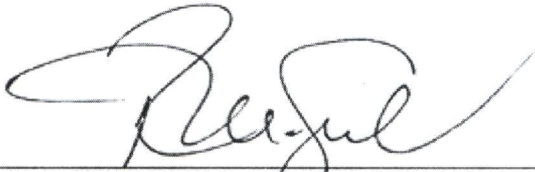


Re: Lyndon Johnson

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
OCTOBER 18, 2017



Robert M. Czede, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 03234-13

AGENCY REF. NO. 2013-2321

**IN THE MATTER OF LYNDON
JOHNSON, CITY OF LONG BRANCH
POLICE DEPARTMENT.**

Stuart J. Alterman, Esq., for appellant, Lyndon Johnson (Alterman & Associates, attorneys)

James L. Plosia, Jr., Esq., for respondent, City of Long Branch Police Department (Plosia & Cohen, LLC, attorneys)

Record Closed: July 10, 2017

Decided: August 23, 2017

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE

The City of Long Branch (respondent) recommended termination of Lieutenant Lyndon Johnson (appellant or Lt. Johnson) as a Police Officer employed by the City. Respondent argues that he violated: N.J.A.C. 4A:20-2.5(a)(1) Incompetency, Inefficiency, Failure to Perform Duties; N.J.A.C. 4A:2-2.3(a)(3) Inability to Perform Duties; N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty and N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause. Specifically, respondent alleges

appellant, Lt. Johnson improperly accessed the Criminal Justice Information System (CJIS), specifically by obtaining unauthorized information through the system on multiple occasions. Appellant contends he acted appropriately and did not violate any regulation, rule, policy or procedure.

PROCEDURAL HISTORY

On January 25, 2013, respondent prepared and served appellant with a Preliminary Notice of Disciplinary Action because of his actions. A local hearing was not requested by the appellant and a Final Notice of Disciplinary Action was issued on August 12, 2013, removing him from service on that date. A timely appeal was filed and the matter was transmitted by the Civil Service Commission to the Office of Administrative Law (OAL) on March 6, 2013, as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

Hearingsⁱ were held on October 5, 2015, January 6, 2016, January 11, 2016, January 12, 2016, January 26, 2016, March 15, 2016 and June 14, 2016. After, post hearing briefs were received the record closed on October 21, 2016.

On March 31, 2017, the originally assigned Judge (Shuster) retired from the bench. On April 21, 2017, the OAL sent a correspondence to all parties notifying them of the retirement and requesting a telephone conference. A telephone conference was held on April 25, 2017, with the parties and Assignment ALJ Delanoy to discuss how the parties wished to proceed. This matter was re-assigned to the undersigned on May 1, 2017. A telephone conference was held on May 8, 2017, wherein the court requested that the record be re-opened so that the court may acquire all the closing submissions and documents that were missing from the record at OAL. The parties graciously agreed and the record was reopened on May 8, 2017, so the parties could submit the requested records.

ⁱ Respondent brought four separate disciplinary actions against appellant. This was the fourth and final case to be heard.

On June 15, 2017, the undersigned requested a telephone conference with the parties. The telephone conference was requested to clarify the discrepancy between the PNDA and FNDA. To be more specific, the PNDA listed the charges as: N.J.A.C. 4A:20-2.3(a)(1) Incompetency, Inefficiency, Failure to Perform Duties; N.J.A.C. 4A:2-2.3(a)(3) Inability to Perform Duties; N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming; N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty and N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause. However, the FNDA only references N.J.A.C. 4A:2-2.5(a)(1) as the final charge. This section references the opportunity for a hearing before the appointing authority which is frequently referred to as "Loudermill". The FNDA has no reference to any charges from the PNDA.

The discrepancy was not discussed at the initial hearing on October 5, 2015 and neither counsel raised it during the seven days of hearings. Several hundred pages of closing summations were submitted from both parties, none of which address the discrepancy. In fact, the Long Branch's summations list the charges from the PNDA and the appellant's summations list N.J.A.C. 4A:2-2.5(a)(1), the Loudermill regulation. However, Lt. Johnson's October 7, 2017, Closing Summation and October 21, 2016, Reply Brief, specifically reference and defend the charge of N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming.

On June 19 and 20, 2017, the undersigned received email replies from both parties to my inquiry. The City of Long Branch argued that:

"...the Final Notice fails to list the charges. However, ...Howard Woolley, ... found "Lt. Johnson guilty as charges of the specifications contained in the Preliminary Notice of Disciplinary Action", and determined that termination was the appropriate penalty (as checked off on the FNDA Form. Thus, although the "Sustained Charges" box in the 31B was not properly filled out, Mr. Woolley's decision clearly and unequivocally found Lt. Johnson guilty of each of the Charges and Specifications contained in the Form 31A (which Form was the first exhibit in the City's "NCIC look-up" exhibit book. The Court should also note (as per Mr. Woolley's decision) that Lt. Johnson and Mr. Alterman waived their right to a local hearing re the Preliminary Charges and requested the issuance of a Final Notice (Form

31B). In so doing, there was obviously no doubt or dispute that the City would find, in the FNDA, that Lt. Johnson was guilty of the Charges and Specifications set forth in the PNDA. In addition, the Court is referred to page 8 of the 10/5/15 OAL transcript, in which this issue was explained to Judge Schuster, and the ALJ accepted that the City, after the waiver of the local hearing by Lt. Johnson, found Lt. Johnson guilty of the Charges and Specifications set forth in Form 31A. See lines 5-18.

I disagree. Similarly, the appellant argues that: "any reference to Wooley's local decision is violative of the law of the case and will result in my immediate application for a mistrial. The burden is on the charging party. Failure to properly charge Lt. Johnson endures to Lt. Johnson's benefit and to the Town's detriment. The transcripts speak for themselves." I also disagree.

First, the argument that because appellant "waived their right to a local hearing re the Preliminary Charges and requested the issuance of a Final Notice" somehow provides "no doubt or dispute that the City would find, in the FNDA, that Lt. Johnson was guilty of the Charges and Specifications set forth in the PNDA" is without merit. There is nothing in any record to support that thought. Furthermore, the transcript is void of any discussion of the charges. It discusses the "specifications" but not the "charges". I agree with appellant that any reference or consideration of Wooley's decision is impermissible. Therefore, in determining the charges, I must consider the law, history of the case and actions of the parties.

Appellants are entitled to due process in the disciplinary process. See N.J.S.A. 11A:2-13. More specifically, appellants are entitled to fair notice and an opportunity to be heard. Id. Fair notice means notice of the disciplinary charges and the basis upon which those charges are justified. Id. Generally, courts look to the content of the PNDA and FNDA to determine whether the stated specifications match the reasoning used to sustain the charges. See Hammond v. Monmouth County Sheriff's Dept., 317 N.J. Super. 199, 206 (App. Div. 1999). The standard, however, is ultimately whether an appellant had "plain notice" of the factual basis for the charges. See Pepe v. Twp. of Springfield, 337 N.J. Super. 94, 97 (App. Div. 2001).

Appellant, if not previously provided plain notice of the specific additional factual allegations, cannot be found guilty based on said specifications.

N.J.S.A. 11A:2-13 provides:

[B]efore any disciplinary action in [regarding termination, suspension, removal, fine, or disciplinary demotion] is taken against a permanent employee in the career service or a person serving a working test period, the employee shall be notified in writing and shall have the opportunity for a hearing before the appointing authority or its designated representative. The hearing shall be held within 30 days of the notice of disciplinary action unless waived by the employee. Both parties may consent to an adjournment to a later date.

Pursuant to N.J.S.A. 11A:2-6(d), the Civil Service Commission adopts and enforces the regulatory rules governing disciplinary action. N.J.A.C. 4A:2-1.1-6.2. Pursuant to those rules, civil service employees may be subject to disciplinary action for:

1. Incompetency, inefficiency or failure to perform duties;
2. Insubordination;
3. Inability to perform duties;
4. Chronic or excessive absenteeism or lateness;
5. Conviction of a crime;
6. Conduct unbecoming a public employee;
7. Neglect of duty;
8. Misuse of public property, including motor vehicles;
9. Discrimination that affects equal employment opportunity (as defined in N.J.A.C. 4A:7-1.1), including sexual harassment;
10. Violation of Federal regulations concerning drug and alcohol use by and testing of employees who perform functions related to the operation of commercial motor vehicles, and State and local policies issued thereunder; and
11. Other sufficient cause
[N.J.A.C. 4A:2-2.3(a)].

Removal, demotion, or suspension or fine for more than five working days at any one time constitutes "major discipline." N.J.A.C. 4A:2-2.2(a). An agency seeking to impose major discipline upon a civil service employee must provide the employee

written notice. N.J.A.C. 4A:2-2.5. To that end, prior to the imposition of major discipline, “[a]n employee must be served with [a PNDA] setting forth the charges and statement of facts supporting the charges (specifications), and afforded the opportunity for a hearing” except:

An employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services. . . . However, a [PNDA] with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension. [N.J.A.C. 4A:2-2.5(a)1].

This requirement reflects well established due process rights that attach to employment by state governments. When threatened with major disciplinary action, such as termination, the State cannot, without violating an officer’s constitutional rights, deprive an officer of the position without due process of law. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 538 (1985). Such a deprivation must “be preceded by notice and opportunity for hearing appropriate to the nature of the case.” Id. at 542 (citing Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950)). “The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer’s evidence, and an opportunity to present his side of the story. . . . To require more than this prior to termination would intrude to an unwarranted extent on the government’s interest in quickly removing an unsatisfactory employee.” Id. at 546. (internal citations omitted). The Third Circuit has emphasized that constitutional due process requires that the notice provide the degree of specificity necessary for the employee to have “the opportunity to determine what facts, if any, within his knowledge might be presented in mitigation of or in denial of the charges.” McDaniels v. Flick, 59 F.3d 446, 457 (3d Cir. 1995) (citing Gniotek v. Philadelphia, 808 F.2d 241, 244 (3d Cir. 1986)). “Such notice need only be given so far in advance of the pre-termination hearing so as to allow the officer a chance to present his side of the story.” Gniotek, supra, 808 F.2d at 244.

Relevant herein, “[o]n appeal to the Civil Service Commission from a departmental determination a hearing de novo is held at which all relevant testimony may be introduced. It is not a new hearing ‘on the record’ below, but a new plenary hearing at which evidence and testimony are presented.” I/M/O Appeal of Darcy, 114 N.J. Super. 454, 459 (App. Div. 1971) (citations omitted). The importance of proper notice cannot be understated, however, even at the administrative level because “the Civil Service Act mandates review only of the adverse decision of the appointing authority as stated in the final notice of disciplinary action, since that is what the employee appeals to the Board.” Hammond, supra, 317 N.J. Super. 199, 206 (App. Div. 1999). To otherwise allow a broadening of the charges beyond those contained in the Final Notice “would be to surcharge the right to appeal with a cost which violates any decent sense of due process or fair play.” Id.

