

TABLE OF CONTENTS

TRANSMITTAL LETTER	i
I. STATEMENT OF FACTS	1
a. The September 19, 2002 Memorandum	1
b. Execution of the September 19, 2002 Memorandum	4
c. The Documents Supplied	6
d. Press Reports on the September 19, 2002 Memorandum	8
e. Actions Taken After the Memorandum Became Public Knowledge	9
f. June 18, 2002 Memorandum from Former Captain Edgar Hess to Superintendent	11
g. Limited Involvement of the Special Investigation Unit	13
II. STANDARDS OF CONDUCT	14
a. Federal Rules Concerning the Dissemination of Intelligence Information	14
b. Conflicts of Interest and Ethics	15
c. State Police Conducting Investigations of its Members	17
III. ANALYSIS	18
a. Violation of the Federal Regulation Concerning Dissemination of Intelligence Information	18
b. Actual Conflict of Interest	20
c. Appearance of a Conflict	22
d. The Dissemination of Confidential Information to the Press	25
e. Available Alternatives to the September 19, 2002 memorandum	25
IV. RECOMMENDATIONS	26
a. Uniform Training on Standards for Disseminating Intelligence Information	26
b. Sanctity of Background Investigations	27
c. Eliminating Leaks to the Press	27
d. Office of the Attorney General to Conduct Background Investigation of Superintendent-Nominee	28
e. Promotions	28
f. Legal Advisor	29
LIST OF EXHIBITS	30
ACKNOWLEDGMENT	31



State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF GOVERNMENT INTEGRITY

DAVID SAMSON
Attorney General

PO Box 063
TRENTON, NJ 08625-0063
TELEPHONE (609) 530-4400

EDWARD M. NEAFSEY
Director

LETTER OF TRANSMITTAL

November 8, 2002

Honorable David Samson
Attorney General of New Jersey
Office of the Attorney General
P.O. Box 080
Trenton, New Jersey 08625-0080

Dear Attorney General Samson:

On October 10, 2002, you directed the Office of Government Integrity ("OGI") to conduct a fact-finding review of a memorandum dated September 19, 2002, from Superintendent Joseph J. Santiago to Major Kenneth C. Hess regarding "Official Corruption Investigation" and the circumstances surrounding issuance of the memorandum, including applicable standards of conduct. OGI interviewed 17 individuals, and reviewed the relevant documents. This Report summarizes OGI's investigation and conclusions. A time line for the circumstances surrounding the September 19, 2002 memorandum is included in the Report. (Exhibit 1)

One of the paramount interests of any law enforcement agency is maintaining the sanctity of investigative files and records. A law enforcement agency can only successfully meet its objectives when its personnel, and the public, are confident that investigative files and records are secure. Therefore, after receiving this assignment

from you, the first thing OGI did was ensure that no documents had been removed, or altered, from any of the files that were subject to production under the September 19th memorandum. OGI verified that no documents were removed or altered. OGI makes this finding based upon witness interviews and physical inspection of files.

Based upon the overriding interest of the public in the integrity of law enforcement, OGI finds the issuance of the Superintendent's September 19th memorandum, which ordered the production of originals and all copies of confidential investigations pertaining to himself and his Executive Staff and the names of all of the investigators assigned to the investigations, to be a gross exercise of bad judgment. The demand made by the Superintendent in this particularly cavalier manner did a disservice to the New Jersey State Police, threatened the integrity of the State Police investigative process, and lessened public confidence in the abilities of the State Police. This finding is based upon the conclusion that the Superintendent's issuance of the memorandum resulted in three violations of the law.

First, the production of the confidential files ("Investigator's Reports"), ordered produced pursuant to the Superintendent's memorandum, is governed by the Code of Federal Regulations. (28 CFR Part 23). These federal rules impose a "need to know, right to know" standard for production of documents and prohibit accessing intelligence information for non-law enforcement purposes. The Superintendent lacked a genuine law enforcement purpose for demanding production of these confidential files. Indeed, his self-interest in "researching" investigations about himself was not a law enforcement purpose. Contrary to what he believed, he did not have the "right," as Superintendent,

to demand the production of these reports, because federal regulations were violated in their production.

Once the Superintendent issued the memorandum, his subordinates were under orders from their superior, the agency's highest ranking person, to comply with the demand. By State Police regulation a subordinate can voice his or her concerns but he or she must ultimately comply with the order. Subordinate State Police officers did express their concerns about producing these documents, but complied with the order. This production of the records caused the non-compliance with the federal rules.

Second, the September 19th memorandum violated the Conflicts of Interest Statute, N.J.S.A. 52: 13D-23(e), which prohibits state employees from engaging in conduct that presents a conflict of interest, or an appearance of impropriety, with their state duties. By issuing this memorandum, the Superintendent violated both of these provisions of law. His demand to produce investigative records concerning himself was in substantial conflict with the proper discharge of his duties. His action also created suspicion among the public that he engaged in conduct violative of the trust imposed on him as Superintendent.

Third, pursuant to legislative directive, the legal obligation to avoid the appearance of impropriety and, therefore, not engage in conduct that conflicts with public duties is also codified in the Department of Law and Public Safety's Code of Ethics and in the New Jersey State Police Rules and Regulations. The Superintendent's issuance of the memorandum violated the Department's Code, and the State Police rules and regulations, which apply to the Superintendent.

Former New York City Police Chief Lee Brown said that “the leadership of a police organization ultimately will determine the character of the organization.” The example set by the Superintendent in issuing the September 19th memorandum was a poor one. On its face, the Superintendent's memorandum set the wrong example for the rank and file of the New Jersey State Police. Moreover, the issuance of the memorandum was wrong-headed. As this Report shows, there were other, legitimate ways for the Superintendent to answer any questions he might have had about investigations against him and members of his executive staff. For example, the Superintendent should have contacted the Office of the Attorney General before taking any action. That he unilaterally decided to issue the memorandum threatened the integrity of State Police records and brought disrepute to the State Police.

