlawful and Improper Restrictions on Filing Complaints

The law requires that departments accept complaints 24 hours a day, seven days a week. It also requires police agencies to accept complaints from third parties and anonymous sources, and to investigate them as fully as possible. It emphasizes that departments should accommodate complainants and it provides citizens with the option of going to the county prosecutor rather than the police department. Having different options for citizens with grievances is especially important when citizens are afraid to file a complaint with the

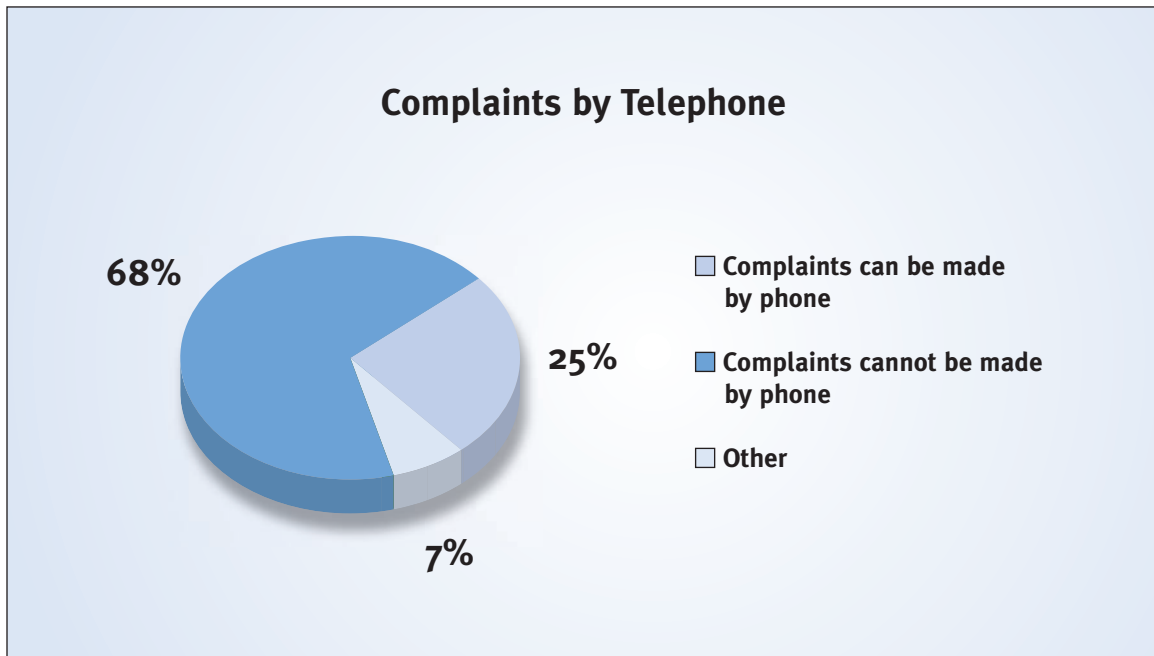
very agency they feel victimized them. For this reason, national best practices standards dictate that people be able to file complaints in a variety of ways. In recent years, legal actions resulting in consent decrees with police agencies having serious misconduct problems all specified that people be allowed to submit complaints in a variety of ways (e.g., Cincinnati and Los Angeles consent decrees).

Unfortunately, in New Jersey, few departments meet the requirements of the law in making IA accessible. Results in our survey of over 500 departments are as follows.

Restrictions on Phone, Mail and Electronic Complaints

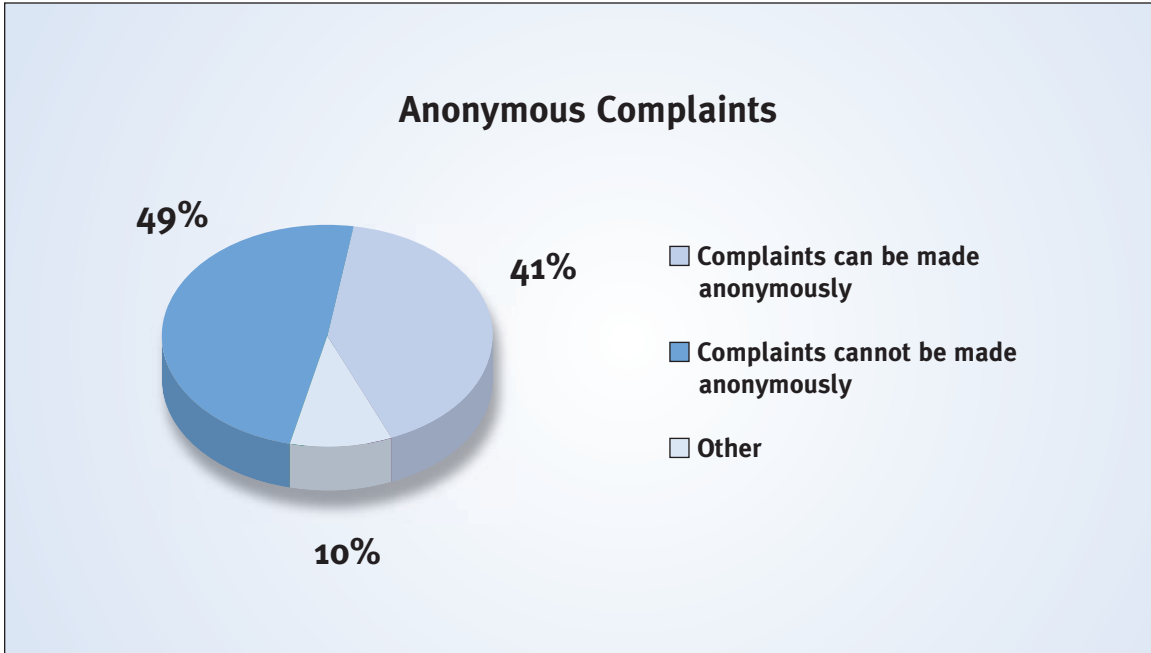
- 63 percent of agencies require complaints to be filed in person.
- 68 percent of agencies do not accept complaints by telephone.
- 86 percent of agencies will not mail complaint forms or allow them to be picked up from the station and taken home.
- Only 4 percent of agencies said that they accept complaints online.

