

TO: Attorney General Matthew J. Platkin
First Assistant Attorney General Lyndsay V. Ruotolo

FROM: OPIA Special Investigations Bureau

DATE: September 22, 2024

SUBJECT: NJSP Observations and Recommendations
Arising out of CJ: 2022-09986 IA: 2023-070

BACKGROUND

In June 2022, the Office of Public Integrity and Accountability (OPIA), Special Investigations Bureau (SIB), was tasked with investigating allegations made by [REDACTED] [REDACTED] allegations centered around the actions of members of the NJSP Office of Professional Standards (OPS) and specifically Lieutenant (LT) Joseph Nitti of NJSP OPS.

The OPIA investigation included the collection of evidence from NJSP, OAG's Office of Law Enforcement Professional Standards (OLEPS), and Office of Equal Employment Opportunity (EEO) investigative files, reports, emails and text messages as well as witness and subject interviews. The results of the investigation have been forwarded to the Office of Attorney General (OAG) Executive Staff for review and action deemed appropriate.

The investigation uncovered conduct and practices that relate to the overall functioning of the NJSP. The following observations are provided to improve the professionalism of the NJSP in fulfilling its mission to provide exemplary service to the people of New Jersey. To be effective, every organization must examine and adjust its practices and policies on an ongoing basis to continue to grow and improve.

DISCUSSION

I. OPS Investigation Techniques

This OPIA investigation revealed that on paper the NJSP has robust procedures for conducting internal affairs investigations and it appears that appropriately experienced personnel are, generally, assigned to OPS. However, this investigation revealed the need for additional protocols and training on basic provisions of the Internal Affairs Policies and Procedures (IAPP) that ensure objective, unbiased investigations; maintain confidentiality; and respect the anonymity of anonymous complainants.

As discussed in detail below, this investigation revealed instances of lack of confidentiality in handling IA information, failure to adhere to formal reporting structures, failure to maintain objective and unbiased investigations, and the use of extraordinary and inappropriate investigative techniques in direct violation of commands and the guiding principles of the IAPP.

a. Failure to Conduct Objective, Unbiased Investigations

“The goal of internal affairs is to ensure that the integrity of the agency is maintained through a system of internal discipline where an objective and impartial investigation and review assure fairness and justice.” IAPP 4.1.1.

The particular matters focused on during this OPIA investigation arose out of an anonymous letter received by Witness 1 in February, alleging that Subject 1 had made a comment that another member had been promoted to solely because he was Black, that Subject 1 had attempted to undermine that, and that had failed to report this conduct. OPS Case No. -0125 was opened. LT. Joseph Nitti, along with the assigned OPS investigator, conducted a Principal interview with Subject 1, the subject of the complaint, and prompted to review the anonymous letter. Subject 1 then advised that the anonymous letter contained a misspelling of name that was consistent with the same misspelling had routinely observed to be made by Subject 2. Subject 1 further expressed during the course of Principal interview, that felt Subject 2 was trying to obstruct promotion to. At that point LT Nitti filled out a Reportable Incident Form 525 on behalf of Subject 1, the subject of the initial anonymous letter. This led to the inception of OPS investigation -0165, which was based on Subject 1's belief, supported by Witness 1's statements, that Subject 2 was likely the author of the anonymous letter. It is noted that Subject 1 and Witness 1 were very close with each other. It is further noted that at the time that was targeted by members of OPS, Subject 2 was a senior Black member of the NJSP.

After Subject 1 and Witness 1 alleged that Subject 2 had written the anonymous letter, the focus of the OPS investigative efforts shifted from the conduct alleged in the anonymous complaint to proving that Subject 2 had written that letter. Much of the investigative strategy for the investigation into who wrote the anonymous letter derived from discussions with the subject of the complaint about an alleged racist comment and other witnesses closely aligned with the subject. Extraordinary methods were undertaken largely at the suggestion of the subject and allied witnesses in order to prove that Subject 2 wrote the letter. These included: taking samples of the typeface of five typewriters that were in storage and one of which had been in the area where Subject 2 worked to compare with the typeface of the envelope enclosing the anonymous letter (none matched as the envelope was not typed but created by a printer); obtaining video of the area around the post office where the letter was postmarked; obtaining fueling records from Subject 2's vehicle; fingerprinting the anonymous letter and envelope; and ultimately submitting the letter for DNA testing against command orders. The subjects and allied witnesses also suggested that the investigators undertake additional investigative steps, including obtaining GPS locator information from Subject 2's phone (this was not done as the GPS program was not activated on the phone); and breaking into Subject 2's office to check document history on his desktop computer.

After LT Nitti submitted his report and recommendations on the investigation into whether Subject 2 authored the anonymous complaint, LT Nitti sent a text from his personal cell phone to the personal cell phone of the reviewer of his report and recommendations, urging the reviewer not

to “pussy out,” that is, to accept LT Nitti’s recommendations that the allegations against [REDACTED] Subject 2 [REDACTED] should all be sustained.

In addition, LT Nitti sent copies of his drafts of the confidential IA reports to [REDACTED] Witness 2 [REDACTED], who had no connection with the underlying investigation or the review process.

Overall, LT Nitti displayed a lack of objectivity in connection with the [REDACTED] Subject 2 [REDACTED] investigation, as detailed in the Summary and Conclusions focusing on identifying the writer of the anonymous allegations rather than the allegations themselves. The investigation into [REDACTED] Subject 2 [REDACTED] violated the IAPP and should never have been opened, let alone resulted in sustained findings.

b. Constructive Failure to Accept An Anonymous Complaint

The IAPP requires that anonymous complaints be accepted. See IAPP § 5.1.1; see also 5.1.2 (anonymous complaints from members of the public). Section 5.1.7 provides:

Anonymous reports of improper conduct by an officer shall be accepted. All efforts will be made to encourage full cooperation by the complainant. 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. In the event an agency receives an anonymous complaint, the officer accepting it should complete as much of the internal affairs report form as he or she can, given the information received.

The rationale for accepting anonymous complaints is obvious—many individuals, including members of the public or of the agency in question, may be reluctant to file complaints for fear that they may suffer adverse consequences. This investigation brought into sharp focus the need to permit anonymous complaints, as many NJSP members expressed fear that if they reported misconduct they would suffer negative career consequences and become the target of retaliation of one type or another.

It is clear that undergoing an investigation to identify the person making an anonymous complaint undermines this policy. Yet, in this case, the prime investigatory focus became determining who made the anonymous allegations, not whether the anonymous allegations were true. As noted above, OPS went to extraordinary lengths to identify who wrote the letter making an anonymous complaint. Thus, while OPS may have gone through the motions of accepting an anonymous complaint, this investigation reveals a constructive violation of the obligation to accept an anonymous complaint, rather than focusing on detecting the identity of the anonymous complainant.

OPIA discovered that this investigation was not the only one in which OPS attempted to discover the identity of an anonymous complainant. While there may be circumstances that would warrant attempting to determine the identity of the complainant, such as a complaint that also constitutes a physical threat, such an investigation should be undertaken only after consultation with the OAG.

c. Breach of IA Confidentiality

The IAPP treats records of internal affairs investigations as highly sensitive and confidential.

The nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information and remain exempt from access under the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1.1 to -13. The contents of an internal investigation case file, including the original complaint, shall be retained in the internal affairs function and clearly marked as confidential. The information and records of an internal investigation shall only be released or shared under [] limited circumstances. IAPP 9.6.1.

The OPIA investigation revealed that there were failures to maintain the confidentiality of internal affairs records, none of which were reported or addressed.

OPS LT Nitti sent a copy of the allegations and conclusions for that investigation, mislabeled to conceal its identity, to **Witness 2**, who had no connection to the IA investigation. He later sent an edited copy of the document, also mislabeled under a different name, to **Witness 2**. In both instances there was no report of a breach of confidentiality by either member. Moreover, neither LT Nitti, nor **Witness 2** were candid in their interviews about the breach of confidentiality. In particular, LT Nitti sent emails to **Witness 2** in May and July of 2021 attaching drafts of the confidential OPS investigation. LT Nitti asserted that he had only sent one copy in May to **Witness 2** by mistake, claiming that the report had inadvertently been mislabeled as the copy of a physical training program he had actually intended to send. **Witness 2** explained that **Witness 2** was “pissed” at LT Nitti for sending the document and admonished him, but denied receiving any additional emails of this nature. However, in July 2021, Nitti sent an updated version of the draft OPS report regarding **Subject 2** again to **Witness 2** under a different file name. LT Nitti could offer no legitimate explanation why he sent the second report to **Witness 2** in July. **Witness 2** was retired from the NJSP at the time OPIA discovered the second email and was not re-interviewed.

Witness 2, assigned to OPS and one of the reviewers of the **Witness 2** investigation, breached the confidentiality of OPS investigations by making copies of the **Witness 2** OPS file, taking notes of his own interview by OPIA in this matter and then revealing information from the interview in civil litigation without proper permission, in violation of the confidentiality rules.

As noted above, LT. Nitti also sent a text from his personal cell phone to the personal cell of a supervisor in his command about the review of the **Subject 2** IA matter, asking the reviewer not to “pussy out.” This was clearly an attempt to influence the review of an IA matter outside the formal review process and without using any confidentiality protocols.

In addition, as noted in detail below, members assigned to OPS maintained a group chat on their personal cell phones for use as an employee locator, but also used the chat to discuss a case then pending in OPS.

d. Inappropriate Commentary Regarding A Crime Victim, Using Personal Phones for NJSP OPS Business, and Subsequent Roadblocks to Accountability

The OPIA investigation revealed the widespread use of personal phones for NJSP OPS business among investigators within OPS. This can result in a breach of IA confidentiality. This practice can result in the failure to preserve records regarding disciplinary matters that are required to be retained. It also creates an impediment to effective administrative investigation of alleged misconduct that occurred in a designated extension of the workplace. Among other reasons, members were using their personal phones to send daily locators and other information associated with investigations using a group text thread in OPS. Within the thread, LT Nitti sent a text referring to an ongoing criminal investigation into the arrest of a NJSP member for sexual misconduct with an underaged girl, a matter that was already under investigation by OPS when the text string occurred. The text was clearly inappropriate and was investigated as collateral to this investigation. In particular:

- LT Nitti sent a group text referring to a criminal charge that had been brought against [REDACTED], who was alleged to have given alcohol to, and inappropriately touched, a 14-year-old girl in a hotel during a school sports trip. In response to a newspaper article about the arrest of [REDACTED], Lt. Nitti texted “Can we at least see a pic of her. I’d like to see what all the hubbub is about.” This matter was already opened as a matter in OPS at the time of the text.
- This text was received by [REDACTED] members of the NJSP OPS [REDACTED], including [REDACTED]. The existence of this text went unreported until this OPIA investigation. It was reported [REDACTED] [REDACTED] stated that [REDACTED] did not report it for fear of negative career consequences.
- LT Nitti had posted an inappropriate text to a group text thread about a member’s retirement function, asking if there will be strippers at the event since it cost \$60. That matter was referred to the Office of Equal Employment Opportunity (EEO) and LT Nitti was directed to undergo additional training. LT Nitti received that training prior to the text about the sexual victimization of a 14-year-old.
- As noted above LT Nitti sent another text from his personal phone to the personal phone of the supervisor reviewing his findings in the [REDACTED] **Subject 2** investigation. This text was part of a series in which LT Nitti was requesting an update on the Bureau level review of the findings. The text read – “I hope you guys don’t pussy out lol.”

The use of personal phones to discuss sensitive internal affairs investigations by OPS should be discontinued. It is recommended that NJSP issue State cell phones to OPS investigators and adopt an SOP specifically covering their usage in connection with OPS investigations in consultation with OLEPS and the DOL.

In addition, the uncovered conduct of the individuals who received this text on their personal phones in responding to this investigation must be addressed. When the attorney assigned by the union to represent certain of these individuals in this investigation, as a Weingarten representative, was unavailable for approximately two weeks, the union was requested to appoint another individual as a Weingarten representative for the witnesses. Ultimately, as permitted by the IAPP, members were notified of their scheduled interviews, but the members failed to show up at the date and time for their interviews. Instead, the interviews occurred later when the same

attorney appointed by the union was present to represent all of the members on the text string. At those interviews the attorney objected to members providing their phones for review or providing information from their phones that directly related to texts between NJSP members referring to matters under investigation by OPS. This exceeds the role of a Weingarten representative. In addition, each member gave almost verbatim accounts in which they claimed they were not offended by the text and attempted to justify Nitti's comments during their interviews. The effort to justify LT Nitti's indefensible comments reflects either a complete breakdown in the culture of the State Police OPS or a choreographed attempt to avoid accountability for blatant misconduct.

All members of the NJSP OPS [REDACTED] Squad who received the text from LT Nitti objectifying an underaged victim of alleged sexual misconduct by a trooper and did not report it, and later sought to offer the same justifications for LT Nitti's comment while being represented by the same Weingarten representative, should be transferred out of OPS [REDACTED].

II. Perception that Members Are Not Treated Equally

The investigation revealed that there is a widespread perception, supported by evidence uncovered in this investigation and others, that certain members are "protected" or "favored" (hereafter favored members) based on personal relationships to command staff that permit them to act with relative impunity. These relationships, which typically stem from attending the same academy class or from social relationships outside of work, reinforce the view that NJSP is infused with an "inner circle" mentality (where the "inner circle" is dominated by white males). Multiple members, aside from Subject 2, including members of rank [REDACTED], all of whom identify as members of underrepresented ethnic and/or racial groups,¹ expressed the view that favored members enjoy:

- Direct access to leadership outside the chain of command, which is used to foster fear in other members;
- A lack of consequences for misconduct, and
- Different and more favorable paths for promotions and assignments.

a. Fear of Voicing Complaints Against Favored Members, Especially Among Members of Underrepresented Racial and Ethnic Groups

It was observed during this investigation that members of underrepresented ethnic and/or racial groups refrain from reporting misconduct, some of which was directly discriminatory, due to perceptions that complainants themselves routinely become subjects of investigations.