The courts have further interpreted the scope of the due process requirement as “plain” notice. “It is elementary that an employee cannot legally be tried or found guilty on charges of which he has not been given plain notice by the appointing authority.” West New York v. Bock, 38 N.J. 500, 522 (1962). “‘Plain notice’ is the standard to be applied when considering the adequacy of disciplinary charges filed against public employees.... These principles emanate from the concept of affording due process and fairness to proceedings which impact so significantly on an employee.” Pepe, supra, 337 N.J. Super. 94, 97 (App. Div. 2001). Where an appellant has plain notice of the basis of the charges a technical failure in the specifications does not, therefore, prevent that basis from consideration.

In Pepe, a firefighter was served with a PNDA which contained an expansive narrative specification. Pepe, supra, 337 N.J. Super. at 99–103. Therein, the PNDA broadly accused the firefighter of participating in a false-alarm call with two other firefighters. The hearing officer found him guilty as an accomplice by knowledge and association, a characterization that did not fully match the specifications. Id. at 96. On appeal, the Law Division dismissed the charges on that basis. Id. at 97. The appellate division reversed, however, finding that the firefighter had plain notice of the basis for

the charges and therefore it was error to dismiss the charges on due process grounds. Id. at 98–99.

In Grasso v. Sea Isle City, 93 N.J.A.R.2d (CSV) 747, a police officer was served with vague specifications that could have implicated either the officer's behavior or an entirely different officer's acts. After being dismissed by the ALJ on that basis the Commission remanded under the principle that Grasso could be properly charged, despite vagueness in the PNDA, if he had actual (plain) notice of the charges. Id. at 750. Further, however, the Commission found:

[T]he appointing authority issued an "amended and/or refiled" Preliminary Notice of Disciplinary Action on February 28, 1992, with detailed specifications of the charges at issue. The Board finds, however, that this attempt to now correct any deficiency in providing notice to appellant of the specifications of the charges against him is impermissible and...void. Id. (emphasis added).

On remand, the ALJ found that Grasso, though discovery and the hearing below, had been fully apprised of numerous more specific allegations and could be charged on the basis of those specifications. Id. at 757. Despite so finding, the ALJ ultimately found none of the plain-notice specifications had been sufficiently proven and dismissed the charges. Id.

Without plain notice of the basis of the charges, new specifications added at a late stage run afoul of, and must be dismissed under, the 45-day limit to bring disciplinary charges against police officers under N.J.S.A. 40A:14-147, which states that "[a] failure to comply with said provisions as to the service of the complaint and the time within which a complaint is to be filed shall require a dismissal of the complaint." N.J.S.A. 40A:14-147. In Fabian v. Town of North Bergen, CSV 3198-97, Initial Decision (August 24, 1998), adopted, MSB (October 14, 1998) < <https://njlaw.rutgers.edu/collections/oal/html/initial/csv3198-97.html>>, a police officer was charged with leaving his assigned sector without authorization. However, during the administrative hearing the department argued that the officer failed to obey orders

and failed to respond to radio calls, charges not contained within the PNDA. The ALJ held that “[n]either Fabian nor his attorney had knowledge that the real issue in this case was Fabian's alleged noncompliance with an order modifying his regular assignment.” Id. at 4. Thereafter, because the actual basis for the charges had been introduced outside the 45-day period under N.J.S.A. 40A:14-147, the ALJ dismissed the charges.

In this case, the charges listed in the PNDA are clear, however, the FNDA fails to address any charge. Clearly, the appellant had “plain notice” of the factual basis for the charges in the PNDA, however, with the FNDA failing to address any charge, the subsequent actions of the appellant are critical. Again, the parties participated in seven days of hearings where the charges were never addressed. The parties also submitted several hundred pages of closing summations. In his closing submissions, the appellant references that he “was served with a PNDA alleging the appellant violated the N.J.A.C. 4A:2-2.5(a)(1), seeking his removal....” Although factually incorrect, it likewise fails to provide guidance on notice of the charges that appellant defended over the seven days of hearings.

However, in his October 7, 2016, Closing Summation, appellant stated that, “...based upon the testimony and evidence in the record, the appointing authority has failed to demonstrat[e] by a preponderance of the competent, relevant and credible evidence that it had just cause to sustain the alleged violation of N.J.A.C. 4A:2-2.3(a)(6), conduct unbecoming a public employee, against the Appellant.” Also, in their October 21, 2016, Reply Brief, “...based upon the testimony and evidence in the record, the appointing authority has failed to demonstrate by a preponderance of the competent, relevant and credible evidence that it had just cause to sustain the alleged violation of N.J.A.C. 4A:2-2.3(a)(6), Conduct Unbecoming a Public Employee, against the Appellant.”

As such, I **FIND** as **FACT** that appellant had “plain notice” of N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming as a charge from the PNDA. I **FURTHER FIND** as **FACT** that the appellant specifically defended the charge of N.J.A.C. 4A:2-2.3(a)(6)

Conduct Unbecoming at the hearing and in his closing submissions. I **FURTHER FIND** as **FACT** that appellant did not have "plain notice" of N.J.A.C. 4A:20-2.5(a)(1) Incompetency, Inefficiency, Failure to Perform Duties; N.J.A.C. 4A:2-2.3(a)(3) Inability to Perform Duties; N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty and N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause in the FNDA. As a result, I **CONCLUDE** that N.J.A.C. 4A:20-2.5(a)(1) Incompetency, Inefficiency, Failure to Perform Duties; N.J.A.C. 4A:2-2.3(a)(3) Inability to Perform Duties; N.J.A.C. 4A:2-2.3(a)(7) Neglect of Duty and N.J.A.C. 4A:2-2.3(a)(12) Other Sufficient Cause are **DISMISSED** for improper notice in the FNDA. I likewise **CONCLUDE** that the sole sustained charge is N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming.

The record closed on July 10, 2017.

TESTIMONY

For Respondent

Lieutenant Thomas Shea (Lt. Shea)

As a form of brevity, Lt. Shea's background and qualifications were stipulated by the parties. TR16:3. He explained that his Internal Affairs Investigation Report laid out that the investigation into this case began during his investigation of the "Witness Intimidation" allegations against Lt. Johnson. "There was a Church lookup case, which Lt. Johnson wasn't charged with." R-3, TR18:9. Lt. Johnson performed lookups for Church members from the Second Baptist Church in Long Branch. TR18:13. Dispatcher, Hope White, informed Lt. Shea that a former Long Branch dispatcher, now Officer O'Brien, had concerns about the lookups Lt. Johnson was asking them to perform. TR19:2.

Computer lookups are performed by a Long Branch Police Department dispatcher "under the authority of the Watch Commander". TR19:9. ATS/ACS lookups are for bench warrants and are done for traffic warrants in Municipal Court. TR20:12. Lt. Shea explained that Officers on the street would request an "all the way around"

computer search, which includes a check of the driver's license, registration, and warrant search. TR23:16. They can be performed by police officers in their patrol cars or called into dispatch. TR24:1. Lt. Shea's practice was to call them in. TR24:23.

A NCIC check is used to ascertain whether there are any outstanding warrants on the person nationwide. TR25:17. The witness explained that the "all the way around" check requested by a police officer on the road through dispatch was to check the person's license, registration, the vehicle, and "you're also checking statewide warrants and if they have any, national". TR27:23. Thus, there are three types of "computer checks" in the "all the way around" search: license and registration; New Jersey warrants; and national warrants. TR28:7.

Lt. Shea also described a "criminal history check" or "CJIS" explaining that "[t]he police officers request a criminal history check if they're doing an investigation but they have to ask dispatch. And dispatch has to get approval from the Watch Commander before they can run it." TR31:7. The witness explained that a CJIS check "is more an in-depth investigation. It's not just checking someone for warrants." TR31:17. "[Y]ou can't -check their criminal history unless you're doing an active investigation into them." TR31:22. Lt. Shea explained the legal restrictions because "when a person first becomes a police officer in New Jersey, they are trained with the workings of CJIS and what's allowed and what's not allowed with respect to those lookups". TR33:2. Also:

And you're asked to sign a memo that states you cannot run a CJIS criminal history checkup on any subject unless you're performing an investigation, have an investigation number attached that you can point to show there's an active investigation. You can't just run someone for no reason. TR33:5.

He explained that incoming police officers are told that an officer could face criminal charges if they conduct an improper criminal history check. TR34:16. Lt. Shea quoted R-8 stating that: "As per Title 28, Federal Code New Jersey CJIS Security Policy, employees of the Long Branch Police Department may only use information obtained directly or indirectly from the criminal justice information system, CJIS, for

criminal justice purposes.” TR35:13. Then, he read another sentence into the record: “Any employee found to violate this Order or improperly disseminate, improperly use CJIS information, or irresponsibly dispose of any form or copy of CJIS information, may be subject to federal, state, civil and/or departmental charges, the sanction for which may be incarceration, fines, punitive charges, suspension and/or termination.” TR35:21; TR36:1.

Lt. Shea explained for a search to be valid, the necessity of a “criminal justice purpose” is paramount. “[C]ourts have decided that people have a right to privacy when it comes to their past criminal history. You can look at this information as long as there’s an investigative purpose.” TR37:16. Police Officers in New Jersey have been criminally charged for abusing access to the CJIS system “[a]ll the time.” TR38:10.

Lt. Shea was posed with a hypothetical scenario in which a citizen was stopped for a motor vehicle violation, and an officer on the scene ascertained through ATS/ACS that there was an outstanding warrant. The person is thereafter brought into the Police Department and a CJIS can be legitimately be requested “if you’re looking to release them on bail to see if they had any priors and they didn’t show up for Court.” TR39:17. Additionally, the person’s criminal history could be relevant for whether or not they should be released or held for bail. TR39:21. In that case, a CJIS lookup would be authorized by the Watch Commander. TR40:7.

Lt. Johnson’s “CJIS” lookups originally came into question when several dispatchers informed that Lt. Johnson had requested criminal history lookups for members of a church in Long Branch. TR41:23. Based on this information, Lt. Shea checked to see who Lt. Johnson was making criminal history background checks for, and learned that it was being done for members of the Second Baptist Church. TR42:14. This was a matter of concern to Lt. Shea; accordingly, the City initiated an investigation to ascertain why the lookups were being done. TR44:21. The proper procedure for criminal history lookups is to do a “CCH” lookup in the CJIS system. TR45:23.

Lt. Shea identified the Garrity Statement taken at the Monmouth County Prosecutor's Office of Lt. Johnson on May 31, 2012. TR47, R-4. Lt. Shea testified that Lt. Johnson was not charged for the "Church" CCH lookups, and did not know why. TR47:17. Lt. Shea determined that Lt. Johnson had the Long Branch Police Department run a criminal history background check on his own son. TR49:3. Also, during the May 31, 2012 Garrity Statement, Lt. Shea asked Lt. Johnson if he ever ran criminal histories in his position as liaison to the Housing Authority and Lt. Johnson answered "no". TR49:15.