Following the survey, we visited the Web sites of the 21 law enforcement agencies that said they accepted complaints online. Our volunteers found information about police complaints on only 9 of the 21 Web sites. The other 12 Web sites did not have any information about how file a complaint. One department with a very good online complaint form — West Orange Police Department — did not inform our volunteer over the telephone about the option of filing online.



Unlawful Restrictions on Anonymous and Third-Party Complaints

- 49 percent of agencies do not accept anonymous complaints.
- Of the 41 percent of agencies that said they accept anonymous complaints, 17 percent also said that anonymous complaints are not investigated.
- 74 percent of agencies do not accept third-party complaints.



The law emphasizes the importance of accepting and investigating anonymous complaints. Although it refers to the difficulty of investigating anonymous complaints, the law nevertheless requires that it be done: “The investigation of anonymous complaints can be troublesome. However, accurate information about officer wrongdoing may be provided by someone who, for any number of reasons, does not want to be identified. Therefore, an anonymous report must be accepted and investigated as fully as possible.” (IAPP 11-17) Accepting anonymous and third-party complaints is critical to the IA process. It allows individuals, including police officers, to file allegations of wrongdoing while limiting exposure and possible retaliation.

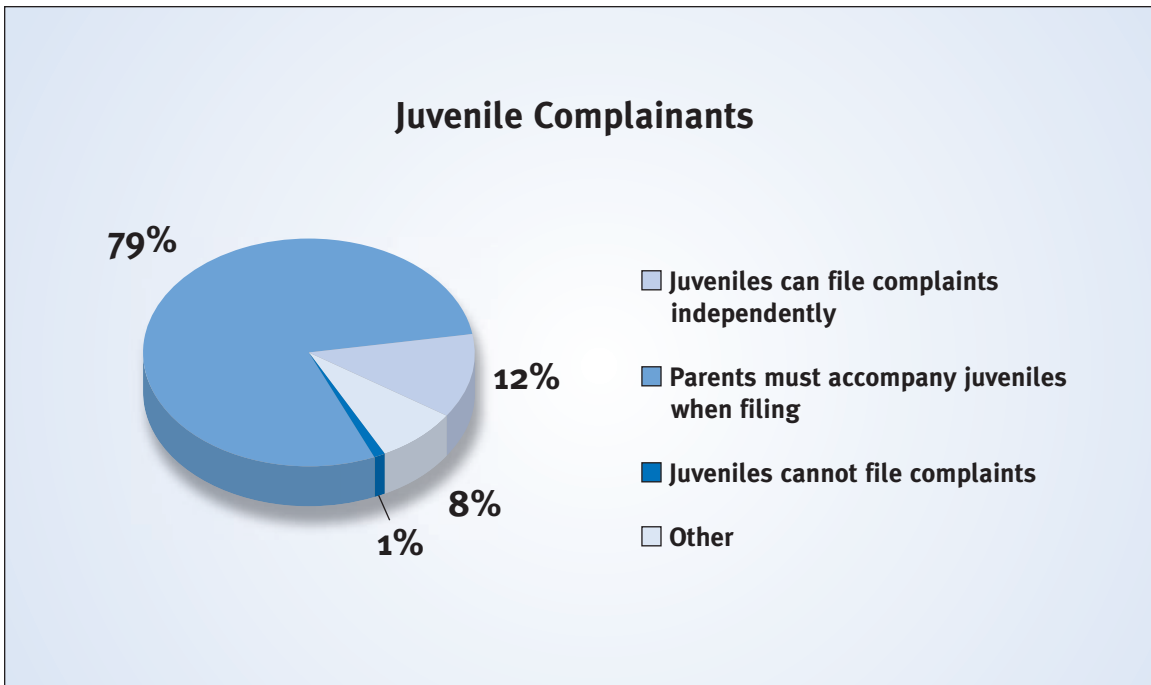
Although Bloomfield (Essex County) reported that anonymous complaints would be investigated, it noted that such complaints have “no credence whatsoever.” Likewise, Galloway Township (Atlantic) said anonymous complaints were “questionable,” and Hamilton Twp. (Atlantic) said such complaints were “like a rumor.” Bound Brook (Somerset) stated that anonymous complaints are “not investigated at all,” but that the officer involved would be notified. Franklin Township (Somerset) simply stated that “not

much [is] done with anonymous complaints” although the department still accepted them. Many departments, including Hillsdale (Bergen), Spring Lake (Monmouth) and Washington (Morris), stated that complaints filed anonymously were not treated as “formal” complaints, but rather as something less than a real complaint. Similarly, Burlington City (Burlington) stated that anyone can “make a complaint but when you actually file a complaint you have to come in and make a written statement with proper identification.”