- During a [REDACTED]'s interview [REDACTED] asserted that, upon [REDACTED] transfer to OPS [REDACTED] was warned by other members to be aware of LT Nitti due to his reported dislike for minorities and favored status with certain command staff.
- A [REDACTED] reported that LT Nitti called a [REDACTED] by the moniker "Paco" and this went unreported. That [REDACTED] believed that the [REDACTED] referred to as "Paco," who is

¹ Several lawsuits by female members of NJSP have been filed in recent years alleging that female members are subjected to discrimination. Those allegations were not part of this investigation and are the subject of a separate evaluation by outside attorney Karol Corbin Walker of Kaufman Dolowich.

Latino, did not report this because [REDACTED] was fearful of retaliation due to the perceived connections that LT Nitti had with command staff members.

- A [REDACTED] reported that LT Nitti referred to a [REDACTED]'s wife as a "typical Puerto Rican." When told of this incident by a [REDACTED] the [REDACTED] responded that the comment should be reported. The comment was never reported by any party.
- As noted in detail above, even though numerous members of OPS received a patently inappropriate text from LT Nitti, objectifying an underage girl who a member had been criminally charged with sexually touching, it went unreported until our investigation. At least one member admitted that [REDACTED] did not report it for fear that doing so would negatively affect [REDACTED] career.

b. Failure to Adhere to the Supervisory Structure Among Certain Members

NJSP is configured in a para-military structure which serves to enhance the good order and discipline of an organization of this size. That said, there were instances of a relaxed approach to chain of command exhibited by superior officers in the presence of subordinates. The appearance of fraternization between senior and junior officers had a chilling effect on members reporting what they felt would be misconduct committed by some junior officers. During their respective witness interviews, several members, all of whom identify as members of underrepresented ethnic and/or racial groups, reported that they or other members of the NJSP were fearful or intimidated by this and asserted that they were reluctant to report issues regarding LT Nitti due to the belief that doing so would be detrimental to their careers.

In other words, members were fearful of reporting misconduct due to perceptions that the subject of their complaints, including LT Nitti, were protected or favored members who would not be held to account due to their apparent relationship with command staff. Instead, members believed that reporting such favored members would, in effect, put a target on the complainant's back. This perception appears to have been perpetuated by the lack of consequences for observed and reported misconduct and the overt displays of familiarity via informal conversations with command staff on a first-name basis:

- One member reported that members would routinely hear LT Nitti engaging in casual conversation with LTC-2 [REDACTED] as Nitti would leave the door to his office open while speaking to [REDACTED] and referring to [REDACTED] by [REDACTED] first name.
- Reviews of emails between LT Nitti and the LTC-2 [REDACTED] confirm a close and seemingly informal relationship.
- LTC-2 [REDACTED] noted in [REDACTED] interview that [REDACTED] counted LT Nitti as a friend.
- LT Nitti admitted in an interview that he had a longstanding close friendship with LTC-1 [REDACTED] to whom he improperly sent confidential draft OPS investigative reports on two occasions.

It is recommended that NJSP Command Staff take immediate steps to mitigate this perception by implementing appropriate measures and enforcing the Chain of Command structure. Such measures might include command staff or OLEPS management critiques at the Bureau and Unit levels. In addition, creating an established method of filing a complaint through an ombudsman or special route such as through OLEPS or an alternative independent agency within LPS when the complaint involves OPS or command staff should be implemented immediately.

This Office is not suggesting that supervisors and subordinates cannot sustain friendships outside of work or act collegially at work. Instead, personal relationships cannot be abused to break the chain of command—in either direction—or to harm another or benefit another based on those friendships. Moreover, professional obligations, such as maintaining the confidentiality of internal affairs information, cannot be compromised by personal relationships, and it is imperative that personal relationships not chill members from reporting misconduct for fear of retaliation or adverse career consequences.

c. Potential for Manipulation of the Promotional Process

This investigation revealed that the NJSP has a promotional system that is built on outwardly objective factors, but can be subjectively manipulated. It appears that this can be carried out via the use of personnel transfers, position criteria changes, and deliberate selection of candidates over those objectively more qualified. It appears the NJSP has attempted to address the latter aspect of subjectivity by a procedure that if a Commander chooses not to promote a tiered member on three consecutive occasions, that Commander will be challenged by the other Commanders and would then have to defend the decisions. We have no indication from our investigation that this change is adequately addressing the significant issue identified. Indeed, given the time a promotional process takes and the prevalence and frequency of transfers, it seems unlikely that anyone would have three consecutive denials from the same Commander to render the change impactful.

There were other practices observed that should also be addressed. It should be noted that these practices contributed to the perception that favored groups benefit from this manipulation of the promotional system. These observed practices are as follows:

- Multiple personnel interviewed advised that there is a practice routinely used by Branch Commanders of laterally transferring individuals into positions to block other candidates from promotion. After the lateral transfer, the disfavored candidate who would have tiered for the promotion is blocked because the lateral transfer eliminated the promotional opportunity by rendering the position no longer vacant.
- Conversely, a candidate who is not likely to make the tier for a promotion is transferred to another unit with fewer candidates for promotion to ensure that the candidate tiers and can be promoted. For example, when then-DSFC Nitti did not meet the tier of qualified applicants for lieutenant in OPS, he was transferred from OPS Central to a confidential position within the Office of the Deputy Superintendent. He was then promoted to Lieutenant outside of the competitive promotional process, as the position was unclassified. LT Nitti served in this role for a little over a year, after which he was transferred back to OPS Central as a LT.
- During the lead up to the 2022 OPS Central captain promotional process, an [REDACTED] and a [REDACTED] requested that the long-standing position criteria be changed to remove the need for a member to have experience in conducting meaningful reviews. This was formerly a function of the Internal Affairs Bureau, but it had since become a function designated to a separate Intake and Adjudication Bureau. It is noted that LT Nitti did not have experience in meaningful reviews. To gain that experience, LT Nitti would have to have worked out of Bear Tavern Road.

LT Nitti worked his entire time at OPS in the Toms River office near his home. One minority candidate did have experience in meaningful reviews. The removal of this criteria shifted the balance of the tiering and resulted in LT Nitti being tiered for promotion. This change in criteria, albeit arguably in line with the reconfiguration of Bureau responsibilities and applicable to future promotional announcements, was consistent with the conclusion that the Command Staff was intent on ensuring LT Nitti's promotion.

III. Culture and Practices that Discourage Members from Raising Issues of Concern

The OPIA investigation revealed evidence of organizational practices, policies and culture in NJSP that: discourage members from raising issues of concern; foster an atmosphere of distrust among members; protect the status quo; and discourage honest and open assessment of areas that need improvement. This perception was particularly persistent among many members of underrepresented ethnic/racial groups interviewed in this investigation. The reported culture and practices, which this investigation corroborated, include:

- Members who raise issues, especially issues related to favored members, experience adverse consequences in assignments and promotions;
- OPS targets individuals who do come forward to raise issues.
- Complainants are themselves disciplined for reporting allegations of improper conduct either too late or too soon.
- OPS investigators attempt to determine, at times through extraordinary measures, the identity of those who file anonymous complaints in violation of the Attorney General's Internal Affairs Policy and Procedures (IAPP) – which expressly permits anonymous complaints, rather than focusing on the merits of the complaints themselves.
- Complaints are trivialized and result in no action, even when complaints are elevated to mid-level command, who fail to address issues regarding favored members for fear of jeopardizing their own careers.
- There is no effective procedure to voice concerns when the allegations involve OPS or other higher-level management.
- Members seek transfers rather than confronting issues in a constructive way, leading to continued failure to address underlying problems.