Since what transpired before and after the memorandum was issued is part of the totality of the circumstances, it is included as part of this fact-finding Report. The Superintendent, unfortunately, compounded his grievous error in judgment by meeting with Major Hess, the Trooper who received the memorandum demanding production of the files, at a Ewing restaurant on Columbus Day. This meeting occurred after the Attorney General announced that OGI was assigned to review of this matter, but before any witnesses were interviewed. The details of this meeting, as described by the attendees, are set forth in the Report. OGI believes that the meeting was ill-advised and under the circumstances creates an appearance of impropriety.

OGI's review included inquiry into the Superintendent's written and stated motivation for issuing the memorandum. The Superintendent claimed that he authored the memorandum because neither he nor his Chief of Staff were aware of any

confidential investigations involving him or members of his executive staff. While the Superintendent stated he did not know the Trooper who initiated the lawsuit which gave rise to the memorandum, Lt. James Campbell, except by reputation, OGI's review disclosed information that would suggest that the Superintendent knew more than the mere fact that the complainant was "Trooper of the Year." For example, evidence indicated that the Superintendent knew this Trooper had supervised investigations into the Superintendent when he was the Newark Police Director. Additionally, a memorandum by a subordinate provided information that there were pending investigations against the Superintendent. The Superintendent acknowledged that he did read that memorandum.

As the Report will show, at the very least, the motivation for the September 19th memorandum suggests an appearance of impropriety and a conflict of interest. If, as he claimed, the Superintendent merely wished to understand the basis for the civil suit, he had other alternatives for obtaining the information. The Superintendent should have asked a readily available Office of the Attorney General for legal counsel in what he admits was a legal matter.

OGI believes the inconsistencies between the Superintendent's claim as to what motivated his issuance of the memorandum and the other evidence, makes it difficult to credit the Superintendent's stated purpose. However, assuming the Superintendent's motivation is accepted, it still did not provide a justification for his demand of confidential files concerning himself. That is because, regardless of his motivation, it was improper, and indeed illegal, for him to have had the memorandum issued. Succinctly, his reasoning provided no excuse for his action.

Nor is he excused because he never saw the records. The violations of law occurred because of the demanding, not the viewing. While the fact that he screened himself from reading the reports mitigates the harm that was caused by his issuance of the memorandum, it does not undo the violations.

In short, OGI concludes that the issuance of the September 19, 2002 memorandum violated the Conflicts of Interest statute, the Department of Law and Public Safety's Code of Ethics and the Rules and Regulations of the New Jersey State Police. Production of the confidential files pursuant to the memorandum violated federal rules. Based upon these conclusions, OGI finds that the Superintendent committed a grievous error of judgment in issuing the memorandum.

OGI's Report follows with sections on the Statement of Facts, Standards of Conduct, Analysis and Recommendations. Some of OGI's recommendations for strengthening the Division of State Police include the following: providing uniform training on the standards for disseminating confidential information, protecting the sanctity of four-way background investigations, assigning the Office of the Attorney General to conduct the background investigation on any Superintendent-nominee and eliminating the illegal dissemination of confidential information, particularly leaks to the press. Finally, I recommend that you, as chief law enforcement officer in the State, make this Report and its findings public.

Respectfully submitted,

Edward M. Neafsey, Director
Office of Government Integrity

cc: Peter C. Harvey, First Assistant Attorney General
Lori E. Grifa, Chief of Staff

I. STATEMENT OF FACTS

a. The September 19, 2002 Memorandum

The September 19, 2002, memorandum is printed on New Jersey State Police Office of the Superintendent letterhead. (Exhibit 2). The memorandum is addressed to Major Kenneth C. Hess, Investigations Bureau, from Joseph J. Santiago, Superintendent. The subject is "Official Corruption Investigation." The memorandum is marked confidential. The memorandum is marked with a due date of September 24, 2002. In the comments section are the following remarks:

"Attached please find a Reportable Incident Form, which has been filed by Lt. James Campbell of the Evidence Management Unit. Within the document, Lt. James Campbell alleges that, while he was assigned to the Official Corruption Unit, he was involved in several confidential investigations involving me and other high ranking members of my Executive Staff. I nor my Chief of Staff are or were aware of any such investigations.

You are hereby directed to ascertain the following:

- **How many confidential investigations were conducted involving me or any member of my Executive Staff;**
- **Who authorized any such investigations;**
- **Who were the investigators assigned to such investigations;**
- **Who were the recipients of the findings of such investigations;**
- **Where were the investigation files stored; and**
- **Who may have had access to such files.**

In addition, provide me with the originals and all copy [sic] of these confidential investigations. Delivery of your response to the aforementioned inquiries, along with the original and all copies of the investigative files, are to be hand delivered to me no later than 24 September 2002." (Emphasis Added).

The memorandum is signed by Joseph J. Santiago, Superintendent. During his interview with OGI, former Superintendent Santiago acknowledged signing the memorandum. The memorandum was typed by Lt. Jack McDonnell. Lt. McDonnell is assigned to the Office of the Superintendent. He based the demands and wording of

the memorandum on specific instructions provided by Chief of Staff, Captain Rosanne Manghisi. Lt. McDonnell stated that the request emanated from a Notice of Tort Claims. Lt. McDonnell, an attorney, said that he has never given any legal advice pertaining to any State Police matter including this memorandum. At the time the memorandum was drafted, Lt. McDonnell had been assigned to the Office of the Superintendent for only ten weeks. Lt. McDonnell, a 20-year veteran of the State Police, admitted he lacked familiarity with "Investigator's Reports," which were the type of reports directed to be produced pursuant to the memorandum.

Accompanying the Notice of Tort Claims was a State Police form SP 525, Reportable Incident Form. (Exhibit 3). The SP 525 form is used by Troopers filing internal complaints. In the SP 525, Lt. Campbell claimed that he and Sgt. Joseph Campbell (his brother) were involved in several confidential investigations concerning the Superintendent and other high ranking members of his staff. The investigations occurred prior to the appointment of the Superintendent. Once the Superintendent was confirmed, Lt. Campbell claims, the Superintendent and Chief of Staff Manghisi initiated retaliatory actions against him and his brother. The claim of employer retaliatory action was made under the Conscientious Employee Protection Act, N.J.S.A. 34:19-1.