Unlawful Restrictions on Complaints by Juveniles

The ACLU-NJ volunteers asked 438 agencies whether juveniles (under age 18) could file complaints and, if so, whether parental involvement would be required. The IAPP says that a juvenile may file a complaint; it makes no mention of parents, or the need for their involvement.

Nevertheless, in violation of the law, 79 percent of agencies said juveniles had to have a parent or adult with them to file a complaint. Notably, the following five agencies declared that juveniles were unable to file complaints: Palisades Park (Bergen), Burlington Twp. (Burlington), Bloomfield (Essex), Dunellen (Middlesex) and Keansburg (Monmouth).



Restrictions on When Complaints can be Filed

Although the IAPP requires that “At no time should a complainant be told to return at a later time to file his report,” **many police agencies will not accept complaints from citizens outside regular business hours or on weekends and holidays.** Citizens who call after business hours are often left with the option of leaving contact information on an answering machine. To their credit, some agencies, such as the Roselle Park Police Department (Union), adhere to the IAPP and allow any supervisor to accept citizen complaints. This means that complaints can be accepted at any hour. Recently, the Morris County Prosecutor issued a countywide law enforcement legal advisory to all police officer and non-sworn police employees reminding them of the importance of accepting complaints and criticism as part of the IA process. Through the advisory, the prosecutor offered all agencies IA training by his office. This perfectly illustrates how to encourage IA accessibility.

*“At no time should a complainant be told to return at a later time to file his report.”
—New Jersey State Law*

Unwelcoming Attitudes

The IAPP states that “...internal affairs investigators must remember that it is important to balance the need for receiving citizen complaints of officer misconduct against the danger of discouraging citizens from coming forward with their complaints. Therefore, any language that would serve to dissuade or intimidate a citizen from coming forward should be avoided.” (IAPP 11-17)

Despite this clear directive, many police departments responded to our volunteers’ questions by lecturing them about filing false or frivolous complaints or adopting an intimidating tone. **Some law enforcement agencies, such as Pennsville (Salem), refused to answer our questions altogether.** Passaic (Passaic) and Pemberton Borough (Burlington) hung up on our volunteers before they completed the survey. Other agencies directed our volunteers to the court system.

Implicit and Explicit Restrictions on Complaints by Immigrants

Roughly 20 percent of New Jersey’s population is immigrants — the third largest proportion in the United States, according to the U.S. Census Bureau’s 2006 American Community Survey. Immigrants are more vulnerable to crime and exploitation because of language and cultural differences and sometimes because of their immigration status. Therefore, their access to IA warrants particular concern.

Language Barriers

During our telephone survey, we randomly selected 112 departments to see how non-English speakers were handled. Our volunteers found that people who do not speak English have great difficulty getting information about the complaint process from most police departments. Our volunteers who used another language when they called police departments could not find anyone who spoke it. Police responded to non-English speaking callers with indifference, impatience and even ridicule; some placed non-English speaking volunteers on hold for long periods of time or disconnected them. Technologies available today can eliminate language barriers in routine police work, and their absence in police departments to communicate with non-English speakers is inexcusable.

- Out of 112 agencies queried, 34 percent said they could not provide accommodations or translators for the foreign language that we requested.
- Of the 77 agencies asked, 67 percent said they only have IA forms in English.

Barriers Created by Immigration Status

We asked 425 law enforcement agencies questions to determine whether immigration status negatively affects immigrants' ability to file IA complaints and whether a complaint by an undocumented immigrant would result in a call to U.S. Immigration and Customs Enforcement (ICE). Attorney General Directive 2007-3 on local police contact with immigrants prohibits police from asking witnesses or crime victims about immigration status.

Although 88 percent of agencies stated that a person's immigration status would be irrelevant to filing an IA complaint, only 42 percent of those agencies assured our volunteers that ICE would not be contacted if the complainant was undocumented. More than half of the agencies called stated that ICE might be contacted. (See Appendix 3).

Several agencies declared that, because of their status, undocumented people could not, or should not, file an IA complaint. Margate City (Atlantic) declared that an undocumented person could file an IA complaint so long as he or she passed a "background check."

Some agencies understood that they have an obligation to investigate complaints regardless of the complainant's immigration status. Bogota (Bergen) stated that "if there is a complaint with someone in my department then I have an obligation [to investigate it.]" Ridgefield (Bergen) stated that ICE could be contacted at anytime, but filing a complaint would not "trigger" such action.

Moorestown Township (Burlington) stated that if the complainant is "bad news" (e.g., a gang member), "there [would be] an obligation to call ICE," but ICE would not be called

just to get the complainant in trouble. Avon-by-the-Sea (Monmouth) said it would report to ICE if the complainant had committed a crime, and is “not trying to penalize anyone for reporting something.”

VII. Recommendations for Improving the Complaint Process

Improving citizen access to internal affairs is a key priority. We specifically recommend the Office of the Attorney General require implementation of:

- Mandatory academy training for all police recruits to ensure they know what IAPP requires regarding acceptance of citizen complaints
- Training for all police personnel, including dispatchers and receptionists, about the proper procedure for accepting citizen complaints so that they know that citizen complaints can be accepted by telephone, mail, fax or online and that anonymous parties, juveniles, immigrants and third parties can file complaints
- Language accessibility and outreach standards for police departments in jurisdictions with significant populations of immigrants
- A statewide 24-hour IA complaint hotline with assistance for those who need language or impairment accommodation
- Random testing of the skills and knowledge of telephone receptionists and intake officers by police executives for compliance with the IAPP

In addition, local departments should conduct community outreach and education about the complaint process, including posting informational posters in precincts and community centers, and making complaint forms available in police and public facilities.