It was also observed that, in certain instances, mid-level supervisors trivialized complaints of harassment and, in at least one instance, the violation of a direct order by a major. This and the aforementioned perceptions prompted members to seek transfers out of these situations rather than pursue misconduct complaints:

- ██████ received harassing text messages and telephone calls laced with profanity from LT Nitti and, rather than file a formal complaint, requested a transfer to get away from LT Nitti.
- ██████ reported what ██████ believed to be LT Nitti's violation of a direct order to both a Captain ██████ and a Major ██████. This was met with the comment from both in effect "that's just Joe [Nitti] being Joe."

- [REDACTED], during discussions of investigative strategy related to the anonymous letter at the center of the investigation into [REDACTED], ordered that no DNA testing occur. Nonetheless, LT Nitti directed [REDACTED] to send the letter for testing. [REDACTED] reported that LT Nitti did so even though there was no mistaking the order that DNA testing was prohibited. [REDACTED] Even though [REDACTED]'s order was clear, other supervisors knew about LT Nitti's violation of the order and went along with it.

Aside from [REDACTED] who reported this violation to OPIA's SIB, no other supervisor filed misconduct complaints. One could reasonably conclude that this was attributable to avoiding potential negative career consequences for those who reported the comments and the perception that command staff would rather that no one "rock the boat" by raising such issues.

RECOMMENDATION REGARDING THE Subject 2 FINDING

The Sustained Finding in OPS Investigation [REDACTED]-0625 Against Subject 2 Should Be Vacated

As noted above, an anonymous letter was sent to Witness 1 [REDACTED] alleging that Subject 1 [REDACTED] made remarks about a [REDACTED] being promoted instead of him because he was Black, that [REDACTED] had attempted to undermine said [REDACTED] and [REDACTED] had failed to report the conduct. The OPS investigation of those allegations, OPS [REDACTED]-0125, determined the allegation that Subject 1 [REDACTED] had made disparaging comments could not be sufficiently proven, as there were no direct witnesses to the comments, Subject 1 [REDACTED] denied the comments, and the [REDACTED] at issue was unaware of the comments. Likewise, the allegation that [REDACTED] had failed to report the comments was also determined to be unfounded.

Notwithstanding the results in OPS [REDACTED]-0125, a misconduct finding against Subject 2 [REDACTED] was substantiated for Failure to Notify the Division of Information to Which the Division Would Take Cognizance. This finding was based on Subject 2 [REDACTED]'s failure to immediately report rumors that Subject 1 [REDACTED] had made the very comments that were determined not to have been made in [REDACTED]-0125. Subject 2 [REDACTED] had reported the supposed comments to [REDACTED] and [REDACTED] who were Subject 1 [REDACTED]'s direct supervisors and asked them to speak with [REDACTED]. [REDACTED] said that [REDACTED] told [REDACTED] that [REDACTED] had spoken to Subject 1 [REDACTED], that [REDACTED] admitted that [REDACTED] is a hothead, and that it won't happen again. [REDACTED] denied having this conversation.

Subject 2 [REDACTED] explained that [REDACTED] did not report the matter formally at the time [REDACTED] raised it with [REDACTED] because [REDACTED] believed that it had been handled. When Subject 1 [REDACTED] made the allegations in [REDACTED]-0625 against Subject 2 [REDACTED], Subject 2 [REDACTED] realized that the situation had not been resolved and made a complaint ([REDACTED]-0167) about the alleged comments along with [REDACTED] complaint that LT Nitti had conducted an unfair and biased investigation against him.

The allegation that Subject 1 [REDACTED] made the alleged comment was not sustained. Although information uncovered during this investigation calls that finding into question, Subject 2 [REDACTED] was sustained for failing to report promptly enough a comment that OPS found was not made.

The finding against **Subject 2** should be set aside due to the facts and circumstances uncovered in the OPIA investigation of LT Nitti. The investigation of **Subject 2** is so thoroughly tainted by the misconduct that occurred that it cannot be permitted to stand.

- The investigation of **Subject 2** was not conducted in a neutral and objective manner by LT Nitti as noted herein.
 - LT Nitti personally filled out a complaint form for **Subject 1** alleging that **Subject 2** had authored the anonymous complaint.
 - Much of the investigative strategy for the investigation into who wrote the anonymous letter derived from discussions with the subject of the complaint and other witnesses closely aligned with the subject who made the alleged racial comment.
 - LT Nitti employed extraordinary methods to attempt to prove that **Subject 2** wrote the anonymous letter, including: taking samples of the typeface of a typewriter that **Subject 2** used to compare to the type of the anonymous letter; obtaining video of the area around the post office where the letter was postmarked; and fingerprinting the letter and envelope.
 - The envelope for the anonymous letter was sent on LT Nitti's orders to the NJSP lab for DNA testing against direct orders not to do DNA testing from **Subject 2**, by submitting a request for DNA analysis **Subject 2**.
 - LT Nitti sent a text from his personal phone outside the normal review process to the reviewing **Subject 2** asking him to uphold LT Nitti's findings against **Subject 2** and not to "pussy out."
 - A witness interviewed by LT Nitti later stated that he had not questioned them in an objective manner, that he had already made up his mind about what happened, and that the witness felt like LT Nitti was trying to get the witness to change their answers.
- LT Nitti breached the confidentiality of the investigation by sharing draft reports with **Witness 2**, who had no legitimate reason to see the reports, on two separate occasions.
- **Subject 2** was singled out for failing to report the incident even though **Subject 2** was not a direct witness to the comments. Furthermore, it is apparent that the **Subject 2** and **Subject 2** who directly supervised the individual who allegedly made the comment, did not report the alleged incident at the time they learned of it. If **Subject 2** should have reported the alleged incident immediately, the same would hold true for the **Subject 2** and **Subject 2**. Yet neither was sustained for failure to report the alleged comments.

The treatment of **Subject 2** is consistent with the finding above that members are discouraged from making complaints because they will themselves be subject to discipline for reporting matters too early or too late.