On June 3, 2003, Lt. Johnson was appointed as liaison between the Long Branch Police Department and the Long Branch Housing Authority. TR50:21, R-6. Then, on October 7, 2008, Lt. Johnson was transferred back into the patrol division. TR51:19, R-7.

Lt. Shea identified R-9, which is a list of criminal histories that Lt. Johnson ran during his time as the Long Branch Housing Authority liaison. TR52:22. Lt. Shea created the list with the assistance of Special Officer Phillips and Sergeant Shirley. TR53:3. Lt. Shea explained after the Garrity testimony, he audited the records to see what CCH lookups Lt. Johnson ran. TR53:18. He looked for searches including "Lt. Johnson" or "247" [Lt. Johnson's number]. TR55:10. As part of his investigation Lt. Shea spoke with Daniel Gibson, who is "second in command" at the Housing Authority under Tyrone Garrett, the Authority's Executive Director. TR61:13. Lt. Shea asked Gibson if he had ever requested Lt. Johnson run criminal histories for the Housing Authority. TR61:23. Lt. Shea explained that the Long Branch Housing Authority has their own screening process and actually obtains written consent from the applicant to do background checks. TR63:18. Gibson stated that he never asked Lt. Johnson to perform any criminal background check. TR64:21. In fact, Gibson told Lt. Shea that neither he nor Garrett ever asked Lt. Johnson to run a criminal history check for or on behalf of the Housing Authority. TR67:17.

The Housing Authority and Long Branch Police Department created a "trespass list". TR67:23, R-10. This was a list of people who were excluded from any Federal

Housing Authority property. TR68:20. They were "known people within Long Branch ..." who had drug convictions. TR69:5. Lt. Shea explained that the Housing Authority does not have the right to request a CCH check of a visitor to the Long Branch Housing Authority to see if they are on or belong on that witness trespass list, TR69:10, and Lt. Johnson as the Housing Authority liaison could not legally request such a CCH check for a person visiting the Housing Authority. TR69:15.

Lt. Shea testified that an officer could request a CCH lookup from the New Jersey State Police if they were requesting a bail determination TR69:21 and during an active criminal investigation. TR69:25. Police officers will generally do many more "all the way around" lookups than CCH criminal history background lookups. TR71:15. He explained that a police officer may request a CCH lookup if, for example, he arrested someone in possession of a weapon. TR72-73. This would be appropriate because "convicted felons can't carry firearms legally." TR73:8. Accordingly, ascertaining whether the person brought into Headquarters with a firearm may have violated the "no carrying of firearms by convicted felons" law is a legitimate ongoing investigative purpose for a CCH lookup. TR73:12. As for someone arrested on a drug offense, a CCH lookup might be part of the legitimate "criminal investigative purpose" if the Police Department was considering using the person as a confidential informant. TR73:22. That decision would be made by the Patrol Officer's supervisor, who would obtain permission for the CCH lookup, if at all, from the Watch Commander. TR74:5.

Lt. Shea, referring to R-9, concluded there were "a whole bunch of individuals [who] were run [by Lt. Johnson] for no apparent reason that I could find." TR75:11. Lt. Shea found no "investigative reason" why these CCH lookups were requested by Lt. Johnson while he was the Housing Authority liaison. TR75:14. In order to ascertain if there had been any legitimate criminal investigative purpose for Lt. Johnson to conduct these lookups, Lt. Shea "compiled a list of all the people Lt. Johnson ran that didn't have an investigative number attached to it and then I looked through our computer system to see if there was any reason why he would performing an investigation or any report attached to that particular person, who the CCH was run for." TR76:6. Lt. Shea

testified that if there was no "investigative reason" which can be found for the lookup, then there was no legal reason for the check to have been run. TR76:15.

When a CCH lookup is being done due to and consistent with an ongoing criminal investigation, an investigation number is attached to the CCH look-up list. TR77:12. Investigation numbers are obtained by the officers from dispatchers. TR79:14. Lt. Shea asserted in the Internal Affairs Report that investigation numbers were listed on many of the CCH lookups, noting that there was a legitimate investigation ongoing would justify the CCH lookup. TR80:3, R-11. The lookups themselves were performed either by dispatchers or police officers who had the ability to do the lookups because they used to be dispatchers; he testified that he would not have known how to do such a lookup. TR82.

Lt. Shea further checked into all CCH requests where Lt. Johnson was the receiving agent for the past five years when Lt. Johnson was the Housing Authority liaison. TR85:7. In one entry reviewed by Lt. Shea, there was a legitimate criminal investigation purpose listed on the entry "[f]or bail due to arrest authorized by 247 [Lt. Johnson's badge number]." TR83:12.

Lt. Shea explained the "IMC" computer system used by the Long Branch Police Department. In that system, a person can check any criminal history the person has within the Long Branch Police Department only. TR89. Lt. Shea conducted such an "IMC" search for Mr. T., the person listed on the CCH lookups, and nothing came up. TR90:11. The Lieutenant spoke to Daniel Gibson about Mr. T. Gibson informed him that Mr. T. was a former employee and resident of the Housing Authority. TR90:19. Neither of those facts, however, was sufficient to justify a CCH lookup for Mr. T. TR91:4. Even though another Police Officer, Fernando Sanders [No. "250"] had approved the lookup, it was Lt. Johnson's responsibility because he was the one who requested it. TR92:8. On occasion, Watch Commanders can investigate a request for CCH from officers however, it was the officer making the request who is responsible for the legitimacy of the request "because he's the one entrusted with the authority who asked for it in the first place." TR93:19. Lt. Shea explained that obtaining the Watch

Commander's approval was simply a matter of asking the Watch Commander for permission to ask a dispatcher to run a CCH lookup. In many cases, the Watch Commander would not question the requesting officer on why the CCH was being sought. TR94:3.

The Court asked the witness about the significance of the Watch Commander giving approval for doing the CCH lookup. TR95-96. After listening to this colloquy, the witness responded that the Watch Commander would trust the officer making the request. TR97:1. In this case, it was the Watch Commander trusting a Lieutenant – Lt. Johnson. TR98:1. Sanders, the person whose number was on the lookup that had previously been reviewed, was a Sergeant and Watch Commander, and Lt. Johnson was a Lieutenant. TR98:11. Thus, a Sergeant who is subordinate to a Lieutenant trusts Lt. Johnson to understand the legal parameters of doing a CCH background check. TR98:20.

Lt. Shea testified that Lt. Johnson requested seventy-four CCH lookups during his five years as Housing Authority liaison for which there was no legitimate criminal investigative purpose. TR100:16. However, the Monmouth County Prosecutor's Office informed the Long Branch Police Department that the Prosecutor's Office was not going to treat this matter as criminal, instead, it was remanding to Long Branch to be handled administratively. TR101:21.

Lt. Shea "researched each one of these names [CCH lookups requested by Lt. Johnson] through our computer system, which is the IMC system" (TR24:7) to ascertain whether there was any legitimate criminal investigative purpose for Lt. Johnson to request CCH lookups. There were no investigation reports or ongoing criminal investigations for any of the seventy-four denoted CCH lookups Lt. Johnson had requested. TR24:13. The few lookups Lt. Johnson requested during the five-year period for which there were investigation numbers were excluded from the list of the seventy-four. TR24:25.

On cross-examination, Lt. Shea was asked about “training” Lt. Johnson received regarding R-8 and the Long Branch Police Department’s policy on CCH lookups. Lt. Shea explained that as a Lieutenant in the Police Department you must have considerable knowledge of criminal statutes as part of your daily duties. TR146:1. Prior to a police officer signing off on R-8, they are required to attend a class, which instructs them what they can or cannot do with respect to CCH lookups. TR146:11.

For Appellant

Lieutenant Lyndon Johnson

Lt. Johnson testified that the January 25, 2013, Preliminary Notice of Disciplinary Action served on him was “vague” with respect to the specifications. TR14:12.

The witness testified that, having received the City’s exhibit book, he “went through each and every name that Lt. Shea accused me of running illegally and utilized the information that they gave me to justify whether those names were ran”. TR15:6. He justified them “name by name”. TR15:11. Lt. Johnson became the Long Branch Housing Authority liaison from the Long Branch Police Department on June 3, 2003. TR16:11. The Housing Authority wanted its “no-trespassing policy” enforced by the Police Department. TR23:19. Lt. Johnson testified that the no trespass policy was “a way for us to get around a rush search and seizure, the 4th Amendment. We knew who the drug dealers. . .”. TR24:1. Essentially, the purpose of the no trespassing policy was to “[k]eep the undesirables out of the projects.” TR25:25.

Lt. Johnson identified A-13, which was the “LBHA Criminal History Log Notes”. TR57:5. He typed it after going through each of the names the City claimed that he had illegally run. TR57:7. He was asked about the significance of his first entry, Mr. T., on Exhibit A-13, the witness testified as follows:

The – I want to give a foundation of this that there were several, the way that information was asked of me came from several different sources meaning that the Housing

Authority manager could call me and say listen, we have reason to believe that J.S. was arrested on such and such date, can you find out because we want to take action. So the information could have come via newspaper clipping, phone call, sometimes anonymous phone calls, or an official request as there are some documents in here from the Housing Authority Director or other personnel that will stipulate that they specifically asked for information pertaining to a particular individual. So from Mr. T. from my recollection of taking from what the City provided me, he was a resident of the Housing Authority. There were no reports provided to me in their file. There was a case number generated when this criminal history was done and it was approved by a Sergeant.

TR59:11 –TR 60:1.

When asked why he looked up Mr. T. on the CJIS system, Lt. Johnson stated “I couldn’t tell you because they didn’t provide me with any reports. I mean I don’t know. I could have gotten the call from the Housing Authority saying we suspect him of whatever, whatever ...”. TR61-62. The witness testified that he did not look up Mr. T. “for some illegitimate purpose”. TR63:7.

He then testified about A.M. TR63:8. He typed “unknown date when CCH was ran. No info or reports provided by LBPD.” TR64:11, A-13. The third person is J.A. and Lt. Johnson testified that he was arrested in June 2004, on Long Branch Housing Authority property for domestic violence, and subsequently added to the no trespass list. TR64-65.

Lt. Johnson identified the Housing Authority Resolution authorizing a “vigorous enforcement policy” on Housing Authority property to improve the quality of life for residents. TR67:23, A-29. He and Natalie, a former Housing Authority employee, created the no trespass list. TR68:11. Attached to the Resolution is the “Criminal Trespassing/Barring Policy” which provides that “any person who has received a warning should not be allowed on the Authority’s property as a guest of a resident or otherwise”, and that such a person is “subject to arrest for criminal trespassing ...”. TR70:6.

He understood the “no trespass” policy to provide “[t]hat is if you did not have a legitimate purpose for being on the property and you were involved in criminal activity or violation of quality of life issues or had a pass, the Housing Authority would bar you or member of the Long Branch Police Department”. TR72:5.