Chief of Staff Manghisi stated that after reviewing the reportable incident form, she discussed it with the Superintendent. Former Superintendent Santiago stated that he had never heard of Lt. Campbell, except for his being named Trooper of The Year, before this SP 525 report. However, an interview conducted by OGI would suggest that the Superintendent was familiar with Lt. Campbell. Then Lieutenant Nicholas Theodos

told OGI that he had a conversation with Superintendent Santiago in which the Superintendent brought up the fact that Captain Edgar Hess had meetings with Lt. Campbell and others concerning the background check on Joseph Santiago. Also, then Lieutenant Theodos recalled a conversation with the Superintendent concerning Theodos being promoted to acting Captain of the Criminal Investigations Bureau. Lt James Campbell was acting Bureau Chief of Criminal Investigations at the time. Superintendent Santiago asked if Lt. Theodos had any problem with Lt. Campbell being his assistant. The conversations concerning Lt. Campbell took place prior to May 15, 2002, when Lt. Theodos was promoted to Captain.

Captain Manghisi opined that reviewing the reports was important, because neither she nor the Superintendent were aware of pending investigations against them. She said she provided the specific drafting language to Lt. McDonnell. According to Captain Manghisi, the Superintendent had no involvement in drafting the "requests" contained in the memorandum. She confirmed that the Superintendent signed the memorandum. During an interview with OGI, former Superintendent Santiago disagreed with the representation by Captain Manghisi. Superintendent Santiago stated that he provided the specific instructions for the September 19, 2002 memorandum.

Former Superintendent Santiago maintained that the September 19, 2002 memorandum asking for all reports "involving me and other high ranking members of my Executive Staff," referred to his staff when he was Director of Newark Police Department. Chief of Staff Manghisi believed the request concerned the State Police staff. Also, former Superintendent Santiago believed, based upon his previous law enforcement experience, that all necessary precautions in the request for the

documents were taken, including the fact that Captain Manghisi screened him from viewing the reports.

b. Execution of the September 19, 2002 Memorandum

The memorandum was hand-delivered to Major Kenneth Hess late in the afternoon of September 19, 2002. (Major Hess was promoted by Superintendent Santiago on July 18, 2002, as acting Major in charge of the Investigations Bureau.) Major Hess stated that he called-in Lt. Rich Loufik, Supervisor of the Official Corruption Unit, the next day. Lt. Loufik was the custodian of the documents. Major Hess stated that he asked Lt. Loufik if there was a problem with the Superintendent obtaining the documents. Major Hess expressed concern that the demand may involve an active criminal investigation. Lt. Loufik replied that the reports were "Investigator's Reports," and that there was not an active criminal investigation.

Investigator's Reports are different from Investigative Reports. Investigator's Reports concern information gathered from confidential sources. Usually, under the law, Investigator's Reports are not discoverable material. Investigator's Reports are also known as "yellow sheets" or SP 382 reports. Investigative Reports, "SP 310", are reports utilized in the criminal procedural process. Superintendent Santiago stated that he had no familiarity with Investigator's Reports. Major Hess asked Lieutenant Loufik if the Investigator's Reports mentioned confidential informants. After a casual reading, Major Hess concluded that the reports were "unsubstantiated" source information.

Lt. Loufik told Major Hess that the reports should not be turned over. Lt. Loufik believed the request was an "unprecedented " way to handle Investigator's Reports. Lt. Loufik stated that the reports sought by the Superintendent could be gotten in other,

more appropriate, ways.

According to Lt. Loufik, the Superintendent can request representation from the Attorney General for the purpose of obtaining the requested reports. OGI confirmed that in seeking access to these reports, the Superintendent can request legal advice from the Attorney General's Office. Captain Leonardis, an assistant to Major Hess, provided advice to Major Hess similar to Lt. Loufik's. Major Hess agreed with the advice. Therefore, Major Hess contacted Lt. McDonnell. He asked Lt. McDonnell why would the Superintendent open himself up to criticism? He told Lt. McDonnell that the Superintendent did not need these reports, and that there was nothing important in them, and no reason for the Superintendent to open himself to criticism. Major Hess also said that the Superintendent's request appeared to be civil in nature. Lt. McDonnell replied, no, the Superintendent chewed my head off, just send the things over. Major Hess assured Lt. McDonnell that no copies of the memorandum were made by him.

Major Hess also called Captain Manghisi. He told her that he did not understand the Superintendent's need for the documents. Major Hess has a hazy memory as to the timing and content of the calls to Lt. McDonnell and Captain Manghisi. (It must also be noted that Major Hess could not recall the specific details of a conversation he had with the Superintendent 24 hours earlier. When asked why, he told OGI that he had a disability which affects his memory. Former Superintendent Santiago stated that he had no knowledge about that.) After the conversation and his review of the subject reports, Major Hess "rationalized" that turning over the reports was acceptable, because he said the Attorney General's Office had reviewed the allegations previously, and declined to proceed.

Chief of Staff Manghisi has a slightly different memory of her telephone conversation with Major Hess. She said that it was she, not Major Hess, who said: do not supply the reports if ongoing investigations will be affected. Captain Manghisi does not recall him raising any objections. Former Superintendent Santiago stated that he never heard of any dissension in supplying the requested documents. He told OGI that, in his initial discussion with Captain Manghisi, he had said that no files relating to pending investigations should be sent in response to the demand. As to why that limitation was not placed in the instructions contained in the memorandum, former Superintendent Santiago said it was just understood.

c. The Documents Supplied

On September 20, 2002, the documents were hand-delivered to the Office of the Superintendent. The Investigator's Reports date from 1997 and 2000. The reports contain allegations only as to Joseph Santiago. Also included with the reports was a September 20, 2002, memorandum by Major Hess answering the specific inquiries set forth in the September 19th memorandum. On September 26, 2002, the requested documents were returned to Major Hess. The receipt for the returned documents is attached. (Exhibit 4). All of the documents were returned.