ADDITIONAL RECOMMENDATIONS

In light of the above, OPIA submits the following additional recommendations:

Individual Level

- All members of the NJSP OPS [REDACTED] who received the text from LT Nitti objectifying an underaged victim of alleged sexual misconduct by a trooper and did not report it, and later sought to offer the same justifications for LT Nitti's comment while being represented by the same Weingarten representative, should be transferred out of OPS [REDACTED]

- [REDACTED]

Organization Level

- Though limits on OAG's ability to unilaterally discipline NJSP personnel prevent more sweeping reform, OAG, operating in part through OLEPS, should increase its oversight of OPS, and should refer this report to OLEPS for further investigation, review, and recommendations.
- Consistent with OAG's and OLEPS's existing oversight authority, the Superintendent of NJSP should be directed to present OAG with a plan for improved oversight and management over OPS.
- NJSP should be directed to cooperate with increased oversight by OLEPS, especially as it relates to the internal affairs function of NJSP.
- The IAPP requires that misconduct by Chiefs and certain high-ranking members of the municipal police agencies be reported and investigated by the County Prosecutors or the Attorney General. See IAPP 5.1.8. By analogy, investigations into misconduct by high-ranking members of the NJSP should be conducted by OPIA or another suitable designee selected by the Attorney General. In addition to continuing this current practice, NJSP should be required to affirmatively notify OPIA when OPS receives an allegation of misconduct by a high-ranking member of NJSP command or a member of OPS. In keeping with current practice, in response to such a notification, OPIA will either conduct the investigation itself or work with the Division of Criminal Justice to assign to a County Prosecutor's Office as is done with other conflict cases.
- An alternative mechanism for reporting misconduct within NJSP should be established, especially when the alleged misconduct is committed by OPS or command staff. This alternative mechanism must provide the means for anonymous reporting of misconduct.
- The practice and frequency of transfers within NJSP should be reviewed and addressed by OLEPS so that the IA function and transfer process cannot be used by command staff to impose inappropriate punishment and/or favoritism, including the manipulation the promotional process, or to otherwise chill the reporting of misconduct.

STATE OF NEW JERSEY

DEPARTMENT OF LAW AND PUBLIC SAFETY

OFFICE OF PUBLIC INTEGRITY & ACCOUNTABILITY



SUMMARY AND CONCLUSIONS REPORT

Bureau/Unit: Special Investigations Bureau	Division Case Number: C.J. 2022-09986	Case Title: IA-2022-070
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Subject: Lieutenant Joseph Nitti
New Jersey State Police

Please refer to investigative report generated for this case for context and background information related to these findings. This report has been authored to serve as an independent reference to the allegations against New Jersey State Police Lieutenant (LT) Joseph Nitti. All cited rules and regulations are attached hereto.

Summary of Allegations

The allegations at issue in this investigation relate to alleged misconduct by LT Nitti while he served as a member of the Office of Professional Standards (OPS) in the New Jersey State Police (NJSP). The OPS is charged with, among other things, performing the internal affairs function in compliance with the Internal Affairs Policy & Procedures (IAPP) promulgated by the Attorney General. Many of the allegations discussed herein pertain to LT Nitti's conduct relevant to specific internal affairs investigations. By way of background, a brief overview of the internal affairs investigations referenced herein is provided below:

- IA [REDACTED] 070 was opened on 06/06 [REDACTED], in response to allegations of racism, bias, and official misconduct among members in the Division of the Office of Professional Standards (OPS). These allegations were related specifically to an internal affairs investigation into

Investigator Name, Badge # [REDACTED]	Page 1	Supervisor Approval [REDACTED]	Review Date 9/4/24 Revised Date 9/22/24
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an anonymous letter received by [REDACTED] of the New Jersey State Police.¹

- IA [REDACTED]-0125, was opened on 02/26/18 in response to an anonymous letter received by [REDACTED] alleging that [REDACTED] made racist comments against a Black colleague claiming that [REDACTED] promotion was based on his race. The OPS did not sustain any allegations against [REDACTED] at the conclusion of this investigation, and instead launched a separate investigation in response to the anonymous complaint. The finding for IA [REDACTED]-0125 as it pertained to [REDACTED] was UNFOUNDED, on the grounds that there was insufficient evidence uncovered to support the allegations.
- IA [REDACTED]-0165, opened on 03/18/18, was originated by LT Nitti on behalf of [REDACTED] to determine the origins of the anonymous letter that formed the basis of an investigation into racist comments allegedly made by [REDACTED]. In response to [REDACTED] review of the anonymous complaint against him during the course of his Principal interview, LT Nitti drafted a Reportable Incident Form 525 on [REDACTED] allegations that [REDACTED] authored the anonymous letter in an attempt to obstruct [REDACTED] promotion to [REDACTED].
- IA [REDACTED]-0212, was opened on 05/18/18 into allegations that NJSP [REDACTED] had engaged in misconduct with a minor on [REDACTED], in Pennsylvania. On [REDACTED] was charged and arrested on four criminal charges for Indecent Assault of a Person Less Than 16-years-old, Furnishing Liquor to a Minor, Unlawful Contact with a Minor, and False Imprisonment. [REDACTED] was suspended without pay on [REDACTED]. As a result of this investigation, [REDACTED] was terminated on [REDACTED].

Allegation #1: Inappropriate Standard of Conduct-Insubordination

This allegation, if sustained would be a violation of **Article IV, Section 3(b)**, of the **Rules and Regulations** of the **Division**, entitled General Provisions, which reads in part:

“Not willfully disobey any lawful verbal or written order of any superior commissioned officer, superior non-commissioned officer, or other member placed by competent authority in a position of supervision over such member. Should any such lawful order conflict with a previously issued order, or any provision of these Rules and Regulations, the member to whom such order is given shall respectfully call attention to such conflict of orders, and if the member giving the last order does not reissue same so as to obviate such conflict, the order shall stand and the responsibility shall be that of the member giving such order, and the member obeying such order shall not be disciplined.”

¹ Additional information came to light during the investigation that implicated [REDACTED] thereby halting the continuation of the administrative investigation, until such time as those issues could be resolved.

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In connection with [REDACTED]-0165, an investigation was launched to determine the author of an anonymous complaint about a NJSP member, despite the fact that anonymous complaints are expressly permitted under the IAPP Section 5.1.7. LT Nitti of NJSP OPS (Central) directed [REDACTED] to have the New Jersey State Lab test the anonymous letter/envelope for DNA on the “lick seal” of the envelope after being ordered not to do so:

- During [REDACTED] formal witness interviews [REDACTED] was asked to provide a detailed description of the circumstances surrounding LT Nitti’s request to have the anonymous letter/envelope tested for DNA. As it pertained to the request for DNA testing, [REDACTED] recalled, during the course of the investigation of [REDACTED]-0165, LT Nitti contacted [REDACTED] and requested to have the envelope swabbed or tested for DNA. [REDACTED], along with [REDACTED] discussed the request with Major-2 [REDACTED]. Major-2 [REDACTED] denied the request to test for DNA. Part of the reasoning was that this was not a criminal investigation, and that they would then have to, at some point, have [REDACTED] submit a DNA sample for the purpose of a comparison. To the best of [REDACTED]’s recollection, after the meeting, [REDACTED] and [REDACTED] contacted LT Nitti from [REDACTED]’s office, and while on speaker phone, advised him that his request to have the envelope swabbed for DNA had been denied. LT Nitti attempted to justify the reason for requesting the envelope to be tested for DNA. [REDACTED] again advised LT Nitti that there would be no testing for DNA. To the best of [REDACTED]’s recollection LT Nitti appeared to be annoyed that his request was denied. [REDACTED] later discovered during [REDACTED] preliminary review of [REDACTED]-0165 on or shortly after 05/20 [REDACTED], that LT Nitti had submitted the envelope to be tested for DNA on 04/07 [REDACTED], after the order from [REDACTED] not to test for DNA, and prior to [REDACTED]’s retirement on 05/01 [REDACTED]. [REDACTED] of NJSP OPS, during [REDACTED] formal interview, remembered dropping the anonymous letter/envelope off to the lab and submitted a request to see if DNA was present, not to specifically see whose DNA it was. According to [REDACTED], this investigative task was assigned to [REDACTED] by LT Nitti. It was [REDACTED]’s understanding, that any task assigned by LT Nitti was already vetted and approved by the bureau-level command.
- LT Nitti reported during his formal subject interview that testing the anonymous letter was discussed with command and that he also discussed it with Major-1 [REDACTED] directly. LT Nitti and Major-1 [REDACTED] claimed that the envelope was going to be sent to the lab to determine if there was a presence of DNA. LT Nitti denied being aware that the envelope was to be tested for DNA. LT Nitti admits that he was told that there would be no testing for DNA. LT Nitti asserted that, if the lab ran the DNA, then it would have been a mistake on their part. LT Nitti denies ever handling a case before or reviewing a case involving the use of DNA testing during