VIII. Weaknesses in Investigations

Once a complaint has been filed and assigned to an investigator, a timely, thorough and fair investigation should take place.

People who report police misconduct to the police department may have reservations and fear retaliation from officers they’ve named or, if they are officers themselves, from their peers. Internal affairs investigators should be mindful of these concerns when handling complaints, and police agencies should have safeguards in place to ensure a fair and sensitive process. Even the appearance of bias or favoritism towards an officer can

discourage people from complaining in the future and harm the police agency's credibility in the community.

Personnel assigned to IA must have unquestioned integrity. Failure to maintain the highest standards can expose the agency to external criticism and litigation and harm employee morale.

In reviewing the question of integrity, we compared the IAPP requirements with current practices in over 50 complaints filed by individuals against police officers between 1999 and the present. The cases came from Salem, Monmouth, Hudson and Ocean counties. We also examined news articles, public records and court documents and interviewed complainants and police officers.

Investigations are Not Always Thorough

The law requires that all parties be notified in writing about the initiation and outcome of the investigation and that all parties concerned be interviewed during internal investigations.

Police agencies failed to provide written acknowledgement of the complaint in 70 percent of the cases, and they failed to provide the complainant with the final disposition 10 percent of the time.

Despite these clear directives, in not one of the 50 cases we reviewed was the complainant interviewed by IA investigators. This is not only a direct violation of the IAPP, it also fails to conform to standard police investigatory practices. Police agencies failed to provide written acknowledgement of the complaint in 70 percent of the cases, and they failed to provide the complainant with the final disposition 10 percent of the time. In at least a dozen of the cases we reviewed, the agency reached a disposition without ever interviewing the target police officer, yet another violation of the law and standard police procedure.

These findings are similar to the conclusions reached in 2001 by the Division of Criminal Justice, the investigative arm of the Office of the Attorney General, after its audit of the Irvington Police Department (Essex). The audit found that most IA cases were completed without interviewing target or witness officers. This runs afoul of recognized policing standards and defies logic, particularly because target officers are obligated to answer questions in administrative investigations, and do not have the right to refuse to respond on Fifth Amendment grounds in these matters.

The success of investigations could be improved if police agencies routinely video and/or audio tape IA interviews. Valuable investigative and oversight opportunities are lost when these sessions are not taped. Tapes could be used at an officer's administrative hearing and provide an unimpeachable record. Internal affairs commanders could use the tapes as part of subsequent periodic reviews to assess investigator skills, biases and training needs.

We also came across cases where IA abandoned investigations against police officers who retired or resigned. This practice deprives citizens of a thorough and fair review of all facts and undermines public trust in the IA system.

Officers Assigned to Internal Affairs Often Lack Training

Although the law requires that personnel assigned to IA be trained investigators with knowledge of IA and the disciplinary process, this is often not the case. IA officers have a high turnover rate, as we discovered when we tried to gather information or track statistics. Often, our follow-up call to an agency a second time found a new officer in charge.

Unfortunately, there are limited training opportunities for those charged with conducting internal investigations for police departments.

Unfortunately, there are limited training opportunities for those charged with conducting internal investigations for police departments. The Division of Criminal Justice offers two courses: 1) a one-day course called "Internal Affairs Policy and Procedure" that is intended for county prosecutors' investigators and offered three times a year; and 2) a four-day course with the same title that is intended for IA officers and offered twice a year, but only opened for two officers per department. These trainings offer just the basics, have no follow-up, and do not cover some of the skills needed by IA officers, such as in-depth training in interviewing, investigations and labor law issues.

Due to the insufficient training opportunities offered by the state, some local jurisdictions have taken IA training into their own hands: in Burlington County police and prosecutors worked together to establish the Internal Affairs Association to provide both training and peer-to-peer interaction for police professionals who work in IA. In Morris County, the prosecutor is working on developing an IA training program to conduct for officers in Morris County police agencies.

Investigations are Sometimes Marred by Conflicts of Interest

In some instances, such as in Union City (Hudson), Woodbridge (Middlesex), North Bergen (Hudson) and Ocean Township (Monmouth), we found that supervisors who held offices in the union, either currently or in the past, were assigned to IA, a practice that is prohibited because of the inherent conflict of interest. Many departments assign investigative work to target officers' supervisors or to use detectives assigned to criminal investigative divisions, as was the case in places like Seaside Heights (Ocean), Fort Lee (Bergen) and Ocean Township (Monmouth). Turning confidential internal investigative matters over to non-qualified personnel risks compromising the IA process and case disposition.

The Fairness of Investigative Outcomes is Questionable

Police Internal Affairs Annual Summary Reports (IAASR) are the only public view into the secretive IA process. Police departments submit these reports to the county prosecutors each year. The prosecutors compile the information into countywide reports and forward the data to the Division of Criminal Justice within the Office of the Attorney General. This statewide information shows how often citizens' complaints are "sustained."