Returning to A-13, Lt. Johnson’s rationale for doing a CJIS lookup on H. was that he was on the no trespass list and he “has an extremely long, lengthy history of drug arrests and his mother was a resident of the Long Branch Housing Authority.” TR73:7. Asked to explain how persons get on the no trespass list, he said:

In order to justify putting him on the list we had to run a criminal history, because, just because someone is not, the IMC systems which is being referred to in all these proceedings, is a system that only deals with Long Branch reports. If someone committed a crime in Eatontown or Alabama, you are not going to see those crimes or anything that they were involved in-house system so therefore you have to run a CCH to get the full rap sheet on what they have been involved in and where at. That information would turn around and be used against them because just because we took it one step further with the policy, just because we said that H. committed this crime, that person was notified by mail and then we would give them a chance to appeal it because just because it is on a criminal history doesn’t mean he may or may not have been convicted we could not follow through and add them to the list. So there was a whole process of how they came to be known on this list and maintained on the list.

TR74:13 – TR75:1.

The witness testified that the CJIS lookup he did would reveal convictions, as in the “disposition of the case.” TR76:9. Lt. Johnson testified that his justification for doing a CJIS lookup on H. was “[t]o show that he qualified to be added to the trespass list.” TR77:16.

Regarding the CJIS search on Mr. B., Lt. Johnson testified that he may have been involved in a domestic violence episode in May of 2004. TR77:23. “ I was asked

to find out what happened in that particular case.” TR78:3. Lt. Johnson offered the same rationale for doing the lookup on Mr. N.. TR78:23. Explaining that :

No, what would happen is, I could come in in the morning and I could have an e-mail that said, ‘Lyndon, what happened at ... G. Court last night,’ and I have to backtrack. I have to look into the police blotter, see who was involved and then I would have to get the investigative report. If it warranted I would go further and say, ‘okay, well this person has a criminal history and this person doesn’t.’

Again, just because a person didn’t commit a crime in Long Branch doesn’t mean that they haven’t committed a crime someplace else. We are at a zero-tolerance policy so anybody that we came into contact with, meaning any other officer not just Lyndon Lt. Johnson, we did a full work up on because that was the only way to address the problem.

TR79:3.

The witness referred to the November 2004, lookup of D.A., and testified that she had been arrested for “endangering the welfare of a child.” TR84:4. He performed this lookup because the Housing Authority requested that he do so “maybe for the disposition, was she found guilty and so forth, criminal justice purposes”. TR84:8.

He testified that he did the lookup in December 2004, for J.S., who had been arrested five months earlier for domestic violence. TR84:17. He performed the January 2005, lookup on Mr. R. because he had been asked “specifically from the Housing Authority requesting that we deal with Mr. R.” TR85:14. Robinson had a history of CDS arrests, and may have been living with his father on Housing Authority property. TR85:9.

He did a lookup on R.M. because he had been arrested on a weapons charge and “to justify adding him to the no trespass list.” TR87:18. He performed a March 2005, lookup on N.G. because she had been arrested four months earlier on a bad check charge explaining that “[s]he would violate the one strike policy which involves criminal activity.” TR88:2. The one strike policy is cause for evicting Housing Authority

residents. TR88:5. A-28. The policy “clearly states that if you are involved in criminal activity you will be evicted.” TR88.

The 13th person on A-13 no trespass list, D.J., “had a long history of drug arrests.” TR91:3. Also, K.S., was on the Long Branch no trespass list and “has a long history of CDS arrests”. TR6:7. Lt. Johnson proffered that the justification for doing this lookup was to potentially put K.S. on the Housing Authority no trespass list. TR6:14. Lt. Johnson testified that doing a CJIS lookup for this reason was legitimate. TR6:12.

Exhibit A-13A and A-13B, are emails concerning the “no trespass list” hearing. TR25-26. Lt. Johnson testified that those emails caused him to “run a criminal history” on people. TR27:23. Exhibit A-13D, are Lt. Johnson’s handwritten notes concerning the “1-61” exhibits and A-14, is an exhibit that he believes shows that 152 of the 305 computerized criminal histories run during this period of time “contained no case number or had a CJIS or contained no information.” TR31:11. Lt. Johnson’s point was that other people failed to properly use the CJIS system and were not questioned or disciplined. TR33:20. One example he gave was a “background” investigation authorized by Sgt. Roebuck. TR38-39. Lt. Johnson referred to this entry in order to demonstrate that it is not fair for the City of Long Branch to charge him “... for violating a policy that I signed saying that every lookup will have a case number.” TR40:18. Also, Lt. Johnson pointed out a lookup where the wrong purpose code was inserted. TR42. He explained that valid lookup code was “C” for criminal matters, “J” for criminal justice employment, “X” for expungement and “F” for firearms. TR43:5. The witness testified that twenty-six Officers had authorized CCH lookups without a companion case number. TR44-45.

Lt. Johnson asserted that it was permissible for him to do a CCH lookup on someone who had filed an appeal to be removed from the no trespass list. TR65-66. “Q: But you were gathering information [re-evictions] does that mean you would also be running criminal histories? A: Correct.” TR67:5. Lt. Johnson went on to state that criminal histories were justified for persons who were being barred from Housing Authority property. TR69. Lt. Johnson explained that the “one-strike policy provided

him authority for running criminal history or CCH checks because "I need to run criminal histories in the performance of my job to do my job. I couldn't provide them with the information that they needed if I didn't have that information." TR74:21. Lt. Johnson testified that the names for which he ran criminal histories would come to him from telephone calls, newspaper clippings, emails from the Housing Authority residents, etc. TR75:2. Also, Lt. Johnson testified that he had reason to run criminal history checks on persons on the no trespass list because, in his view, one had to have a "good reason to be put on the list." With respect to evictions, Lt. Johnson referred to Ms. B., who the Authority "was looking to evict due to criminal activity in and around her unit." TR95:3.

Exhibit A-45, concerns a "trespass sweep" and Lt. Johnson testified: "... it looks like here, there were numerous people with drug-related arrests. So, we definitely would have done criminal lookups for this." TR102:20. Also, he testified that A-47, a 2013 memo from Randy Phillips to Lt. Johnson provides justification for performing CCH lookups. Stating that "[d]epending on the matter involving the particular person that I found. If I did the IMC lookup and if he wanted to know on such and such date, they called up about J.S., what he was arrested for, what did he do, so forth and so on." TR104:7.

Lt. Johnson identified Exhibit A-48, which was advising Garrett of persons that the Long Branch Police Department had been arrested in and around Housing Authority property, and who were, accordingly, added to the trespass list. TR104:12. Lt. Johnson testified that he was asked to do this list, and that, in order to do so, he would have to "do the research, follow up and maybe run a criminal history or whatever, because all that may be in the file could be limited information, meaning the IMC file." TR104:11.

Lt. Johnson identified Exhibit A-50, which was a letter concerning a particular Housing Authority property seeking permission of the Police Department "to stop and question anybody that was around that property that didn't belong there." TR105:17. Remarkably, Lt. Johnson stated that this letter gave him justification to run a criminal history background check! TR106:2. Lt. Johnson testified with respect to two evictions,

and stated that these were examples “of why I may run a criminal history on somebody”. TR108:2.

On cross-examination, Lt. Johnson testified that the lookups he ordered to be done while he was Long Branch Housing Authority liaison were for a purpose related to Long Branch Housing Authority operations. TR6:14. When asked why he had denied doing so in his Garrity Statement R-4, he claimed that he was “mistaken”. TR7:5. In fact, he found the City’s charges against him in this case to be “ambiguous” even after he had read Lt. Shea’s Internal Affairs Report. TR16:14.

His understanding of the IMC database in Long Branch Police Department was that it was “a self-contained system within the City of Long Branch that deals with reports and things of that – records of that nature.” TR26:18. The IMC database contained only documents and information generated by the Long Branch Police Department. TR26:24. Asked if there was any information in the IMC database about someone’s arrest record compiled outside of Long Branch, Lt. Johnson agreed that the information would be contained therein and in fact said: “It could be, yes.” TR27:21. This was because an arrest report generated by a Long Branch Police Officer might make mention of a person’s prior arrest record outside of Long Branch. TR27:22. He also agreed that it was possible someone could find out information about arrests outside of Long Branch in documents contained in the IMC system without having to access the CJIS system. TR28:13.

Lt. Johnson stated that A-29, the Long Branch Housing Authority trespass policy was in existence when he became the liaison in 2003. TR30:11. He agreed that there were five grounds set forth in the policy for putting someone on the Long Branch Housing Authority no trespass list. TR31:4. He was asked if a person would have to do one of those five things to be a trespass list, the witness stated: “I wouldn’t say it’s true, I would refer to F. ‘No person should be added to the no trespass barring list without first, just cause. Said just cause will be stipulated by the executive director, director of management, or a member of the Long Branch Police Department.’ ” TR31:10. Asked if numbers one thorough five of the policy “involve conduct which occurs on or near

Authority property”, the witness responded: “I would say one through five deals more with residents and F could be non-residents.” TR31:22. The witness agreed that the phrase “on or near Housing Authority property” is contained in paragraphs one through four of the policy. TR33:5. Asked about number five, which was damage to Authority property, the witness would not agree that a person had to be on Housing Authority property to cause damage. TR34:7.

He was asked to explain the “warning” language in the “no trespass” policy, Lt. Johnson stated that the warning consists of being told that you are on the no trespass list, and, if you violate the policy and are on Housing Authority property, despite being on the trespass list, you are subject to criminal prosecution. TR36:11. Asked if numbers one through five of the policy only describe conduct in Long Branch the witness would not agree to that either. TR36:16. However, when confronted with the fact that each of the five provisions states that the conduct which results being on the no trespass list must be “on or near” Housing Authority property meant that the misconduct has to occur in Long Branch, the witness then contradictorily stated: “I agree with that statement.” TR37:3; 13. The witness then stated that a person cannot be on a no trespass list for an allegation, only for convictions. TR37:25. The witness was then asked if the no trespass list only included persons convicted of crimes in Long Branch, and replied (again contradictorily): “No, I’m not saying that.” TR38:7. When asked to explain the discrepancy, he stated “IMC is only as good as the information being put into it” and that “[w]hat one officer may find important, another officer may not.” TR39:10; 21. The witness went on to state that he did the CCH checks because he wanted to see if the person involved had “[a] certified conviction.” TR40:11.

Lt. Johnson stated that it was not enough for a person to have allegedly engaged in misconduct to get on the no trespass list (TR40:25) and it was not necessary to have a conviction in order for someone to be put on the no trespass list. TR41:6.

When asked about the lookups he requested while Housing Authority liaison that Lt. Shea investigated and whether he performed the CCH lookups and did not do any IMC lookups, the witness replied: “No, I may have did a multitude of things, I may have

re-dug out a criminal complaint, I may have dug out a DMV lookup, I may have dug out the IMC, I may have had a multitude.” TR42:13. The witness agreed that, with respect to an IMC lookup, he could do this himself or he could have a dispatcher do it. TR42:20. Lt. Johnson agreed that the information in the Long Branch IMC system can be accessed by any Long Branch Police Officer at any time. TR43:12. He agreed that this was not true for the CCH lookup, which is an “investigative tool”. TR43:17. The witness also agreed that access to the CCH system was limited to “criminal justice purposes.” TR43:25. He further agreed that these lookups were done by dispatchers, not himself. TR44:3. Lt. Johnson specifically recalled doing IMC lookups on his own for Housing Authority issues. TR44.