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his tenure assigned to OPS. It should be noted, Major-1 was supervised [REDACTED] under Major-2 when LT Nitti discussed testing the anonymous letter for DNA. As [REDACTED], Major-1 would not have been in a position to supersede Major-2's decision.

- [REDACTED] reported during [REDACTED] formal interview that [REDACTED] denied the request to have the anonymous letter tested for DNA. [REDACTED]'s response was, "No, this is not a criminal case." [REDACTED] could not remember a circumstance in the past where DNA testing was conducted on an anonymous letter investigation. The DNA request was discussed during a bureau-level command briefing. [REDACTED] further reported that the denial of this request would have absolutely been passed down through the chain-of-command directly to LT Nitti who was the principal investigator and would have included [REDACTED], who was [REDACTED] at the time. [REDACTED] considered the testing of the anonymous letter for DNA to be a bit much for an investigation of this nature, particularly because other investigative measures taken (fingerprints, surveillance video, typewriters, etc.) came up negative. During the course of the interview [REDACTED] was advised that the anonymous letter was in fact tested for DNA on April 7, 2021. According to [REDACTED], [REDACTED] retired on May 1, 2021, and would have left two weeks prior to that. [REDACTED] asserted that [REDACTED] orders were clear and direct and that no one could say otherwise. [REDACTED] further asserted that testing for DNA in OPS was not commonly done and he considered it to be a little extreme. [REDACTED] expressed that if the testing was done before April 21, 2021, it was done behind his back. The anonymous letter was submitted for DNA testing on April 7, 2021.
- A review of the [REDACTED], listed the Description of the Attachment as NJSP Office of Forensic Sciences Receipt dated April 7, 2021 consisting of 2 pages. The Office of the Forensic Sciences Evidence Receipt, revealed that [REDACTED] requested that the adhesive portion of the envelope, which appears to have been licked in order to seal, be tested for the presence of DNA. [REDACTED] further requested the item (envelope) to be sent to NJSP Central Lab for DNA testing and entry into the CODIS Database. The Forensic Sciences Evidence Receipt further revealed that [REDACTED] submitted the request under Agency Case # [REDACTED]-0125. [REDACTED]

² This Summary Report focuses on the conduct of LT Nitti. [REDACTED]

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Allegation #2: Culpably Inefficient Supervision

This allegation, if sustained, would be a violation of **Article V, Section 5**, of the **Rules and Regulations** of the **Division**, entitled Performance of Duties, which read in part:

“No member’s duty shall be performed in a culpably inefficient manner. As used in this Section, culpably inefficient manner is that inefficiency for which there is no reasonable or just excuse.”

- Having been denied his request to test the anonymous letter for any DNA on the “lick seal” of the envelope, LT Joseph Nitti, knowingly and purposely directed ██████████ to submit the anonymous letter/envelope to the NJSP Office of Forensic Sciences “Trace Evidence Laboratory,” for the express purpose of having it tested for DNA. ██████████ effected this assignment on April 7, 2021.
- During ██████████ formal witness interview, ██████████ stated that he could not recall an investigation in the past where DNA testing was conducted on an anonymous letter.
- Some of the investigative measures utilized by LT Nitti were based on the information obtained from the ██████████-0125 witness interviews of ██████████ and ██████████, who were the subject of the anonymous complaint and a witness to the events alleged in the complaint respectively.
- ██████████, as well as ██████████, indicated that the scientific techniques and resources utilized by LT Nitti during the course of his investigation, were unprecedented for an anonymous letter investigation, and had never been allowed in the history of the NJSP for an administrative investigation.
- ██████████ reported during ██████████ formal witness interview that, although DNA testing would be out of the realm of possibility as an investigative measure to be undertaken in an administrative investigation, the decision to do so would be up to the individual investigator and his or her chain of command to determine if that would be an appropriate investigative measure to take. ██████████ opined that that decision to do so would be determined by the bureau-level command to include the Major.

Allegation #3: Questionable Conduct On-Duty – 2 Counts

This allegation, if sustained, would be a violation of **Article IV, Section 2.a.**, of the **Rules and Regulations** of the **Division**, entitled Conflicts of Interest, which reads in part:

“No member shall act or behave in an official capacity to the personal discredit of the member or to the discredit of the Division.”

Count 1:

LT Nitti sent a text to ██████████, ██████████, related to ██████████ review of ██████████-0165. As the ██████████, ██████████ was above LT Nitti in the chain of command and was responsible for reviewing and approving LT Nitti’s IA investigative reports.

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During his interview on [REDACTED], LT Nitti affirmed that he recalled receiving a text on the group text exchange on 6/30/22, that involved an open source news article regarding a NJSP Trooper that was arrested in the [REDACTED] for alleged illicit sexual conduct with an underage female. LT Nitti was shown a copy of the screen shot that contained the group text in question to refresh his memory. LT Nitti asserted that OPS [REDACTED] was not investigating the matter involving the arrest of the NJSP Trooper at the time the news article was released. LT Nitti further confirmed that it is possible that this matter could have been referred to OPS for administrative review after the criminal investigation concluded. He did not recall the details related to the arrest in the news article; he only recalled that someone posted the article.

As to his comment posted to the group text, “Can we at least see a pic of her. I would like to see what the hub-bub is about,” LT Nitti did not believe the comment to be inappropriate. Nitti explained what he meant to convey with the comment was, as an investigator, when he sees an article related to the solicitation of a minor, the first thing that sticks out in his mind is how old is the person, and what do they look like--is it a teen that looks like she is eighteen (18), is it a kid that looks like they are twelve (12)? He would need to see what the victim looks like so he could make a better determination of the mindset of the perpetrator. LT Nitti denied that he was making a comment about a victim of assault, claiming that he was making a comment about what the facts are, and as an investigator he would like a little more information.