We looked at more than 200 IAASR forms comprising 41,000 complaints filed in the 10 years between 1996 and 2005, and found that citizens' complaints were sustained at an astonishingly low rate. For example, only 4.4 percent of complaints of excessive force were sustained, 6.2 percent of complaints of differential treatment and 13.5 percent of complaints about poor officer demeanor. These rates are far below the 47.2 percent of complaints about internal rule violations that were sustained, complaints that are mostly filed by superior officers rather than civilians. (See Appendix 1).

Delays are a Frequent Problem

Internal affairs investigations are almost always deferred until any related civil or criminal proceedings end. This is unfair to the complainant, the community, the police agency and the officer, who remains under a cloud of suspicion until the case can be resolved. When an officer is found guilty in a related case, the police agency often concludes the IA case quickly, essentially adopting the court ruling without undertaking an independent IA investigation. The failure to provide a balanced administrative investigation and hearing erodes the confidence of the public and police officers alike.

Even when there are no related civil or criminal cases, delays remain a problem. Many police agencies carry over "pending" complaints literally for years; this is particularly true for complaints of excessive force.

How long should an IA investigation take? The IAPP does not set specific deadlines, and as a matter of due diligence cases should not be rushed. However, all involved parties

should be kept informed of the progress of an ongoing investigation. Citizens cannot assume that an investigation will take place, especially when they don't receive written acknowledgements of their complaints.

Some IA personnel interviewed for this study failed to understand the “45-day rule.” N.J.S.A. 40A:14-147 requires that disciplinary charges alleging a violation of the agency's rules and regulations be filed within 45 days of the date the person filing the charge obtained sufficient information to file it. One investigator interpreted the rule to mean he had to conclude the entire investigation and present administrative charges within 45 days of receiving a citizen's complaint. What the “45-day rule” actually means is that once a police executive has enough information or proof to file disciplinary charges, those charges must be filed within 45 days. The “sufficient information” threshold may be present on the first day of an internal investigation or months later, depending on the complexity of the case. The IAPP clearly encourages police executives to file a disciplinary charge as soon after the incident as possible, but there is no time cutoff. Investigators should know about their obligation to comply with the 45-day rule, but the rule should not be used to rush a case to a conclusion.

IX. Recommendations for Improving the Investigative Process

We recommend that the attorney general amend the Internal Affairs Policy & Procedure to:

- Establish a statewide standard for timelines for the acknowledgment of citizen complaints, the assignment of cases to investigators and periodic reports to parties and supervisory agencies
- Mandate better IA case tracking and logging and provide a model investigative log for agencies to use
- Clarify the “45-day rule” for presenting administrative charges
- Require that agencies notify the Office of the Attorney General if they have insufficient resources to meet established expectations for timeliness of response and pending cases management
- Require the use of video and/or audio taping for interviews of complainants and officers
- Require that investigations against police officers who retire or resign continue to a proper disposition

We also recommend that the attorney general explore the feasibility of a citizen complaint mediation process where complainants and police officers can discuss their encounters in the presence of a neutral party, a process that is not currently permitted under the law.

X. Lack of Transparency, Accountability and Public Reporting

The current IA system in New Jersey affords little transparency or accountability to the individual complainant — or to the public.

Police agencies often provide no feedback or accountability to the individual complainant. Although the law requires that the police notify the complainant at the beginning and conclusion of an IA investigation, all too often the complainant hears nothing. Moreover, there is no administrative appeal process for citizens dissatisfied with the handling of a complaint or the conclusions reached. Nor can citizens challenge a decision of a county prosecutor to remand a complaint to a local agency, which the complainant may have avoided because he lives there or is afraid.

The lack of transparency means that the community is left with speculation rather than facts.

Public accountability is no better. Policing has historically been an insular occupation traditionally averse to transparency and skeptical of the value of citizen oversight. In police culture, the prevailing view is that police are best suited to monitor themselves. As a result, the investigative and disciplinary processes are secretive; police officials often refuse to confirm or deny that a particular incident or officer is under review. Even when an investigation is made public, the outcome often is not. The lack of transparency means that the community is left with speculation rather than facts.

Current law gives the police agency executive, the county prosecutor or the attorney general the discretion to release information about IA investigations and outcomes, but that discretion is rarely exercised. A number of laws, personnel concerns and collective bargaining agreements create barriers to full disclosure of police internal investigations. Although certain personnel matters should be kept confidential, a blanket refusal to release information to the public is unwarranted.

In some states, including Georgia and California, police departments post brief descriptions of IA complaints and outcomes on the Internet. Although officers' names are not included, these postings allow the public to see how police agencies deal with citizens' concerns and alleged police misconduct, reassuring the public of their standards. This open system also allows police officers to observe what penalties may be imposed and see whether disciplinary disparities exist within an agency.

Poorly Maintained Statistics Render Annual Internal Affairs Reports Useless

New Jersey does not have a detailed system for public reporting of allegations of police misconduct; police executives and the public are forced to rely on the Internal Affairs Annual Summary Reports for statistics about complaints.

IAASR information is channeled from local police agencies to county prosecutors, who compile and forward countywide data to the Division of Criminal Justice within the Office of the Attorney General. The reports represent each police agency's total IA investigative caseload for citizen complaints. Although filing these reports is mandatory, some police agencies have refused to release their reports to the public. Ten municipalities in Bergen County were sued in 2008 for failing to make their reports public.