Lt. Johnson was asked if the only way to find out about a person’s convictions was to go through the CCH system, and answered that question in the negative. TR44:22. The witness immediately thereafter agreed, however, that he could not find out about criminal convictions in Long Branch Municipal Court by looking at the IMC system. TR46:18. Lt. Johnson then stated, however, that there could be information about prior convictions because a police officer investigating the current crime the person had been charged with might have conducted a CCH lookup. TR49:16. Lt. Johnson testified that he may have received information about prior convictions from another source, such as a parole officer. TR51:4.

Lt. Johnson testified that he “could have” put persons on a no trespass list for which he did not order CCH lookups. TR53:17. He explained that “I used a multitude of sources to justify someone being placed on the no trespass list.” TR54:9. He did not recall whether he informed Tyrone Garrett that he was performing CCH lookups as a component of his recommending people to be placed on the no trespass list. TR55:8. Nor does he recall telling Garrett that he was doing IMC lookups for the same purpose. TR55:15. He does not believe he showed Garrett any “IMC” documents for anyone on the no trespass list. TR55:20. Asked several times whether he had any facts to dispute the assertion that only persons who engaged in misconduct on or near Housing Authority property were placed on the no trespass list, Lt. Johnson eventually answered that he did not have any facts to dispute this statement. TR58:2.

Lt. Johnson asserted that Section F of the “no trespass” policy provided additional “cause” for being placed on the list on top of the five provisions set forth in the policy. TR60:4. Asked if he recalled anyone going on the no trespass list for being arrested for drugs outside the City of Long Branch, Lt. Johnson replied: “I couldn’t tell you.” TR60:17. He was asked about the fifty-five persons for which he requested lookups, each of which he went through in incredible detail in his exhibit books, and whether any of these persons were arrested outside the City of Long Branch, Lt. Johnson replied: “I would say probably 92 to 95% of those crimes, if not more, where – these were things that were done in the City of Long Branch.” TR61:1. When asked if any of the crimes for which these lookups were done occurred outside of Long Branch, Lt. Johnson answered: “I’m not sure.” TR61:8.

The witness defined just cause as “the totality of the circumstances with everything involved.” TR63:16. Lt. Johnson recalled that there may have been ten or fifteen appeals of persons to get off the no trespass list in the years he was the Housing Authority liaison. TR63:25. The witness stated he didn’t have the appellant’s criminal history background with him at these hearings, but had a “synopsis” of the history, which he would then summarize and present at the hearing. TR64:8; 11. Lt. Johnson testified that he was given the CCH reports in paper form, but may have looked at the computer screen as the dispatcher did the CCH lookup. TR65. Lt. Johnson testified that he made notes of these CCH “summaries”, but did not save any of these notes “[b]ecause I did not find it relative.” TR68:4. He was asked several times whether he had written or “summarized” the appellant’s criminal history on the appeal form, the witness finally answered: “[s]ome of them I did, some of them I didn’t.” TR72:15. He did not know where the appeal forms were and he did not keep copies of those them. TR73:23; 25. Although Lt. Johnson initially stated he was not the “Prosecutor”, he agreed that he was at these hearings “presenting evidence to support the recommendation that you should be on the no trespass list ...”. TR75:13.

Lt. Johnson explained how a request to put someone on a no trespass list originally came about. TR79:3. It could occur because Lt. Johnson saw a police report that indicated someone had been involved in alleged criminal activity on or near

Housing Authority property. TR79:21. Asked how he would proceed at that point, Lt. Johnson gave a number of answers which, when summarized, seemed to amount to "it depends." TR80. He stated that he may have started with the IMC system and looked at reports contained therein and perhaps interviewed the arresting officer about the episode which precipitated the criminal complaint. TR81:4. Lt. Johnson then reiterated that he would destroy his notes after the "no trespass" appeal hearing. TR85:8. He stated that he may also have listed criminal convictions or arrests on the appeal form. TR85:11. That form would be kept by the Housing Authority. TR86:3.

Lt. Johnson agreed that he was aware nationally of challenges to no trespass lists for housing authorities. TR90:9. Asked if some of the CCH lookups were for evictions, and the witness responded: "[t]hey could have been, I'm not sure." TR91:16.

Lt. Johnson was also asked about the CCH lookups he did for residents, and whether any of those were for purposes of eviction. TR91:24. Lt. Johnson was then asked to confirm that it wouldn't be for a "no trespass" reason that he did the CCH lookups for residents, and eventually agreed that made no sense. TR92. Asked if he recalled any Housing Authority official requesting that he do CCH lookups for purposes of evictions of Housing Authority residents, Lt. Johnson answered that he did not so recall. TR92:24. He also did not recall Mr. Garrett ever asking him to run a CCH for an applicant seeking to obtain housing. TR93:4. The witness agreed that applicants (as opposed to "trespassers") could be excluded for criminal conduct outside of Long Branch. TR95:9. In his view, it would justify performing a CCH lookup. TR95:14. He stated that he did not know how the Authority did these lookups, because "it wasn't my job" (TR95:20) and did not know if applicants had to sign a release in order to allow the Authority to do the CCH lookups. TR96L4.

Lt. Johnson agreed that, for purposes of eviction, a resident could engage in criminal conduct outside of Long Branch which might require a CCH lookup. TR97:7. Asked again if any of the fifty-five CCH lookups he reviewed from Lt. Shea's IA report involved evictions, and Lt. Johnson replied: "I would have to go back over them." TR97:22.

Lt. Johnson was asked whether any of these fifty-five lookups were for evictions (and after having confirmed that Lt. Johnson himself created the exhibit books in conjunction with his attorney's office), the witness continued to state that some of those fifty-five lookups "could have been" for eviction purposes. TR100:5; 14.

Thereafter Lt. Johnson was asked whether he ever request a CCH lookup for a victim in a domestic violence situation. TR101-103. He was then referred to R-3, at page 10 (Lt. Shea's IA report) and the entry for B.W. TR104. Lt. Johnson testified that he did a CCH lookup because B.W. was involved in a domestic dispute with his wife and was arrested. TR108:15. B.W. had not been arrested at the scene but was arrested for a prior incident, four months prior to the domestic violence incident. TR108:21. Lt. Johnson agreed that he had run a CCH check for B.W. TR111:21. Lt. Johnson testified that he was asked to investigate whether B.W. lived at P. Street or J. Avenue, TR112:17, and that he did the CCH lookup because of this address issue. TR113:2. Lt. Johnson then testified that he did not run this CCH lookup because of the address issue (TR113:13 but rather because B.W. "gave one address but as a previous address, he gave a Housing Authority address. TR114:12.

Q: And is it your testimony that you're allowed to do a CCH lookup over a residency question for a Housing Authority purpose?

A: If they're going to move for eviction.

Q: So you think that's the law, you think you're allowed to do a CCH criminal history background check form someone because they may be illegally residing in the Housing Authority? That's what you -- that's your understanding of this?

A: And to --

Q: Could you answer my question, then you could explain, yes or no? Is that your understanding?

A: Yes.

TR114:14-TR115:1.

Lt. Johnson then provided a second potential rationale for doing this lookup stating that B.W. “was involved in a domestic violence incident and his wife was an employee and the Housing Authority and wanted it investigated.” TR117:23. Lt. Johnson testified that the Authority did not ask him to do a criminal history background lookup in this matter, TR118:6, but that he did this on his own as “part of my investigation.” TR118:10. He stated that that was not part of his duties as liaison to conduct a criminal background check for employees or prospective employees of the Housing Authority. TR119:15. He was asked why he did a CCH lookup in this case when anything he wanted to know about the domestic violence incident could have been obtained by looking up an IMC, he replied that it “[d]epends on what I was looking for.” TR120:10. Regarding the CCH lookup for B.W., Lt. Johnson finally stated that “[w]hat I said to you is that there are a multitude of reasons why I would run a criminal history.” TR123:1.

Lt. Johnson was given a chance to clarify his testimony and stated:

A: No, what I would like for you to do is not take a snippet of what I say and try to hone in on it. What I said is that he – if you look at the police report, his wife was accused of stabbing him, or using a weapon, or he was. So, I may have been doing an investigation, she may have been terminated as an employee, the Housing Authority can’t come to the police department and do the investigation. That’s why I believe I was entrusted with the position and the title.”

TR123:21-TR124:5.

The witness did agree that it would not be legal for him to do a CCH lookup on B.W. (the husband) because the Authority was worried about whether his wife should continue to be employed by the Authority. TR127:3. He was then asked if it was legal for him to do a CCH lookup for B.W. to be evicted from Housing Authority property, and he testified that yes this was a legitimate criminal justice purpose. TR127:7; 9; 11. Lt. Johnson believes that this is criminal because B.W. might have “violated the one strike policy”. TR127:14. Lt. Johnson testified that an eviction procedure is a criminal matter. TR127-128.

He testified that he ran criminal history checks at the Long Branch Housing Authority when he was the liaison, Lt. Johnson again responded: "... there was a multitude of reasons why I ran criminal histories." TR137:1. Sometimes he ran them just to see if someone should be on the no trespass list. TR137:9. Lt. Johnson reiterated that he did the run to put them on the no trespass list or for eviction. TR137:25. It was done for "quality of life issues and to get drugs out of the projects." TR139:11. The witness was then asked if he had ever done a CCH lookup for someone who was already on the no trespass list, and agreed that he had done so. TR140:9. Lt. Johnson testified that he did so because he wanted to see if they perhaps should have been taken off the list. TR140:19. Lt. Johnson's answers on this to this questioning was "could have been." TR140:21. He then testified that he also did the lookups to see if they should stay on the list. TR142:7. However, he never took someone's name off the no trespass list. TR142:21.

Lt. Johnson agreed that, for anyone arrested in the City of Long Branch, records concerning said arrest would be accessible through the Long Branch Police Department IMC system. TR6:5. The only exception would be that if someone was giving a "desk" appearance for disorderly person offense. TR6:17. Other than that exception, the witness agreed that any criminal involvement of a citizen within the environment of the City of Long Branch would be accessible in the Long Branch Police Department IMC system. TR7:5. Lt. Johnson testified that the IMC system provides information about arrests, etc., of residents of Long Branch, but not about criminal convictions. TR7:18.

The witness is not aware of any legal restrictions imposed by the State or Federal government with respect to a police officer's access to the Long Branch Police Department IMC system. TR8:7. Lt. Johnson agreed that a police officer can access the IMC system on his or her own, without any assistance or help from a dispatcher. TR8:18; 21. The only thing a police officer would need to do to gain this access would be a password. TR9:5.