During their respective witness interviews, [REDACTED], [REDACTED], after being shown a copy of the screenshot of the group text message in question, each affirmed that they received and read the message. None of them claimed to find LT Nitti’s comment regarding the 14-year-old to be offensive. Instead, in general they gave very similar accounts that as investigators seeing a photograph of the 14-year-old girl could factor into the investigation in that the accused, a NJSP Trooper may have believed she was older than her actual age. None of the afore-referenced members interviewed believed that LT Nitti’s comment should have been reported to EEO. All of the members interviewed admitted that they received the group text message on their personal cellular devices. None would provide their personal cell phones to be reviewed in connection with the investigation

It should be noted that legally, it is no defense to sexual misconduct toward a minor that “she

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looked older.” Especially in this case - where the trooper knew that the victim was attending a high school wrestling event with [REDACTED] – her age was never a legitimate investigative issue.

It should be further noted that [REDACTED] were all represented by the same union attorney, [REDACTED] at their interviews. They had been scheduled to appear at an earlier date and were advised to obtain a different Weingarten representative, because attorney [REDACTED] was not available. However, each of them simply failed to appear at the date and time scheduled for their interviews.

Allegation #4: Breach of Confidentiality Regarding an Internal Affairs Investigation

This allegation, if sustained, would be a violation of **Article XIII, Section 19 (b) and (c)**, of the **Rules and Regulations** of the **Division**, entitled **Conflicts of Interest**, which reads in part:

b. “Treat as confidential, unless the contrary is specifically authorized by competent Division authority, any matters or information which pertain to the Division, its operations, investigations or internal procedures.”

c. “Not disseminate, distribute or supply to any unauthorized member or any other person, an original, copy or abstract of any Division document, unless specifically authorized by competent Division authority.”

During the review of LT Nitti’s email exchange, requested on 8/13/22, there were two (2) emails with attachments related to IA [REDACTED]-0165 sent to [REDACTED] LTC-1, [REDACTED] NJSP, who had no supervisory authority over OPS matters.

1. 5/20/21-**Subject:** let me know if you like this running program - **Attachment:** running program.docx
 - i. This document contained LT Nitti’s Internal Affairs Allegations and Conclusions for IA [REDACTED]-0165 dated 5/17/21.
2. 7/2/21- **No Subject - Attachment:** 1.docx
 - i. This document contained LT Nitti’s revised Internal Affairs Allegations and Conclusions for IA [REDACTED]-0165 dated 7/1/21.

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When asked if any files or documents should be sent to any NJSP member outside of OPS, LT Nitti reported during his formal interview on 12/19/22, that he knew where we were going with this. LT Nitti stated that while on his way to this interview, he spoke to his Weingarten representative [REDACTED] regarding this email (referring to Email 1). LT Nitti expressed that he is a very close friend of [REDACTED] LTC-1 of twenty-four (24) years. LT Nitti continued to explain that [REDACTED] is an avid runner and [REDACTED] plays Lacrosse. [REDACTED] LTC-1 asked LT Nitti for a running program to help [REDACTED]. LT Nitti further explained that he reached out to [REDACTED] for a running program and when emailing the same to [REDACTED] LTC-1, he inadvertently sent the wrong file which was the Internal Affairs Allegations and Conclusions for [REDACTED]-0165. LT Nitti further asserted that he has “hundreds” of files on his computer desktop and attached/sent the wrong one. LT Nitti described [REDACTED] LTC-1 as being, “the last boy scout,” and as such, [REDACTED] LTC-1 immediately called him and berated him for sending him a confidential document. LT Nitti apologized to [REDACTED] LTC-1 for sending the document. LT Nitti did not self-report this matter to his bureau level command. LT Nitti further explained that he found this email while looking through his emails related to the cases discussed during the course of this interview in preparation for the same.

It should be noted, that upon further review of the 5/20/21 email (Email 1) above, it was determined that while the attachment was named/titled **running program.docx**, the document containing the Internal Affairs Allegations and Conclusions to [REDACTED]-0165 was also named by Nitti as running program.docx. Furthermore, the 7/2/21 second email sent to [REDACTED] LTC-1 had an attachment named/titled **1.docx** but contained LT Nitti’s revised Internal Affairs Allegations and Conclusions dated 7/1/21. LT Nitti did not mention the second email to [REDACTED] LTC-1 containing the revised Internal Affairs Allegations and Conclusions during the course of his first formal interview. This was addressed in his second interview after the second email came to light.

- [REDACTED] all of whom had extensive experience in OPS and supervised LT Nitti, all reported during their respective formal witness interviews that it was not acceptable for OPS-related files/reports/documents to be forwarded to anyone outside of OPS.
- A voluntary formal interview was conducted with [REDACTED] LTC-1 on [REDACTED]. [REDACTED] LTC-1 was informed, that during his formal interview, LT Nitti disclosed that sometime in [REDACTED], he inadvertently sent [REDACTED] LTC-1 an email with an attachment containing information regarding a confidential investigation that he was assigned. [REDACTED] LTC-1 asked if this was concerning [REDACTED] to which I responded it was. [REDACTED] LTC-1 further remarked, “Did he tell you how pissed off I was that he sent it?” [REDACTED] LTC-1 was asked to provide any details [REDACTED] could recall regarding the email sent. [REDACTED] LTC-1 explained that LT Nitti has [REDACTED] who is a very good runner and [REDACTED] played lacrosse. [REDACTED] LTC-1 asked LT Nitti for assistance, as he was aware that [REDACTED] was a distance runner. [REDACTED] LTC-1 asked LT Nitti for suggestions, to which he responded that

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he would send [REDACTED] something via email. When [LTC-1] received the email, it wasn't a document about running, but contained information regarding [REDACTED] case. [LTC-1] called LT Nitti and asked, "Why are you sending me this?" LT Nitti responded that it was inadvertently sent.

When asked if [REDACTED] could recall how the attachment was named, [LTC-1] recalled that it had to do with something in regards to "Running or training."

- When asked if that was the only time LT Nitti emailed [REDACTED] anything inadvertently, [LTC-1] responded that [REDACTED] could not recall any other email sent to [REDACTED] inadvertently, before or after receiving this email. [LTC-1] retired before the second email was uncovered and was not reinterviewed.

Allegation #5: [REDACTED]

This allegation, if sustained, would be a violation of [REDACTED], which reads in part:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

In sum, there was insufficient evidence to determine whether or not

[REDACTED]

Allegation #6: Candor

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This allegation if Sustained would be a violation of **Article V, Section 15**, of the **Rules and Regulations** of the **Division**, which reads in part:

“No member shall knowingly, under any circumstances, make or cause to be made, any false or misleading official statement or intentionally misrepresent any facts.”

Standing Operating Procedure B10 Conduct of Investigations, Section XI, Paragraph D, which reads in part:

“All members of the Division are obligated to answer questions and provide full and complete information to investigating officers during internal investigations. Less than complete candor during any statement may lead to serious disciplinary sanctions, which may include suspension or termination.”