Captain Manghisi is a 22-year veteran of the New Jersey State Police. Captain Manghisi said that the Investigator's Reports were only reviewed by her and that the Superintendent never saw the reports. She said she told the Superintendent that he did not need to see the reports, because nothing in the reports related to the civil allegations made by Lt. Campbell. Captain Manghisi also noted that the reports did not have any Supervisor approvals or dates. According to Captain Manghisi, a lack of

approvals and dates is a very unusual occurrence. Former Superintendent Santiago stated that he never read the reports. Based upon a briefing he received from Captain Manghisi, the former Superintendent Santiago told OGI that she told him that none of the requested reports included ongoing investigations and that they (Captain Manghisi and Major Hess) made sure of that so that there would not be any interference with active investigations. Former Superintendent Santiago said that, after this assurance was given, Captain Manghisi briefed him on Major Hess's report. In addition, former Superintendent Santiago stated, that he first learned the particulars contained in the reports by reading about them in the newspaper.

After reviewing the reports, Captain Manghisi gave the documents to Lt. McDonnell for the purpose of returning them to Major Hess. Captain Manghisi said that no copies were made of the Investigator's Reports. Sgt. Thomas Suscewicz signed a receipt for the documents. (Exhibit 5). Lt. Loufik placed the returned package in a safe. Lt. Loufik had also made a copy of the documents that were sent to the Office of the Superintendent. An OGI Investigator inspected the documents in the safe and compared them to the copies made by Lt. Loufik. The files were intact. No documents were missing from the files.

On September 25, 2002, the Superintendent signed a memorandum that memorialized the return of two original reports from Lt. Loufik dated February 6, 2002 and February 28, 2002. This memorandum was also on Office of the Superintendent letterhead. The September 25, 2002 memorandum listed attachments. The attachments were the subject Investigator's Reports. The February 6, 2002, memorandum by Lt. Loufik, listed the eight Investigator's Reports supplied to him

concerning Newark City Police Director Santiago.

d. Press Reports on the September 19, 2002 Memorandum

On October 8, 2002, the Asbury Park Press published an article summarizing the contents of a September 19, 2002 memorandum authored by State Police Superintendent Joseph Santiago. According to the Article, the Superintendent is alleged to “order the confiscation of all potentially damaging state police investigative records on himself and his top staff.” The article also indicated that the Superintendent wanted the following information concerning himself and his executive staff:

- “The number of confidential investigations conducted on Santiago and any member of his executive staff.”
- “The names of those who authorized the investigation and investigators assigned to the inquiries.”
- “The recipients of the findings of the investigators, where the investigative files are stored and the names of those who may have access to the files.”

The article noted that the memorandum was prompted by an internal State Police complaint, regarding the transfer of a State Police officer out of the Official Corruption Unit to an assignment 80 miles from his home. The article further indicated that, according to confidential sources, the transferred officer participated in investigations involving the Superintendent and other members of the executive staff, and that, in the memorandum, the Superintendent declared that he and his Chief of Staff, Captain Rosanne Manghisi, were unaware of being the subject of any State Police investigations.

e. Actions Taken After the Memorandum Became Public Knowledge

Chief of Staff Manghisi said, upon reading the article about the content of the

memorandum, she wanted to gather all of the documents concerning the September 19th memorandum. First, she wanted the original memorandum. She asked Lt. McDonnell for it. He couldn't find it because, inadvertently, the original memorandum had been delivered with the documents back to Lt. Loufik. The original memorandum was retrieved from Lt. Loufik.

Chief of Staff Captain Manghisi stated that she told Superintendent Santiago not to discuss the memorandum. Former Superintendent Santiago stated that Captain Manghisi never told him not to discuss the memorandum.

On October 10, 2002 the Attorney General assigned OGI to review the circumstances surrounding the memorandum. The Attorney General informed the Superintendent of OGI's assignment and publicly announced it. On October 10, 2002, working with First Assistant Attorney General Peter Harvey, the Director of OGI selected a team to conduct this fact-finding review. The team met on October 11th, and each member was instructed that the review would be conducted in a confidential manner.

According to Major Hess, he received a telephone call at his home from Captain Manghisi on Sunday, October 13, 2002. Captain Manghisi stated that she needed a copy of the Sgt. Suscewicz's receipt for the return of the original Investigator's Reports.

Captain Manghisi believes she made the call in her car on Monday morning, while on the way home from Massachusetts. She said that the Office of the Superintendent had just moved and everything was in boxes. She stated that she looked everywhere for the receipt but could not locate it. She assumed that Lt. McDonnell had a copy, but, she said, since everything was in boxes, she contacted

Major Hess.

On Monday, October 14, 2002, Major Hess met Captain Manghisi at State Police headquarters. That day, the Columbus Day holiday, Major Hess had been scheduled for a day off. Major Hess gave her the receipt.

Captain Manghisi stated that she was hungry and asked whether Major Hess would go with her to lunch. She told Major Hess that the Superintendent was going to meet her there. They drove separately to a nearby restaurant, Merlino's, which is located less than 5 minutes from State Police Headquarters. They sat down outside. Superintendent Joseph Santiago arrived and he sat down with them. According to former Superintendent Santiago, he kidded Major Hess about having a scotch. Captain Manghisi stated that Major Hess and Superintendent Santiago stayed about half-an-hour. Major Hess and Superintendent Santiago did not eat lunch. Captain Manghisi said that no aspect of the memorandum was ever brought up during conversation. However, Major Hess stated that the Superintendent inquired as to whether Major Hess had a recollection as to the concerns he (Hess) had expressed about the September 19th memorandum to Captain Manghisi and Lt. McDonnell. Former Superintendent Santiago stated that the memorandum was not discussed at lunch. The former Superintendent stated in an interview to OGI that, if he did not talk to Major Hess during the course of the memorandum, "do I look stupid" enough to talk with him now. Former Superintendent Santiago stated that he did not plan on meeting Major Hess at Merlino's Restaurant.

Captain Manghisi stated that the reason the Superintendent appeared was because he wanted to exchange some files with his Chief of Staff before heading to a

meeting in Cape May. She too was attending the meeting in Cape May. Only Captain Manghisi and a late arriving Director of Strategic Planning Michael Wagers chose to dine.