The IAASR is an inadequate reporting system. It provides only an overview of the complaints filed and their dispositions, listed under several categories (excessive force, improper arrest, improper entry, improper search, differential treatment, demeanor, firearms discharge and "other"). Individual cases and cases outside the scope of the standard classifications are not identified, which means that serious infractions and police crimes can be masked.

The IAASR does not track information that could provide meaningful feedback to police executives. For example, it does not distinguish between complaints that are generated internally, by police officers, and those that are filed by citizens. It does not track complaints of racial or ethnic bias, a widely acknowledged problem in our state. Local police agencies can customize their reporting systems to provide more detailed information, but few have done so.

The IAASR reports contain mathematical errors and inconsistent categories. Perhaps the greatest flaw is that "cases pending" are not properly carried from one year to the next. This means that the number of investigations is seriously undercounted. In Newark, for example, 1,700 cases were missing because pending cases were dropped from the reports. **We did not find a single county that had accurate summary reports.**

Flawed reporting is inexcusable in an electronic age where accurate and timely information is essential for proper police response. Because the Division of Criminal Justice performs no audits or data verifications, the agency simply accepts flawed reports for critical policing areas.

No Way to Stop Rolling Bad Apples

New Jersey is one of only six states that do not have systems for tracking police officers who lose their jobs due to misconduct. This means that we don't have a way to ensure that those "bad apples" don't travel from one police department job to another. Typically referred to as police licensing or de-certification, this standard of law enforcement

professionalism protects towns, taxpayers and police executives. A nationwide database of police de-certifications has recently been established, but New Jersey can't participate because it has no system for tracking these officers. Even on the county level, there is no system in place to track "bad apples." We learned from our public information requests of the 21 county prosecutors that those offices do not maintain separate files about criminal charges against law enforcement personnel. Law enforcement job forfeiture is not automatic for most offenses and that officer may attempt to seek employment in another police department.

XI. Recommendations for Improving Transparency, Reporting and Accountability

- Establish a system for citizens to appeal when they object to how their complaints were handled or the conclusions reached
- Establish self-auditing mechanisms within police agencies to monitor compliance with the IAPP standards for acceptance, investigation and outcome of complaints and record-keeping of these processes
- Improve the format and substance for reporting county statistics, by updating or expanding the IAASR statistics form and clarifying the use of the "pending" column
- Mandate attorney general review and public reporting of the annual statistics collected
- Require each police agency to publish an annual IA report cataloguing citizens' complaints that lists the types of allegations made, the investigative outcomes and the disciplinary actions taken
- Create a statewide database of poorly performing officers, mandate written notification to the Police Training Commission (PTC) when officers resign or are terminated, and require the PTC to track officers who forfeit their position through a criminal plea bargain
- Require police executives to communicate with the public on a regular basis about IA matters, particularly in high-profile cases that affect public safety or agency credibility

XII. Poor Oversight by the Attorney General and County Prosecutors

A. The Oversight Failure of the Office of the Attorney General

New Jersey has a unified law enforcement system in which all levels of police are directed by and accountable to the attorney general. Regrettably, internal affairs compliance has not been a top priority of the Office of the Attorney General. To make matters worse, turnover in the office is a problem: New Jersey has had six attorneys general in this decade alone.

The lack of leadership at the state level has had the effect of allowing troublemaking street-level police officers to act with impunity, knowing their conduct will not be monitored. The reputations of hardworking, honest police officers who risk their lives daily for the public are tarnished by a small percentage of officers who take advantage of lax supervision.

The Office of the Attorney General has not enforced the IAPP. A 2006 audit of county prosecutors by the Office of Government Integrity found nearly half of all county prosecutors failed to establish an IA policy while others were non-compliant in other areas (see agencies and areas listed in Table 1). This breach of attorney general mandate and New Jersey statute (N.J.S.A. 40A:14-181) remains unaddressed, sending the wrong message to the public and local police authorities. The 2006 audit was never duplicated at any level of law enforcement. Instead, the auditing team was disbanded, a symptom of the decline in oversight by the Office of the Attorney General.

Table 1. County Prosecutors Audited for Compliance with IAPP (2006)

County	Prosecutors with No IA Policy	Missing Intake Form in All Files Audited	Missing Notice to ther Complainant
Atlantic			×
Bergen			×
Burlington			×
Camden		×	×
Cape May		×	×
Cumberland	×	×	×
Essex	×		×
Gloucester			×
Hudson			×
Mercer	×		
Middlesex	×		
Monmouth	×	×	×
Ocean	×		×
Passaic	×		
Salem			×
Somerset			×
Sussex	×		
Warren	×		

Source: Office of Government Integrity Internal Affairs Performance Audit Plan 2004

Although the Division of Criminal Justice, a part of the Office of the Attorney General, oversees statewide implementation of the IAPP, our experience suggests that its own personnel do not enforce it internally. We have conducted tests of the IA system at the Division of Criminal Justice level and encountered inaccessibility there as well. Citizens filing complaints or seeking complaint process information were generally treated with skepticism and uninformative responses. We have even encountered investigators who refused to provide their names to complainants.

B. The Oversight Failure of County Prosecutors

County prosecutors, tasked with overseeing local and county police agencies, have performed no better in conducting oversight than the Office of the Attorney General.