Count 1:

As referenced earlier in this report under the summary of Allegation #4, LT Nitti asserted that he sent **LTC-1** emails containing information related to **-0165** inadvertently. LT Nitti provided a long explanation as to how this happened, referencing his choosing the wrong file from the crowded desktop of his computer. During his follow up interview, it was brought to LT Nitti’s attention that he sent a second email to **LTC-1** again containing information related to **-0165**. This attachment was an amended version of the first attachment sent in his previous email. LT Nitti appeared to be taken totally by surprise and could not offer any response other than he would have not had any reason to send the second email to **LTC-1**. Based on how the emails were titled, and the explanation provided by LT Nitti, it is reasonable to conclude that he was not truthful about the circumstances surrounding his sending confidential information related to **-0165**. The importance of confidentiality in internal affairs investigations is clearly outlined in the Office of the Attorney General’s Internal Affairs Policy and Protocol (IAPP).

Count 2:

As referenced earlier in this report under the summary of Allegation #1, LT Nitti asserted that testing the anonymous letter/envelope for DNA was discussed with the bureau-level command and that he further discussed it with **_____** directly. It should be noted that at the time of these events **_____** held the rank of **_____** and was subordinate to **_____** who was in charge of **_____** at the time. LT Nitti admits that he was told that there would be no testing for DNA, but after discussing the matter with **_____** they agreed that the anonymous letter/envelope should only be tested for DNA presence and kept at the lab for safe storage. LT Nitti denied being aware that the envelope was tested for DNA. As the Unit Head of OPS **_____** part of his responsibility is to review the investigative reports of his investigative staff members. It is reasonable to believe that as the lead investigator of **-0165**, he was or should have been aware of every aspect of his investigation as memorialized in his investigation report.

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In his follow-up formal subject interview, LT Nitti contradicted his previous statement provided in his initial formal subject interview and now said that he could not recall who approved testing the envelope for DNA. In his previous statement he asserted that he had a discussion with [REDACTED] and they agreed that the anonymous letter/envelope would be tested for DNA presence and kept for safe storage at the State Lab. LT Nitti denied having a conversation via conference call with [REDACTED] where his request for testing the envelope for DNA was denied. LT Nitti could not recall anyone in the bureau-level command bringing it to his attention that he tested the envelope for DNA after his request to test it was denied. However, he contradicted himself again stating he did recall having a conversation with [REDACTED] that the lab tested the envelope for DNA when they were only supposed to test it for presence of DNA. In his initial formal subject interview, he stated that he was unaware the State Lab tested the anonymous letter/envelope for DNA and if they did it would have been a mistake on their part.

Clearly, the details provided by [REDACTED] in their respective formal witness interviews contradict LT Nitti's account of the circumstances surrounding the testing of the anonymous letter/envelope for DNA.

Furthermore, a review of the [REDACTED] listed the Description of the Attachment as NJSP Office of Forensic Sciences Receipt dated April 7, 2021 consisting of 2 pages. The Office of the Forensic Sciences Evidence Receipt, revealed that [REDACTED] requested that the adhesive portion of the envelope, which appears to have been licked in order to seal, be tested for the presence of DNA. Furthermore, an additional request was made by [REDACTED] for the item (envelope) to be sent to NJSP Central Lab for DNA testing and entry into the CODIS Database.

LT Nitti's attempt to differentiate between testing for the presence of DNA and testing for DNA is inconsistent with the practice of the NJSP lab as well as asking for entry into the CODIS database. The NJSP lab does not differentiate between testing for the presence of DNA or testing for DNA. Whether the DNA is submitted to CODIS depends on whether the investigation relates to a qualifying criminal investigation and the quality of the sample.

Summary of Findings

Allegation #1: Inappropriate Standard of Conduct-Insubordination - Article IV, Section 3(b), of the Rules and Regulations of the Division

Regarding [REDACTED]-0165, LT Nitti directed [REDACTED] to submit the anonymous letter and envelope to the state lab for DNA testing after being ordered not to do so.

Sustained.

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Allegation #2: Culpably Inefficient Supervision - Article V, Section 5, of the Rules and Regulations of the Division, entitled Performance of Duties.

Having been denied his request to test the anonymous letter/envelope for DNA, LT Nitti knowingly and purposely assigned [REDACTED] to submit the anonymous letter/envelope to the NJSP Office of Forensic Sciences "Trace Evidence Laboratory," for the express purpose of having it tested for DNA. [REDACTED] effected this assignment on April 7, 2021.

Sustained.

Allegation #3: Questionable Conduct On-Duty (2 Counts)

Article IV, Section 2.a., of the Rules and Regulations of the Division, entitled Conflicts of Interest, reads in part:

"No member shall act or behave in an official capacity to the personal discredit of the member or to the discredit of the Division."

Count 1:

Lieutenant Nitti sent a text to [REDACTED], related to [REDACTED] review of [REDACTED]-0165. The text in question stated: "I hope you guys don't pussy out lol."

Sustained.

Count 2:

LT Nitti sent an inappropriate comment on a group text thread [REDACTED]. The text related to an ongoing investigation of a trooper who was arrested for allegedly giving a beer to, and inappropriately touching, a 14-year-old girl stated: "Can we at least see a pic of her. I'd like to see what all the hub bub is about."

Sustained.

Allegation #4: Breach of Confidentiality Regarding an Internal Affairs Investigation - Article XIII, Section 19 (b) and (c), of the Rules and Regulations of the Division, entitled Conflicts of Interest

During the review of LT Nitti's email account, there were two (2) emails with attachments sent to [REDACTED], who was not in Lieutenant Nitti's chain of command or assigned to OPS. The attachments contained two different drafts of the Allegations and Conclusions report for [REDACTED]-0165.

Sustained.

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Allegation #5:

[Redacted]

There was insufficient evidence to determine whether or not

[Redacted]

is not sustained.

Therefore, the allegation

Not Sustained.

Allegation #6: Candor Article V, Section 15, of the Rules and Regulations of the Division (2 Counts)

Count 1:

During the review of LT Nitti's Email account, there were two (2) emails with attachments sent to **LTC-1**, who was not in LT Nitti's chain of command or assigned to OPS. The attachments contained two different drafts of the Allegations and Conclusions report for [Redacted]-0165. As noted above, LT Nitti's explanations that he inadvertently sent the confidential report as an attachment to the first email was not credible, especially since he later sent another version of the confidential report to the same non-OPS member. LT Nitti had no explanation for sending a second email containing the confidential report.

Sustained.

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Count 2:

The details provided by [REDACTED] contradict LT Nitti's account of the circumstances surrounding the testing of the anonymous letter/envelope for DNA.

Despite LT Nitti's insistence that a DNA test was not requested, a review of the Office of the Forensic Sciences Evidence Receipt, revealed that it included a request to have the lick seal portion of the envelope tested for the presence of DNA. Furthermore, the Evidence Receipt contained an additional request for DNA testing and entry into the CODIS Database.

Sustained.

Conclusion

LT Nitti separated from the NJSP during the pendency of this investigation. Nevertheless, pursuant to Internal Affairs Policy and Procedures Sections 9.11.2(f) and (k), his conduct warrants the imposition of major discipline and must be publicly reported pursuant to Attorney General Law Enforcement Directive No. 2022-14 ("Transparency in Internal Affairs Investigations."). Based on the seriousness of the conduct and multiple sustained violations, along with a prior history of improper comments, if LT Nitti were not already separated from the NJSP, the imposition of major discipline, and specifically termination, would be appropriate and recommended.

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