At first, Major Hess stated to OGI that he met the Superintendent at headquarters, then mentioned that the meeting was at the restaurant. Again, it is important to note that Major Hess could not recall specific details of the conversation, which had occurred one day before the interview. However, based on the Attorney General's public announcement regarding OGI's assignment, it was apparent to all that Major Hess would be a crucial witness for OGI to interview. Indeed, Major Hess was the first person interviewed by OGI. His faulty recollection limits OGI's ability to pinpoint the nature of the discussion between Major Hess and the Superintendent.

f. June 18, 2002 Memorandum from Former Captain Edgar Hess to Superintendent

The Superintendent stated in his September 19th memorandum that neither he nor his staff are aware of any confidential investigations concerning them. He also made similar comments that were reported by the Star- Ledger on October 20, 2002. Because of these statements, the review by OGI, by necessity, must include a June 18, 2002 memorandum submitted to the Superintendent by a member of the State Police. On June 18, 2002, former Captain Edgar Hess, now a Supervising State Investigator with Division of Criminal Justice, wrote a memorandum to Superintendent Santiago. The memorandum was e-mailed to Eileen Ciocian, Administrative Assistant to the Superintendent. (Exhibit 6). Ms. Ciocian acknowledged receipt of this memorandum. Ms. Ciocian said that the memorandum was given to Chief of Staff Manghisi and that

the Chief of Staff reviewed the document in front of her. Ms. Ciocian further indicated that Captain Manghisi made a negative comment about the memorandum and immediately took the document into the Superintendent's Office.

The memorandum discussed rumors concerning the background check of Superintendent-nominee Joseph Santiago. Contained in the middle of the memorandum is the following, " In addition, several sources, unrelated to the background investigation came forward with the allegations which were criminal in nature," that is, criminal allegations against Mr. Santiago. The memorandum stated that these allegations were kept separate from the background investigation, i.e. the four-way investigation. The memorandum also stated that the separation was legally necessary because a background investigation cannot be used for developing a criminal investigation. The memorandum further said that the information was supplied to the Division of Criminal Justice to prevent a conflict of interest. Finally, it should be noted that, prior to his transfer by Superintendent Santiago, Lt. Campbell was assigned to the State Police Corruption Unit. Thus, he worked on criminal matters, not background checks. Former Superintendent Santiago admitted that he received the Edgar Hess memorandum. He stated he did read through it. During the interview with OGI, it was pointed out to him that the on the second page of the memorandum reference was made to pending criminal investigations. Former Superintendent Santiago acknowledged that the information was in the memorandum. The Hess memorandum also mentioned Lt. Campbell in a context other than as Trooper of the Year.

In OGI's second interview of Chief of Staff Manghisi, she stated that she discussed the Edgar Hess memorandum with the Superintendent. The memorandum was generated in response to a conversation that Lt. Nicholas Theodos had with the

Superintendent. The Superintendent brought up the name of Edgar Hess in meetings. The Superintendent repeatedly asked Lt. Theodos, what do you think of him? Lt. Theodos said he interpreted this to be a loyalty test as to whether he would deny his friendship with Captain Hess. Lt. Theodos believed the inquiry had nothing to do with Captain Hess, but rather the Superintendent was probing Lt. Theodos' character.

g. Limited Involvement of the Special Investigation Unit

OGI decided to speak with members of the Special Investigation Unit ("SIU") in order to assess whether information or material in the background investigation file was part of what the Superintendent demanded in his September 19th memorandum. SIU is the unit that conducts four-way background checks. Det. Sgt. Martin Temple was assigned to conduct the background investigation of Joseph Santiago. Det. Sgt. Temple stated that sometime towards the end of January or early February 2002, while the background investigation was still ongoing, Joseph Santiago contacted him. During the telephone conversation, Mr. Santiago became irate about leaks concerning the background check appearing in the newspaper. At one point in the conversation, Mr. Santiago said, "I don't trust anyone in the State Police and someone is going to pay for this." In his interview, former Superintendent Santiago acknowledged that he made the telephone call and that he was upset over the leaks to the press. But he denied ever suggesting there would be payback.

OGI Investigators also interviewed one of the supervisors of the Special Investigations Unit. Lt. John Agamie said that the Investigator's Reports subject to the Superintendent's September 19 memorandum were never made part of the background

investigation. Therefore, the Superintendent neither requested nor received anything from his background investigation file.

II. STANDARDS OF CONDUCT

During the course of this review, it became apparent that the State Police needs to establish uniform standards, followed-up by thorough training, regarding its files. That is, the dissemination of information or material in State Police files is not guided by a specific unified Standard Operating Procedure ("SOP"). The Intelligence Bureau has one way of handling Investigator's Reports and the Criminal Investigations Bureau handles Investigator's Reports in an entirely different manner. The Blue Book governs how the Intelligence Bureau treats its files. OGI believes the Blue Book procedures should apply uniformly throughout the Division.

a. Federal Rules Concerning the Dissemination of Intelligence Information

The policy standards for the dissemination of information from Federal intelligence data is controlled by the Code of Federal Regulations. 28 CFR Part 23. All criminal intelligence systems operating through financial support under the Omnibus Crime Control and Safe Streets Act of 1968 must comply with these statutory policy standards. 42 U.S.C. 3789g(c). "Need to know, right to know" is the federal policy standard under federal regulation. 28 CFR §23.20(e). Need to know means that a law enforcement agency in the performance of the law enforcement function has a need to have this particular information. Right to know means that the agency is authorized to have this information. Accessing information such as this for a non-law enforcement purpose would violate federal regulations.

Many state and local law enforcement agencies are subject to the right to know

and need to know standard. Those groups receiving access to federal intelligence information agree to comply with this policy standard. Also, agencies which join one of the federally funded regional information sharing systems must comply with the federal standard. One such regional organization is the Mid-Atlantic Great Lakes Organized Crime Law Enforcement Network (MAGLOCLLEN). In order to be a member of the group, an agency must agree to comply with the federal regulations. The Newark Police Department, while Joseph Santiago was its Police Director, joined the group in 2000. The New Jersey State Police is also a member of MAGLOCLLEN. Some members of the New Jersey State Police believe this is the standard they operate under when disseminating intelligence information contained in Investigator's Reports. Other State Police members interviewed by OGI were not aware of the federal standard for disseminating intelligence information. Former Superintendent Santiago stated that he was unfamiliar with the CFR. However, while Director of the Newark Police Department, he personally signed an agreement that included, among other things, that his department would follow the federal rules in the dissemination of intelligence information. The New Jersey State Police is now training personnel on the federal intelligence dissemination policy standard. This must continue.

b. Conflicts of Interest and Ethics

N.J.S.A. 52:13D-23 sets forth ethical standards that apply to the conduct of State officers and employees. Subpart (e) of the Conflicts statute provides the following:

(1) No State officer or employee or special State officer or employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest.