Rather than acting as the guardians of police accountability, some county prosecutors, such as in Hudson and Monmouth counties, refuse to investigate IA complaints unless the allegations rise to the level of a criminal offense. Some refer citizens who try to file complaints with the county prosecutor's office back to the agencies they are complaining about. This violates the law, which allows a complainant to choose to file a case with the appropriate county prosecutor.

County prosecutor oversight of local police IA divisions is virtually nonexistent. Each county prosecutor's office files "workload" reports for every division or bureau under its command, which provide statistical information about cases handled in numerous categories of crime, but in all but one county no workload report exists for IA cases.

The only county prosecutor who provides accounting for IA investigative work and referrals is the Passaic County Prosecutor's Office. Most county prosecutors do not even routinely test or audit local police IA units for compliance with the law. One exception is the Salem County Prosecutor's Office, which conducts a "Due Diligence Review for Municipal Law Enforcement Departments," available on its Web site.

Currently, the Prosecutor Supervision and Coordination Bureau of the Division of Criminal Justice provides general oversight of the 21 county prosecutors and coordinates statewide implementation of law enforcement initiatives or mandates, including the response to citizens' complaints against law enforcement officers. However, the coordination bureau maintains a policy of avoiding direct contact with the public, which conflicts with Division of Criminal Justice's missions of general oversight and response to citizen complaints.

XIII. Recommendations for Improving Oversight by the Attorney General and County Prosecutors

There is no question that IA operations in New Jersey need greater oversight. The ideal way to accomplish this would be to establish a state-level Professional Standards Unit to fulfill the obligations and responsibilities abandoned by the Office of Government Integrity. That unit would issue guidelines, monitor compliance, offer training and resources, review statistics, report to the public and provide oversight through other means. However, short of creating a state-level Professional Standards Unit, we recommend the following.

The Division of Criminal Justice of the Office of the Attorney General should:

- Conduct an audit of its IA function.
- Ensure its IA personnel are properly trained to handle IA complaints and cases.
- Revise its IA policy to require adherence to the same standards it imposes on subordinate agencies (providing complainants with written acknowledgments, a form outlining the complaint process, contact and referral information such as the intake investigator's name, and written investigative conclusions).
- Establish a means for electronic submission and publication of the reports to help address the inaccuracies and inconsistencies in the Internal Affairs Annual Summary Reports.
- Develop a plan for taking over the IA responsibilities of subordinate agencies that lack the ability or integrity to conduct personnel investigations.
- Develop a plan for taking over subordinate law enforcement agencies that demonstrate a pattern or practice that deprives persons of rights, privileges or protections under federal or state law.

Our review of police accountability IA summary data convinces us that there is a need for enhanced oversight of agencies' recordkeeping and reporting of data. The attorney general and county prosecutors should:

- Provide training to IA administrators on how to file Internal Affairs Annual Summary Reports (currently not one county files accurate reports)
- Revise the Internal Affairs Annual Summary Report form to add additional categories needed for better pattern-tracking such as 1) complaint categories that reflect the breadth of complaints received; 2) a column to distinguish between incidents that occur during traffic stops and other encounters; 3) a column to distinguish between incidents that occur on- or off-duty; and 4) information about the types of crimes alleged against officers (i.e., theft, false reporting, domestic violence).
- Publish IA summaries and index systems. The index systems provide valuable

information, as the Division of Criminal Justice report on the Irvington Police Department (2001) demonstrated. The current IAPP unnecessarily classifies these reports as confidential when they merely list case numbers, allegations, IA investigators assigned to cases and dispositions. The New Jersey police agencies that have made these reports public deserve commendation.

- Analyze IA cases and statistics to expose patterns in citizen complaints and to uncover officers or agencies against whom repeated complaints have been filed. Currently, IA data are collected and compiled haphazardly with no subsequent analysis. Undesirable behaviors and red flags are missed in the process, as are opportunities for early intervention.

XIV. Conclusion

While most police officers follow the rules, the few who don't can undermine community confidence in law enforcement. Our telephone survey found that the average citizen trying to register a complaint encounters a labyrinth of obstacles. Police departments must establish accessible citizen complaint procedures, train their personnel, impartially investigate each grievance and release the resulting information to the public. As the chief law enforcement officer for the state, the attorney general must take the lead in implementing policies that create responsive IA programs and must ensure that each police department complies with the law. The public needs — and deserves — to know that our public servants work within systems and guidelines that protect citizens from abuse and provide avenues for the public to register grievances.

Appendix 1: Statewide Internal Affairs Complaint Summary

Summary Report 1996–2005

New Jersey Statewide Police Internal Affairs Complaints 1996–2005	Excessive Force	Arrest	Entry	Search	Differential Treatment	Demeanor	Other Rule	Other Criminal	TOTAL
Officer Found Guilty:									
Total Sustained Criminal	129	19	5	1	9	22	260	298	743
Total Rule Cases Sustained	384	139	55	181	351	3,128	22,457	257	26,952
Total Sustained	513	158	60	182	360	3,150	22,717	555	27,695
Unsubstantiated:									
Total Exonerated	3,747	918	242	600	1,707	4,866	6,149	383	18,612
Total Not Sustained	4,035	595	161	524	1,825	9,424	8,917	626	26,107
Total Unfounded	2,183	385	115	326	1,630	4,672	5,478	557	15,346
Total Admin. Closed 00-05	318	63	15	36	153	630	1,208	238	2,661
Total Cases Dismissed	10,283	1,961	533	1,486	5,315	19,592	21,752	1,804	62,726
Total Cases Received	11,729	2,195	645	1,760	5,837	23,420	48,113	2,789	96,488

Total sustained and dismissed cases may not add up correctly to total received due to faulty official recordkeeping.