Lt. Johnson stated that he never accessed the CJIS system, and did not know how to do it. TR9:21. He did, however, have a CJIS password. TR9:25. Lt. Johnson

accessed the CJIS system via a Long Branch dispatcher. TR10:4. Lt. Johnson did not give his own password for the CJIS access; rather, the dispatcher would use his or her own password. TR10:7; 9.

Lt. Johnson understood that there were restrictions placed on a police officer's right of access to the CJIS system: "... you were supposed to only use it for criminal justice purposes, not for personal use." TR11:5. Lt. Johnson testified that his understanding of "criminal justice purpose" was "[i]f I'm conducting an investigation or anything I'm using in the course of the duties – my everyday duties I should say." TR11:10. Lt. Johnson stated that a criminal justice investigation was one example of a criminal justice purpose. TR13:3. Asked if his use of the word "investigation" meant investigation into violation of criminal laws, the witness replied: "[i]t could be, but it isn't limited to that." TR13:16. He again equated a "criminal justice purpose" with "the performance of my duties." TR13:20.

Lt. Johnson was asked if he had the authority to investigate criminal convictions for purposes of admission into the Housing Authority and eviction from said Housing Authority, and he responded that "[n]o, they did their own admission." TR15:25. Lt. Johnson agreed that he never requested any CJIS lookups for applicants for Housing Authority apartments. TR16. Lt. Johnson testified that he believed there was a legitimate "criminal justice purpose" to look up the criminal history of "visitor" to the Housing Authority property. TR16-17. Lt. Johnson stated that, for such "visitor" investigations, it was not sufficient for him to access the Long Branch Police Department IMC system. TR17:10.

He never determined, on his own as Housing Authority liaison, to do CJIS lookups on persons who were visiting the Housing Authority property. TR19:12; 14. He then stated affirmatively that, for every single CJIS lookup he did for visitors, he spoke with someone at the Housing Authority before requesting such CJIS lookups. TR19:19. However, Lt. Johnson testified that there were times when he did request CJIS lookups based upon something that "I witnessed." TR20:14; 17.

He arrested “plenty of people” as Housing Authority liaison. TR21:4. He then clarified that some of the persons that he did CJIS lookups for were for persons he had arrested before he became Housing Authority liaison, and there are other persons that he arrested while he was working as the liaison. TR21:22; 25. When asked which of the “fifty-five” in Lt. Shea’s IA investigation report Lt. Johnson had arrested as Housing Authority liaison, the witness replied, “I’m not privy to give you that information ... [b]ecause I would have to run through IMC with all those names, and print out every single one.” TR22:3. The witness was then asked if Lt. Shea had not already done that, and testified that there were no active investigations for any of the fifty-five, and Lt. Johnson agreed that he had heard Shea testify that. TR22:15. He was then asked if he had the legal authority to do a CJIS lookup in 2004, for someone he had arrested in 2001, “[t]he mere fact that they got arrested in 2001, or you arrested them, did not give you the authority to do a CJIS lookup in 2004”. He then answered: “That’s not true.” (TR23:24) stating that he had authority “if that particular individual was going to be barred”. TR24:11. Putting a person on the “no trespass” list is a “criminal justice purpose” (TR24:14; 17) “[b]ased on the totality of things ... [m]y job is to make sure that there was a safe and secure environment.” TR24:20.

He understood that he was not permitted to do a CJIS lookup for somebody on Housing Authority property whom he had arrested three years ago. TR25:9. He explained that he could only do this “[i]f there’s an active – if there’s a criminal justice purposes.” TR25:14. To do a lookup on someone simply because they had been arrested (or even convicted) three years ago, would be a “violation” of the CJIS legal requirements. TR25:25; TR26:1. Only if they were engaged in current alleged criminal activity could you do a search. TR27:11; 14.

Lt. Johnson testified that he initiated a criminal investigation for some of the fifty-five persons on the list. TR27:17. Asked which ones, the witness replied: “[y]ou’re asking me something ten years ago.” TR27:19. When confronted with the fact that Lt. Shea testified his investigation revealed none of the fifty-five persons and had active criminal investigations, Lt. Johnson replied: “Okay and I would submit to you that every criminal investigation that was conducted by the Long – Branch Police Department was

not documented. And if you're asking me if I documented every single inquiry, no. Nor does every other police officer." TR27-28. Putting someone on the "no trespass" list was a criminal justice purpose and allows him to conduct a CJIS lookup. TR39:6.

Lt. Johnson was asked about one A.H., who he testified that he personally arrested as Housing Authority liaison. TR40:19. He was referred to Exhibit R-3, Lt. Shea's investigative report, which showed that the CJIS lookup was ordered by Lt. Johnson nine months after he had been arrested. TR42. Asked if recalled when he arrested A.H. and/or when he did order the CJIS lookup for him, Lt. Johnson testified that he did not recall either of those events. TR43:23; 25. He testified, however, that he conducted a CJIS lookup to obtain A.H.'s "certified convictions" for the purpose of placing him on the no trespass list. TR44:6. The witness was then shown Exhibit A-10, which showed that A.H. was on the no trespass list as of June 2005 (Lt. Johnson ordered the CJIS look-up for A.H. in May of 2007). TR44:13. Lt. Johnson offered no explanation as to why A.H. would not have been placed on the no trespass list at the time of his arrest (as opposed to years later). TR45:11. Lt. Johnson stated that it was "not enough" A.H. had been arrested on Long Branch Housing Authority property to get him on the no trespass list. TR45:23.

Lt. Johnson did not recall testifying that he actually typed up the "no trespass" list. TR50:10. The witness agreed that A.H. was not on the no trespass list as of September 4, 2003 (as per A-34B). TR51:9. He was on the no trespass list as of June 24, 2005. TR51:25. A.H. was also on the list for 2006 and 2007. TR52:10. Lt. Johnson was then asked what possible justification there could be for doing a CJIS lookup on A.H. in 2007, when he had been on the no trespass list for the prior two years. TR52:16. In response, Lt. Johnson first said "[t]here could be several reasons." Then stated "[b]ased on the information I have here, I don't know." TR52:21; 24. Asked if there were any of the fifty-five persons on Lt. Shea's IA report list for whom arrests had occurred around the same time that they were placed on the no trespass list, the witness replied: "I never claimed that the lookups were done at the same time the arrests were done." TR53:6. The witness then (quite remarkably) testified that one reason he may have done a CJIS lookup was to find out an address for the person so

that a “no trespass list letter” could be sent to the person. TR55:13. In fact, Lt. Johnson testified that it was legal for him to have done so. TR56:7. Lt. Johnson stated that one could obtain a person’s address from a CJIS lookup, but that would be “[w]here they were arrested and what address they used”. TR58:15.

The witness provided a second reason he would do a CJIS lookup: “[t]he gentleman was arrested and we wanted to see if he was illegally living there and we wanted to see, during his arrest time, if he had ever used that address before.” TR59:22. He went on to say: “... one reason I would do that [do the CJIS lookup] would be to prove what address he might have used in the past.” TR60:6. Another reason Lt. Johnson gave for the CJIS lookup was to ascertain the date of their convictions. TR60:16. Another reason the witness gave was: “The location of the crime. If it happened actually – it may not have happened at Long Branch Housing Authority. It could have happened in Asbury Park, it could have happened in Florida or at a housing authority anyplace. TR61:11.

The witness agreed that persons put on the no trespass list only get one “notice” of that action – when they are originally put on the list. They do not get an annual notice that they will continue to be on the list thereafter. TR63-64. Asked again if Mr. A.H. was on the no trespass list in 2005, why Lt. Johnson had done a CJIS lookup for A.H. in 2007, after he had already been on the no trespass list for two years prior, the witness responded: “I’m not privy to that.” TR64:8. The witness was then asked if he agreed that there would be no reason to do a CJIS lookup for inclusion of someone on the no trespass list if they are already on the list (unless they filed an appeal), the witness responded: “Wrong.” TR65:14. Lt. Johnson then testified that he might have been running A.H. to see if he should actually be taken “off” the list. TR67:8. Asked if he ever actually did this, the witness responded: “I can’t tell you.”, and “I don’t recall”. TR67:12; 15.

Asked about looking up someone’s address, and whether, if they live in Long Branch, he simply could not do that through IMC, the witness agreed that he could have done so. TR70:14. Asked if he specifically recalled any of the fifty-five CJIS lookups

he ordered to ascertain a person's addresses, the witness answered that some of them "may" have been done for this reason. TR71:5. Lt. Johnson agreed, however, that before he even thought about using the CJIS to find someone's address, he would have first done the driver's abstract and second an IMC lookup. TR71:14. Lt. Johnson went on to describe the case of the domestic violence victim, who may have used a Long Branch Housing Authority address on an arrest report, when he wasn't listed on a lease. TR73:12. Doing the CJIS lookup to check addresses was, in Lt. Johnson's mind, part of his investigation, on behalf of the Housing Authority, to ascertain whether the husband (domestic violence victim) was not legally living at a housing authority address. TR75:1. If that were the case, "[t]hat's a violation of their lease." TR75:9. Lt. Johnson agreed that he did not investigate the domestic violence incident, but that he might have investigated the incident to see if she should be evicted for the domestic violence episode or because she improperly allowed her husband to live on Housing Authority property. TR76. Lt. Johnson did not know if there was any "outcome" to this, in terms of the Authority either evicting or attempting to evict Sarah (a fictional name). TR77:10. When asked if it would have been inappropriate to do a CJIS lookup at the beginning to check someone's address, the witness replied: "No, because maybe the person doesn't have a driver's license." TR77:23. He refused to agree that, given the limited legal nature of access to CJIS information, a police officer such as Lt. Johnson should have done a driver's abstract and IMC search before going to CJIS. TR78:4; 8.

Lt. Johnson had never seen R-19, N.J.S.A. 53:1-20.6, which concerns dissemination of criminal history record background information (TR6:11) nor R-20, the definition of "criminal justice purpose" promulgated by the New Jersey State Police at N.J.A.C. 13:59-1.1. TR8:7. TR8:9. Lt. Johnson did not agree that the definition applied to access to CJIS records. TR8:13. The witness was then read the definition of "criminal justice purpose" for purposes of access to criminal history background records: "[t]he detection, apprehension, detention, pretrial and post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of the accused persons or criminal offenders." TR9:6. After reading the definition (over objection of Lt. Johnson's counsel), the witness was asked if he agreed with that

definition "in terms of your ability as a police officer in New Jersey to access CJIS records". The witness then replied in the affirmative. TR10:20.

The witness was then shown Exhibit R-34, which consists of various "no trespass" lists. TR11:3. Lt. Johnson was asked what "List A" means (which was one of the lists in the exhibit), and replied that he did not know. TR12:16. Lt. Johnson testified that he helped create the "no trespass" list. TR13:23. He also agreed that, at least for some of the lookups for which the City was disciplining him for, he did those lookups "in order to determine whether or not people should be on the no trespass list". TR14:3. The witness was again asked why he didn't do hundreds of CJIS lookups for persons on the no trespass list for a period of more than five years (TR14:4) and his answer could best be described as nonresponsive. TR14:12. The witness was then asked if he had placed anyone on the no trespass list for which a CJIS lookup was not performed; he replied "Couldn't tell you yes or no". TR15:3.