• • •

(7) No State officer or employee or special State officer or employee should knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his acts that he may be engaged in conduct violative of his trust as a State officer or employee or special State officer or employee. N.J.S.A. 52:13D-23(e).

Pursuant to this law the Department of Law and Public Safety adopted a Code of Ethics. The Department's Code of Ethics provides, in part, as follows:

"A. An officer or employee shall avoid any knowing conduct that might reasonably be expected to create an impression or suspicion among the public having knowledge of his acts that he is engaged in conduct violative of the public's trust.

• • •

C. An officer or employee shall not perform his official duties in any manner from which it might be reasonably inferred that the influence either of a personal relationship or of an unprofessional circumstance caused him to act in a biased or partial manner.

D. An officer or employee shall not act in an official capacity in any matter wherein he has a direct or indirect interest, financial or otherwise, which might reasonably be expected to impair his objectivity and independence of judgment in the discharge of his duties or to interfere with the operation of the Department."

The Revised Code of Ethics applies to all members of State Police, including the Superintendent.

New Jersey State Police Rules and Regulations also have the following standards of conduct concerning conflicts of interest, which apply to all members of the Division, including the Superintendent.

"No member should act in an official capacity in any matter wherein such member has a direct or indirect personal or financial interest that might be reasonably expected to impair the member's objectivity or independence of judgment."
Article 13, Section 3;

• • •

“No member should knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of such acts that such member may be engaged in conduct violative of trust as a member.” Article 13, Section 17.

Additionally, adherence to the following State Police regulations is required:

" A member shall be held responsible for the proper performance of duty, and for strict adherence to these Rules and Regulations. It shall not be received as an excuse or justification for any failure to perform one's duty, that the member followed the advice or suggestion of any other person whether that person be connected with the Division or not, unless such person is a member of higher rank who takes responsibility to issue direct and positive orders. "
Section 1, Article 4. (Emphasis Added).

c. State Police Conducting Investigations of its Members

The Superintendent has broad statutory powers for the purpose of conducting an investigation of members of State Police. Under N.J.S.A. 53:4-1, the Superintendent has the specific authority to issue a subpoena for the purpose of obtaining documents. In addition, the Superintendent can seek legal counsel regarding access to records. Assistant Attorney General (“AAG”) Gayl Mazuco is assigned to provide legal advice to the Superintendent.

State Police SOP B10 provides the framework for internal investigation procedures. Section 8 a. of SOP B10 provides that, in an internal misconduct investigation, the conflicts of interest preclusion only applies to the Superintendent if a review by the Attorney General or his designee determines that an actual conflict of interest exists. Director of Strategic Planning Michael Wagers stated that the Superintendent had weekly meetings with representatives of the Attorney General. AAG Mazuco was usually present at those meetings. However, according to Assistant

Attorney General Mazuco, the Superintendent did not seek her advice regarding either the September 19, 2002 memorandum or access to records such as those demanded by the memorandum.

In ordering the Investigator's Reports, via his September 19th memorandum, the Superintendent neither utilized his subpoena power accorded by statute nor requested legal advice from the Attorney General's Office. If he had issued a subpoena for this information, the subpoena could have been questioned or challenged as improvidently issued. By issuing a written order, in the manner he did, the Superintendent enabled himself to proceed unchecked.

Former Superintendent Santiago claimed that he did not have assigned legal counsel, and that AAG Mazuco only advised him on labor issues. AAG Mazuco said that she was available to provide any legal advice sought by the State Police Superintendent. In fact, she was the Attorney General Office's contact person for State Police legal requests. The Superintendent was told to contact her for legal advice by First Assistant Attorney General Peter Harvey.

III. ANALYSIS

a. Violation of the Federal Regulation Concerning Dissemination of Intelligence Information

The federal regulations provide a standard for the dissemination of intelligence information. The standard is "right to know, need to know." 28 CFR Part 23. The request must be related to a law enforcement function. The State Police are subject to this standard. However, not everyone at the State Police interviewed by OGI was

familiar with this standard. The Newark Police Department is also subject to this federal standard. Then Director Joseph Santiago signed an agreement, with a regional law enforcement intelligence sharing agency, which contained the clause that his department would follow the "right to know, need to know " federal intelligence dissemination standard. Former Superintendent Santiago told OGI that he was not familiar with the standard.

Significantly, the demand contained in the September 19, 2002 memorandum was not law enforcement related. Superintendent Santiago wanted to know what the Investigator's Reports stated about him or his staff. There was no law enforcement function being furthered. The surrounding circumstances previously discussed concerning the issuance of the memorandum show that the Superintendent had a personal interest in the information contained in the Investigator's Reports. The former Superintendent stated that the reason for the request was to find out if there were confidential investigations in existence, if they were authorized, who had the information, and most importantly, whether Lt. Campbell was involved. These reasons, besides demonstrating that neither the Superintendent nor his Executive Staff should be involved in the matter, do not demonstrate a needed law enforcement purpose.

An argument has been raised by the Superintendent that he needed the information in order to prepare an answer in a civil suit. Civil suits are not handled by the Office of the Superintendent. An SP 525 report with civil claims is normally sent to the Office of the Attorney General, because the Office of the Attorney General handles them. There was no legitimate law enforcement need for the Superintendent to receive the Investigator's Reports. That he demanded their production violated the federal

standard. Clearly, the State Police need a uniform standard as to the dissemination of intelligence information. Training on the federal standard is needed by all members of the State Police.

b. Actual Conflict of Interest

Conflict of interest is an important ethical doctrine. The Legislature passed a statute that forbids any State officer or employee from having any interest, financial or otherwise, direct or indirect which is in substantial conflict with the proper discharge of his or her duties in the public interest. The Division of Law and Public Safety followed the Legislature's lead by requiring its employees to adhere to this basic ethical doctrine. New Jersey State Police Rules and Regulations, closely follow the Legislature's ethical format. Former Superintendent Joseph Santiago stated that when he was appointed to the position he was made familiar with the conflicts statute during cabinet briefings on integrity.