Source: Office of Government Integrity Internal Affairs Performance Audit Plan 2004

Definitions

Sustained: The investigation disclosed sufficient evidence to prove the allegation.

Exonerated: The alleged incident did occur, but the actions of the officer were justified, legal and proper.

Not Sustained: The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.

Unfounded:

- a. The alleged incident did not occur; or
- b. There is insufficient information to conduct a meaningful investigation. (IAPP 11-21)

Administratively Closed: New disposition added in 2000. The investigation was closed prior to conclusion for a number of reasons including officer retirement, resignation, untimely investigation or other circumstances.

Appendix 2: Complaints by Telephone; Response by County

County	Can File by Telephone	Cannot File by Telephone	Other	Totals
Atlantic	1	17	0	18
Bergen	12	52	5	69
Burlington	8	26	0	34
Camden	10	22	4	36
Cape May	4	7	0	11
Cumberland	1	2	0	3
Essex	6	21	1	28
Gloucester	7	14	3	24
Hudson	2	8	3	13
Hunterdon	5	10	1	16
Mercer	5	7	2	14
Middlesex	5	20	2	27
Monmouth	12	33	3	48
Morris	14	24	0	38
Ocean	10	18	4	32
Passaic	5	9	3	17
Salem	0	6	1	7
Somerset	6	13	0	19
Sussex	1	10	1	12
Union	6	13	2	21
Warren	3	9	0	12
Transit/Port Authority	2	0	0	2
Totals:	125	341	35	501

Source: ACLU-NJ 2009 Internal Affairs Telephone Survey

Appendix 3: Will ICE be Contacted?

COUNTY	AGENCY	COMMENTS
Atlantic	Galloway Twp.	ICE would be contacted if the complainant was in the country illegally. Galloway noted however that it “doesn’t mean the investigator would be any less likely to thoroughly investigate the complaint.”
Atlantic	Longport	If someone is here illegally, “[the police] have obligations to do too.”
Atlantic	Northfield City	ICE “could possibly be contacted [if the complainant is in the U.S. illegally], because we have to uphold the law.”
Atlantic	Ventnor City	“If he is here illegally, ICE will probably be contacted...if he is illegal, he is going to be checked to see if he is valid.”
Bergen	Allendale Borough	ICE won’t be contacted “unless there’s a reason to; we have new guidelines about this.”
Bergen	Closter	“If [the complainant has] no problems with [his] immigration status, don’t sweat it.”
Bergen	Midland Park	Whether ICE will be contacted “depends on what happened... are you saying he is an illegal alien?”
Bergen	Northvale	If illegal, ICE will be contacted.
Bergen	Norwood	“If it doesn’t come up, it doesn’t matter.”
Bergen	Old Tappan	Whether ICE will be contacted “depends on what’s being alleged.”
Bergen	Paramus	If illegal, ICE will be contacted.
Burlington	Chesterfield Twp.	ICE may be contacted, but the complaint is investigated regardless.
Burlington	Medford Twp.	ICE may be contacted “depending on his status, but I wouldn’t hold it against him.”
Burlington	Palmyra Bor.	If illegal, “it’s possible” that ICE would be contacted.
Camden	Barrington	“If citizenship was in question, I’m still a police officer.”
Camden	Berlin Bor.	Must have green card to file complaint.
Camden	Pine Hill	“Are you saying he’s illegally here?”
Cape May	Lower Twp.	“If he’s an illegal alien, we have to report them all.”
Essex	Bloomfield	If illegal, “ICE can be contacted at any time.”
Essex	North Caldwell	If complainant is illegal, immigration could be called. “He is taking a risk.”
Essex	South Orange	Not being a U.S. citizen does not preclude filing, but “no guarantees” about not calling ICE.
Hudson	North Bergen	If illegal, ICE will be contacted. The officer stated that this was the first time he had been asked that question.
Hunterdon	West Amwell Twp.	“Makes a big difference. If here illegally, [by filing the complaint] you’re putting out there that you are illegal.”
Mercer	West Windsor	If illegal, ICE may be called.
Monmouth	Brielle	If illegal, “it’s the law, [ICE] would have to be called”
Monmouth	Interlaken Bor.	No guarantees about contacting ICE.

(Continued on next page)

Appendix 3: Will ICE be Contacted? *(Continued)*

COUNTY	AGENCY	COMMENTS
Morris	Morris Plains Bor.	Must come from a “legal citizen.”
Morris	Mount Arlington	No guarantees about contacting ICE.
Morris	Roxbury	Must be a “U.S. citizen” to file complaints.
Ocean	Manchester Twp.	Must be “legal citizen” to file complaints.
Ocean	Seaside Park	If illegal, that “may be an issue.”
Salem	Carneys Point	If illegal, “then notifications [have] got to be made as they normally would.”
Warren	Belvidere	If illegal, ICE would “probably” be contacted.
Warren	Lopatcong	“Don’t take this as a threat, but would he really want to file a complaint if he is illegal? I’m just being honest with you. He may want to think twice.”
Warren	Washington Twp.	It would “probably be a problem if they are here illegally.”

Source: ACLU-NJ 2009 Internal Affairs Telephone Survey

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