Lt. Johnson was referred to entries in A-13 and R-3 for Mr. T., as well as the language of A-3 the City of Long Branch which provided "no reports" regarding H.T. TR16:20. When asked if that meant that there was no information on H.T., he agreed. TR17:5. He was then asked if he had any reason to doubt the veracity that there was "no information" in the IMC system for H.T., Lt. Johnson answered "yes ... [because] I don't believe anything he has in his report." TR17:10. "I believe he omitted things that would benefit the City of Long Branch". TR17:17. He was asked if that meant that Lt. Shea had looked up H.T., found that he had been arrested for crack cocaine distribution in Long Branch, but intentionally did not include it in his report, Lt. Johnson provided the following answer:

What I'm saying to you is that, throughout these proceedings, we have shown the [sic] Lieutenant Shea has done a one-sided investigation, so why would I believe that he would do anything to help me or to show that what he did? I had to create R-13 from his report and the mast name index that was provided to me, and there is [sic] several names on this list that there were no reports provided or no information.

TR17:23.

Lt. Johnson explained it was not the case that “no reports existed”, he believes that H.T. had a criminal history. Asked if that criminal history was in the City of Long Branch, Lt. Johnson replied that “I don’t know where it is ...”. TR18:14. Asked if he agreed that there would be no information in Long Branch’s IMC system unless the person’s criminal history occurred in Long Branch, Lt. Johnson stated: “[n]ot necessarily”. TR18:17. It was possible that there might be written information in a police report in the City of Long Branch which could conceivably refer to criminal activity outside the City. TR19:1. When asked why, if there was no report generated by Long Branch Police Officer for H.T. for the City of Long Branch, there could be no information in the IMC system about H.T., Lt. Johnson disagreed stating that H.T. “could have been a victim ... could have been a Megan’s Law registrar ...”. TR19:10. Lt. Johnson was then asked why he did a CJIS lookup for H.T., and replied: “[c]an’t tell you why ... no”. TR19:20.

Lt. Johnson explained that H.T. was a former employee of the Housing Authority, and that he would do a CJIS lookup for Housing Authority employees “[i]f they – if a request was made of me by the Housing Authority.” TR21:7. Lt. Johnson was then asked if doing a criminal history background check on someone because they worked for the Long Branch Housing Authority satisfied the statutory “criminal justice purpose”, and he replied that it did not. TR23:19. The witness was then asked several times how a lookup could be justified if it did not satisfy a “criminal justice purpose” and he answered that “I would say that it’s not – not limited to just those [criminal justice purposes as set forth in the statute]”. TR26:13. “[A] missing or endangered person” is not covered in the statutory definition either. TR26:17. The witness testified that doing a criminal history background check for a missing person would meet the definition of the “criminal justice purpose”. TR27:13.

Lt. Johnson was asked why he did a CJIS lookup for Mr. M., number fifty on the no trespass list (A-34A) and Lt. Johnson answered that he did not know why he did the lookup on Mr. M. TR41:10. In fact, he did not recall doing a CJIS lookup on anyone, and did not remember that person from the trespass list. TR41:15.

Lt. Johnson was questioned on why he did criminal history background checks on B. and M.N., both had been involved in a fight with B. as the suspect and M.N. as the victim. TR55:7. Lt. Johnson did not recall anything about the fight between the two parties (TR56:14) and explained that he did lookups on them “[b]ecause the Housing Authority requested information concerning these individuals.” TR55:25; TR56:1. He said the Housing Authority had a right to request this information and he had a right to do the lookup based on the request. TR56:4. When asked if it was enough for B. to get on the no trespass list if he assaulted a Section 8 resident, Lt. Johnson answered: “No”. TR56:14. Lt. Johnson, apparently seeking to explain why he did a lookup on B. and found out about a domestic violence incident in which he was the perpetrator, then inexplicably failed to put B. on the no trespass list, characterized the B. incident as his having being “involved” in a fight. TR57:1. Lt. Johnson then denied that the “fight” was a domestic violence incident, but was then shown Exhibit A-13, which stated that the incident was a “DVA”, which he testified was domestic violence. TR57. The witness then testified that he had made a mistake, and that the B. incident was a domestic violence incident. TR59:1. Lt. Johnson testified that he did the lookup for M.N. “[b]ecause he was involved in the incident”. TR60:9. Lt. Johnson agreed that M.N.’s name was not placed on any of the Exhibit A-34 “no trespass” lists. TR63:2.

Lt. Johnson was asked the lookup of C.W., who is only listed in the Long Branch IMC system as the victim of a theft. TR65-66. His answer was unresponsive. TR67:20.

Lt. Johnson was then asked again about running C.W., for whom the only entry in the Long Branch IMC system is a victim of a crime, and how he could justify a CJIS search for C.W. for a narcotics investigation. TR69:8. In response, Lt. Johnson questioned whether or not he was the person who made this request for a CJIS lookup. TR70:5. Asked about the lookup of D.A., Lt. Johnson said he did so because she had been arrested for endangering the welfare of a child. TR70:21. Asked whether, however, someone else was doing the investigation into that allegation, Lt. Johnson replied “No, you’re wrong.” TR71:3. He then immediately agreed that he didn’t conduct a criminal investigation or write any reports about the child endangerment issue.

TR71:7. Lt. Johnson then speculated that the Housing Authority may have asked for the criminal history background check after D.A.'s arrest "... to see if she was convicted of this or whatever else, because that could jeopardize her lease and have her terminated." TR71:18. Lt. Johnson then testified (for the first time), that CJIS lookups may have been done to find out not only about convictions but arrests. TR72:10. Asked whether the arrest information couldn't have been more easily obtained through the Long Branch IMC system, Lt. Johnson said no, then clarified that this would only work if the arrest had taken place in Long Branch. TR72:14; 20. Asked if that was in fact true for D.A., Lt. Johnson replied "I'm not – I don't know. I didn't see the arrest report." TR72:22. He was then referred to a document which showed that she was arrested at G. Ct.; at that point, Lt. Johnson had agreed that she had been arrested in Long Branch. TR73:3. Asked again why information about the arrest could not have been and should not have been accessed through the IMC system, Lt. Johnson replied that doing so would have only revealed "part of the information". TR73:6. Asked if he had done the CJIS lookup despite the fact that he could have found everything he needed to know about the arrest in the IMC system, to find out if the woman had a prior criminal history, Lt. Johnson answered: "[i]t could have been". TR73:12. Lt. Johnson stated he would have done such a lookup "[i]f the Housing Authority wanted to ascertain if she had a criminal history." TR73:15.

Lt. Johnson was then asked the following questions and provided the following answers:

Q: And you think they had the right to ask that any time they want, under your understanding of how this works? In the CJIS system? They can ask, anytime they want, and you would do it and that would be fine?

A: Based on the definition for criminal justice purposes, yes.

Q: And what was the criminal justice purpose in the Housing Authority wanting to know about whether she had a prior criminal history?

A: I would say detection.

Q: Detection of what?

A: If she was a convicted criminal. What if she was a sex offender?

TR73:17 – TR74:3.

Lt. Johnson was then asked if he was saying that the Housing Authority requested the lookup after the woman had been arrested in Long Branch because, based upon the arrest, the Housing Authority wanted to find out if she had been convicted of some other offense, and replied: “[c]ould have been.” TR74:14. Asked what he meant by “could have been”, Lt. Johnson testified that he was just thinking that, and had no independent recollection thereof. TR74.

Lt. Johnson was then asked about J.S., whose lookup was done in December 2014, but who had been arrested in 2005 and 2006. TR74:20. Lt. Johnson was asked what he wrote in his notes concerning the Shea report that the City had not produced arrest records from 2005 or 2006 for a lookup that was done more than two years prior. TR75:21. Lt. Johnson disagreed with that conclusion; confronted again with the incongruity of the point, he then agreed that it made no sense for the City to provide arrest reports after the CJIS lookup was done, because subsequent arrests could not possibly serve as a justification for a previous CJIS lookup. TR76:24.

Lt. Johnson was then asked about an incident in July of 2004, in which J.S. was listed as a “domestic violence victim”; Lt. Johnson clarified that J.S. may not have been a victim but a perpetrator. TR77. Asked what the justification was for doing a lookup in December for an arrest that took place in July, Lt. Johnson replied: “[b]ecause that may have been when it finally made its way to my desk from the Housing Authority”. TR77:24. Asked why J.S. had not been on a no trespass list, Lt. Johnson replied that he “[m]ay not have met the qualifications.” TR79:23. Asked how being accused of beating up a resident was not enough to get a person on the no trespass list, Lt. Johnson then shifted gears again and sought to place all responsibility on the Housing Authority: “All I did was facilitate the information to the Housing Authority. They made the ultimate decision.” TR80:1. He then stated that he did the CJIS lookups for them “[w]henever they requested.” TR80:9.

Lt. Johnson was then referred to the R. lookup from R-3. TR80:10. Lt. Johnson did the lookup to “justify his criminal history to the Housing Authority”. TR81:19. Lt. Johnson was again asked for the purpose of the lookup, and replied to “[m]ove for eviction for his father.” TR81:22. When asked if that eviction had occurred, Lt. Johnson replied “I was just following orders” “I provided the information. What happened after that, I couldn’t tell you, sir.” TR81:24. Lt. Johnson testified that “sometimes” he would go to the eviction proceedings if he provided information (like a CJIS lookup to the Authority). TR82:25; TR83:1. Lt. Johnson had no explanation why R. was not on any of the no trespass lists. TR83:22. He then explained that R. was on the no trespass list under the name “M.R.”. TR85:1. Lt. Johnson was then pointed to the fact that there were no entries in the IMC system until May of 2005, which was five months after Lt. Johnson authorized the CJIS lookup. TR85. He explained “that might have been when the IMC was installed.” TR85:22.

Lt. Johnson was asked about his lookup for N.G., who was arrested for a bad check not on Housing Authority property. Lt. Johnson wrote in his report that: “[a]ccused is believed to be a section 8 resident”. TR89:18. Lt. Johnson agreed that he had nothing to do with the investigation, charge, and arrest of N.G. for the bad check. TR90:9. He said the only possible justification for looking up N.G. is if she had been a Housing Authority resident. TR91:2. He did not recall her being a resident and assumed she was because he wouldn’t have done the lookup otherwise. TR91:12.