The Superintendent read an SP 525 report, filed by Lt. Campbell, which claimed retaliation by the Superintendent and his Chief of Staff, because of investigations into the Superintendent and other members of his staff. The Superintendent stated he was not familiar with the investigations. The Superintendent stated he had no knowledge of the person who was making this retaliatory claim. The Superintendent decided to draft a demand for the reports that involved him or his staff. Chief of Staff Manghisi claimed that she was the one who drafted the particulars of the September 19th memorandum. Superintendent Santiago, who differs with the recollection of his Chief of Staff, stated that he provided the specific instructions for the memorandum. Superintendent

Santiago stated he signed the memorandum. State Police Rules and Regulations are clear that one cannot justify failure to perform one's duty by blaming the error on the bad advice provided by a subordinate. It is axiomatic that responsibility rests at the top. The Superintendent had a personal interest in these reports because the Investigator's Reports were about him. The Superintendent and his Chief of Staff claimed that it was well understood that no documents pertaining to active investigations were to be produced. Nonetheless, that limitation or understanding was not placed in writing in the memorandum.

Also, the Chief of Staff and Superintendent stated that the Superintendent never actually looked at the documents. But that is besides the ethical point; the actual conflict is the very demand for the documents about himself. The analysis does not have to go any further to find the actual conflict. The Superintendent told OGI that the memorandum was just one of many issued that day, and that he did not really give it that much significance. The former Superintendent stated that if he had wanted to, he could have gotten the documents without an order and there would have been no paper trail. While he could have obtained the documents by orally ordering subordinates to comply with his demands, that act also would have been an actual conflict of interest.

There is no basis for a finding of any criminal intent on the part of the Superintendent based upon OGI's review. The files are intact. There were no alterations to the subject Investigator's Reports. Nevertheless, the Superintendent committed an ethical breach by ordering the production of confidential investigation reports that he knew were about himself.

c. Appearance of a Conflict

The State Police Rules and Regulations provide, in part, that no member should knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of such acts that such member may be engaged in conduct violative of trust as a member. Major Kenneth Hess stated he told either the Chief of Staff or Lt. McDonnell that they did not need to obtain these reports in this manner, because there were other ways of obtaining them. Lt. Loufik told Major Hess that the request was wrong. Captain Leonardis told Major Hess that the request was wrong. Superintendent Santiago stated that no one told him the demand for documents was wrong. Yet, the former Superintendent and his Chief of Staff both stated that they orally warned those producing the documents not to supply any reports concerning current criminal investigations. Therefore, they both knew they should not review certain Investigator's Reports.

Chief of Staff Captain Manghisi stated that she read through the reports. Captain Manghisi represented that the Superintendent never read the actual Investigator's Reports. The Superintendent stated he never read the Investigator's Reports. Captain Manghisi told him there was nothing in the reports that he needed to know. Obviously, based upon their actions, Captain Manghisi and the Superintendent believed the Superintendent did not need to read the reports. The Superintendent stated that, since the Office of the Attorney General chose not to act on the reports, the reports had a different, lesser confidential status than what would be accorded to ongoing investigations. He is wrong. Regardless of the status of the investigation, the confidential sources for the Investigator's Reports deserved the same level of

confidentiality.

The suspicion of impropriety is given added credence by the Columbus Day meeting at Merlino's Restaurant. The Superintendent was informed by the Attorney General that OGI would be conducting a review of the circumstances surrounding the September 19th memorandum. As the attached time line shows, just a few days after being informed by the Attorney General, the Superintendent and his Chief of Staff met with the key witness concerning the memorandum. Major Hess was the individual to whom the subject memorandum is addressed. Major Hess was the one who voiced objections to the production of the Investigator's Reports. They had a drink with the witness at a restaurant located 5 minutes from headquarters, rather than at headquarters, on a holiday after the Chief of Staff insisted Major Hess come in on his vacation day to supply the receipt for the return of the subject documents.

Superintendent Santiago and Captain Manghisi stated that the issue of the memorandum was never brought up during the half hour meeting. Major Hess stated that the Superintendent only made an off-hand remark about the telephone conversations in which Hess had expressed concern about the memorandum to Lt. McDonnell or Captain Manghisi. Regardless of whether the memorandum was discussed, the actual meeting took place a couple of days after the Superintendent was informed by the Attorney General of the review. To even the most casual observer, this meeting raises suspicions as to what actually took place and creates an appearance of impropriety. For the Superintendent to meet with Major Hess under these circumstances was a gross error in judgement. If the Superintendent needed to discuss other unrelated State Police business matters with Major Hess, he should have spoken

to him during normal business hours at State Police Headquarters.

The September 19, 2002 memorandum was not issued in an atmospheric vacuum. The telephone conversation Sgt. Martin Temple had with then Newark Police Director Santiago lends credence to OGI's conclusion regarding the appearance of impropriety. Newark Police Director Santiago, frustrated over leaks to the press concerning information obtained during his four-way background check, angrily informed Sgt. Temple that he did not trust the State Police and that someone would pay for this. Additionally, even though the Superintendent denied ever knowing the work of the complainant Lt. James Campbell, the facts suggest otherwise. Evidence indicates that he did know about some of the investigations handled by Lt. Campbell. The Edgar Hess memorandum and the conversation the Superintendent had with Lt. Theodos suggest that the Superintendent had more familiarity with Lt. Campbell than just the fact that Lt. Campbell was a previous recipient of "Trooper of the Year." It was in this atmosphere that the Superintendent demanded confidential Investigator's Reports based upon an SP 525 report that alleged retaliation.

Also, the Superintendent's memorandum demanded originals and all copies. The Superintendent stated he placed that in his order because he was worried about constant leaks to the press that involved the work of the State Police. Ultimately, nothing was taken from the subject files. Nevertheless, the actions of the Superintendent cast public suspicion over State Police, because the circumstances surrounding the September 19, 2002 memorandum created the appearance of a conflict interest that violated the public trust.

d. The Dissemination of Confidential Information to the Press

On October 8, 2002 a newspaper published a summary of the September 19, 2002 memorandum. The newspaper article had many points of the memorandum correct, but it was incorrect on some important circumstances surrounding the memorandum. The Superintendent never ordered the confiscation of all potentially damaging state police investigations on himself or his top staff; rather, he ordered production of all copies and originals of confidential investigations concerning either himself or his executive staff. The article also stated that the reporter was unaware if the demand of the Superintendent was complied with by Major Hess. Major Hess did not make a copy of the original memorandum. Nonetheless, the press either received a copy of the confidential memorandum, or were told the contents of it. Leaking this information, whether oral or hard copy, is illegal. The article provides further proof of the need to eliminate the illegal dissemination of confidential information.

e. Available Alternatives to the September 19, 2002 memorandum

The Superintendent had other viable options besides the issuance of the September 19, 2002 memorandum. The Superintendent is granted by statute subpoena powers in internal investigations. Therefore, one option available to him was to issue a subpoena for the documents. The subpoena could have been challenged. At the very least, a representative from the Attorney General's Office would have reviewed it.

A second option would have been for the Superintendent to ask the Office of the Attorney General for legal assistance. AAG Mazuco was available to provide legal counsel. First Assistant Attorney General Harvey told the Superintendent that AAG

Mazuco was available for assistance and legal advice. Former Superintendent Santiago stated he did not have any available legal assistance from the Attorney General. He believed that AAG Mazuco was only available for labor related matters. The former Superintendent went on to say this was not a labor matter.

Former Superintendent Santiago stated that he took every precaution when he issued the memorandum. He was fully satisfied with the manner in which the September 19, 2002 memorandum was handled. If the Superintendent had exercised any of the available legal options, he would have avoided engaging in a conflict of interest.

IV. RECOMMENDATIONS

a. Uniform Training on Standards for Disseminating Intelligence Information

During the course of the OGI investigation, the lack of uniformity in standards for disseminating intelligence information and maintaining investigative files became quite evident. Asking a Trooper the standard for releasing intelligence information would elicit one response in one unit and a substantially different response from a Trooper assigned to a different unit. That is, the Intelligence Unit treated Investigator's Reports differently than the Criminal Investigations Unit. Training on the federal right to know, need to know standard is ongoing. Protocols must be established within the State Police for the purpose of insuring that every Trooper uses one standard for releasing intelligence information. Also, there is a need for implementing a system that guarantees that the standard is applied uniformly. Each unit should treat not only the Investigator's Reports in a similar manner, but also all case files. The uniform adoption by all units of the State Police of the "Blue Book" or something similar will provide a uniform system for the

proper maintenance of all files of the State Police.

b. Sanctity of Background Investigations

Unfortunately, having sensitive information appear in press reports is becoming a problem for the State Police. Hopefully, training, as recommended herein, will help eliminate the leaks. Another way to prevent information gathered while conducting four way background checks from becoming public knowledge is to ensure the physical separation of the State Police Unit that conducts the background checks from the rest of the State Police. Physical separation would prevent casual interaction between Troopers that may, inadvertently, lead to leaks. For example, an innocent request regarding how to get in touch with a witness could be used by an uninformed person in a damaging way. Locating the four way unit somewhere away from the State Police Headquarters would provide a perception to the public that the State Police are operating in as confidential a manner as possible.

c. Eliminating Leaks to the Press

The issues of this review concerned the daily activities at State Police Headquarters. The factual substance of the September 19, 2002 memorandum managed to find its way, in a couple of weeks, to the press. The unauthorized release of information to the press is unacceptable for many different reasons. The image of the law enforcement organization is tarnished before the public. The agency's capacity to be an effective investigative body is diminished, because the organization loses its ability to obtain confidential information. Other law enforcement agencies become reluctant to share information. The issue of confidentiality must be stressed to the entire State Police organization. Training should be provided to each Trooper

concerning the handling of information. OGI recommends severe penalties be specifically prescribed in the State Police Rules and Regulations for any unauthorized dissemination of information.

d. Office of the Attorney General to Conduct Background Investigation of Superintendent-Nominee

The Special Investigation Unit should not be placed in the awkward position of conducting a four way investigation on a nominee for Superintendent. The background investigation should be conducted through the auspices of the Office of the Attorney General.

e. Promotions

During the course of OGI's interviews of Troopers, it became apparent that certain high level individuals were in positions for which they did not have the necessary background, training or experience. OGI recommends that before a Trooper is elevated in critical command areas, the Trooper must have developed sufficient experience to serve in the new position to which he or she is appointed. A Trooper should be obligated to learn the basic workings of his or her position before moving up to a new position. The Office of Government Integrity notes that neither Captain Manghisi nor Lt. McDonnell brought to the Superintendent's attention the concerns that some members of the Investigation Bureau had raised. If they had done so, perhaps the memorandum would have never been issued.

f. Legal Advisor

When the next permanent Superintendent is sworn into office, OGI recommends that, during the first six months, an independent legal advisor appointed by the Attorney

General be stationed at State Police Headquarters. The legal advisor would be readily available to address questions posed by the Superintendent and his staff. The close proximity of legal counsel to the Superintendent would help resolve legal issues before they develop into problems. In particular, the legal advisor could help prevent issues such as those that were the subject of the instant review.

LIST OF EXHIBITS

- Exhibit 1 Time Line
- Exhibit 2 September 19, 2002 Memorandum by Superintendent Santiago
- Exhibit 3 State Police Report filed by Lt. James Campbell
- Exhibit 4 September 25, 2002 Memorandum by Superintendent Returning Documents
- Exhibit 5 Sgt. Suscewicz Receipt
- Exhibit 6 June 18, 2002 Memorandum by Captain Edgar Hess

ACKNOWLEDGMENT

This fact-finding assignment was handled by Deputy Attorney General Harry Moskowitz, Division of Criminal Justice, and Office of Government Integrity investigators Warren Monroe, Robert Brescia and Wally Stafford. The assignment was supervised by Office of Government Integrity Chief Investigator Bill Newsome, Deputy Director John Kennedy and Director Edward M. Neafsey.