Lt. Johnson was then asked about D.J.. D.J. was already on the Long Branch Housing Authority no trespass list when the lookup was done. TR91-92. He was asked if he did the lookup to see if the man should be removed from the no trespass list, and answered “[c]ould have been.” TR92:12. Lt. Johnson stated that in order to be placed on the no trespass list, the person had to have the history of drugs or violent behavior anywhere – in Long Branch, New Jersey, or the United States. TR92:19-24. When asked if he had ever done a lookup to find out about crimes that persons might have committed other than the Housing Authority property, Lt. Johnson stated that: “[t]hat would be a reason to do a criminal history lookup.” TR93:14. He was then asked if that meant if a person convicted of a crime in 2001 was put on the no trespass list in 2005,

he said “[c]ould have been.” TR93:19. Lt. Johnson did not remember making any recommendations to put a person on the no trespass list simply based solely on a prior criminal conviction. TR94:2.

Lt. Johnson was then pointed to the H. entry. The lookup was done on January 3, 2005, yet there was not a single piece of information in the IMC system as of that date. TR94-95. Lt. Johnson readily agreed that he did not possess any facts to dispute Lt. Shea’s conclusion that there were no IMC entries for H. at the time the lookup was done. TR102-103.

Lt. Johnson was then directed to K.J., the next person on the list. Lt. Johnson refused to acknowledge that Lt. Shea was accurate in his statement regarding this lookup – “[t]he only incident that proceeded the CCH check, which happened on April 8, 2005, was an arrest for contempt, approximately seven months prior that occurred on Housing Authority property and Lt. Johnson had nothing to do with the arrest.” TR107:19. Lt. Johnson’s basis was for doing the CCH check was “[b]ecause the Housing Authority requested that information.” TR108:15. Lt. Johnson remembered Natalie Turner, asking for the lookup; however, when asked if he specifically recalled her saying so, he replied no. TR108. He did testify that he remembered “someone” at the Housing Authority to look up this person – although he did not remember who it was, he “absolutely” recalled someone requesting it. TR109:2. Lt. Johnson testified that he did not do any lookups at his own initiative, but, rather, was simply “just following orders” of the Housing Authority. TR109:21.

With respect to the Housing Authority requests, Lt. Johnson stated he would do the lookup “[i]f it was a legitimate request.” TR109:24. He then gave what Lt. Johnson asserted were “legitimate” reasons: “[t]hat they had reason to believe that this person was either living there illegally, committing crimes on the property, and they wanted to bar that person from their property.” TR110:1. Lt. Johnson testified that he thought it was legitimate for the Housing Authority to do a criminal history background check on residents for purposes of eviction. TR110:9. He also thought it was legitimate to run a criminal history background check on persons who the Authority might want to put on a

no trespass list. TR110:13. Another reason was if the Housing Authority had “reason to believe that a person was actually committing crimes on the property.” TR110:17.

On redirect, Lt. Johnson testified that the lookups in question were not done for any purpose other than Housing Authority reasons. TR140:11. Lt. Johnson believed that he had the authority to perform these lookups. TR140:22. Lt. Johnson further testified that “[i]t was my understanding that I was to cooperate with the Housing Authority, based upon the federal act.” TR144:6.

Natalie Turner

Natalie Turner (Turner) is the Assistant Executive Director at the Long Branch Housing Authority. TR148:14. Turner’s understanding of Lt. Johnson’s job as liaison was that he was the “point person for us to – to assist us with the cleaning up the area around the – the – public housing area in Long Branch.” TR150:5. When Lt. Johnson was the liaison, she was the Director of Management at the Housing Authority and Mr. Garrett was still the Director at the time, and a Mr. Phillips was the Assistant Director. TR150:25.

She recalled that Lt. Johnson was trying to “clean up” the Housing Authority property by enforcing the Authority’s “no trespass” policy. TR152:1. While Lt. Johnson was liaison, she asked him to look up individual’s criminal backgrounds in the form of criminal convictions and arrests. TR154:23. She asked Lt. Johnson to do the criminal history background check for purposes of an individual’s appeal of having been placed on the no trespass list. TR158:8. Lt. Johnson would provide Turner with summaries of the person’s criminal history background, but not the actual computer generated criminal history form. TR160:6. She understood the one strike policy to mean that “... if a resident was found to be engaging in criminal activity ... they would be evicted.” TR161:22. Lt. Johnson’s role as a Housing Authority Liaison was to provide the Housing Authority with “criminal history information” on individuals. TR163:15.

The witness confirmed that the criminal history background checks for Housing applicants were conducted by the Housing Authority without any involvement of the liaison. TR166; TR167:25. She testified that she would ask him “[i]f this person has a criminal history, if they’ve been arrested.” TR173:15. The information she received from Lt. Johnson might be used for eviction purposes or to be added to the no trespass list. TR174:8. Ms. Turner reiterated that she would ask Lt. Johnson about visitors to the Housing Authority property to see if the person “had a criminal background” or “if they’ve ever been arrested.” TR178:14; 17.

On cross-examination, she testified that she did not know what CCH, CJIS or IMC were (TR180:5; 7; 10) nor did she know the difference between an arrest report and a criminal conviction history. TR180:13. The witness testified that she was not aware of any limitations on the Housing Authority’s ability to access criminal history information, TR181:8, and never spoke to Lt. Johnson about them. TR181:14. Likewise, she was not aware of any restrictions that Lt. Johnson had as a Police Officer in terms of accessing this information. TR181:21. She had no idea if it was legal for Lt. Johnson to gather the information she was asking him to obtain. TR181-182.

She testified that a person who has a criminal conviction record anywhere in the country could be placed on the Long Branch Housing Authority no trespass list. TR182:21. The witness was then shown A-29 – the “no trespass” list (TR182:25) and testified that policy is a HUD policy. TR184:7; 11. She agreed that the five numbered paragraphs setting forth “misconduct” that can be the cause of placing someone on the no trespass list means “misconduct on or near Authority property.” TR184:23. It was her understanding that, in order to be placed on the no trespass list, the misconduct had to occur on or near Authority property. TR185:3. When asked the question again the witness provided the following response: “I – I mean, probably, I mean, I don’t know exactly where everyone that’s on that list actually committed their crime.” TR187:13.

Turner agreed that the “no trespass” policy was adopted pursuant to HUD law, TR189:5, and that the Long Branch Housing Authority had no choice but to adopt it. TR189:9. The “no trespass” policy is mandated for every single housing authority in the

United States. TR189:15. Asked if the Housing Authority in Long Branch had the legal ability to go beyond the policy in terms of creating and enforcing the no trespass list or, alternatively, the Authority had to comply with the policy because it was a HUD mandate, the witness responded: "that wouldn't have been my call." TR190:15.

Turner testified that "I don't know of anybody that was on this list that didn't violate 1 through 5." TR190:22. The witness further agreed that persons were placed on the "no trespass" based upon criminal activity, not criminal conviction. TR191:3. She agreed that the typical way that a "no trespass" inquiry began is when she went to Lt. Johnson and said "could you check and see if this person got arrested?" TR191:18: "It could've been something that I heard or something I could have seen myself." TR191:20. The witness also responded that this would have been something that actually happened on Authority property. TR191:24. She agreed that, if there wasn't police activity based upon the incident or incidents in question, the person could not be put on the no trespass list. TR192:4.

The witness has never heard of anyone being charged criminally for providing an improper address to the Housing Authority. TR196:2; 20. The witness looked at a page from Lt. Johnson's exhibit book involving B.W., and testified that she had seen a "criminal history" before. TR199:5.

On re-direct, she explained that "just cause" in the "no trespass" policy would be determined by "the Executive Director, myself at the time, or a member of the Long Branch Police Department." TR202:1.

Randy Phillips

Randy Phillips (Phillips) was hired by the Long Branch Housing Authority in 1991, and retired in June 2015. TR98:10. He was the "Drug Elimination Coordinator", and his job was to eliminate the drug problem that existed in the Long Branch Housing Authority. TR99:2.

Phillips testified that it was the Housing Opportunity Program Extension Act of 1996 that provided him "with a pathway" to push to eliminate drug distribution and use on Housing Authority property. TR105, A-60. He was involved in requesting information, including criminal background checks, from the Police Liaison. TR108:14. The purpose of this was to keep "undesirables who had a history of drug activities from becoming residents at the Authority," TR108:16, and the second reason was to "keep them off of our property." TR108:20. He testified that the information he requested would concern "arrests" (TR109:15) and that "sometimes" he was provided information about convictions, but that was not his main focus. TR109:19. Phillips testified that prior convictions might be relevant in terms of evictions of residents. Id. Any criminal conviction within five years meant that the person would not be admitted to residency in the Housing Authority. TR110:11.

Phillips explained that he wanted information about convictions anywhere in the country on "applicants". TR112:24. If the Authority learned that the applicant had a criminal record, "[w]e would deny them the entrance into the Housing Authority." TR114-115. Asked if there were any reasons other than checking on applicant's criminal background history to do a criminal lookup, the witness answered: "No." TR116:9. Phillips also testified that both the police and an outside agency did criminal background checks on applicants. TR117.

When asked if he ever spoke with any police officials about the need for background checks, the witness stated that: "I don't recall doing that. No, because we were already getting the information we needed." TR128:10.

On cross-examination, Phillips confirmed that Lt. Johnson blacked out some information on the background searches and Phillips assumed that this was done because "I guess it was information he didn't want us to see, that he blacked it out." TR130:21. When asked if he was aware of any legal limitation on the ability of police officers to obtain information about citizens by way of computer, Phillips said that he was not aware of any limitations. TR131:7. In fact, he specifically asked Lt. Johnson, to obtain approximately 300 criminal background information checks about applicants

for residency in the Long Branch Housing Authority. TR133:13. Mr. Phillips agreed that, as part of the application process, the applicants had to sign a release allowing the search to be done. TR133.

When confronted with Lt. Johnson's earlier testimony that he had never performed any lookups for Housing Authority applicants, the witness replied: "I was under the impression that when we ask for certain applicants, yea, that were looked up." TR134:7.

He understood the basis for the criminal background check would be in a situation in which "I would get some information that this person was arrested with – with drugs." TR137:14. Sometimes he would read about the arrest in the paper; TR137:16, and other times the police would tell Phillips about an arrest. TR137:20. He asserted that "eviction" searches were based on "probable cause". TR138:8.

Phillips confirmed that, in order for a person to be removed from the no trespass list, they would have to file an appeal, followed by a formal hearing. TR139:23. Mr. Phillips attended some of these hearings. TR140:8. He said conduct on or off Housing Authority property could get someone on a no trespass list. TR140-141. Phillips testified that he would only ask Lt. Johnson to do a criminal background check for persons thought by Phillips to be "known drug dealers." TR142:23.

Phillips asked Lt. Johnson to do a criminal history background check on visitors. TR145:8. However, when confronted with R-29, which set forth the five "behavioral" grounds for putting a person on the no trespass list, all of which stated on or near property of the Authority, (TR145:25) he agreed that the misconduct in question had to be on or near Authority property to justify placement of a person on a no trespass list. TR146:6. Similar to Turner, he did not know what NCIC, CJIS, or IMC stood for. TR146:7.

FINDINGS OF FACT

For testimony to be believed, it must not only come from the mouth of a

credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

The testimony of Lieutenant Thomas Shea, was especially credible and persuasive. Even from simply reading the transcripts, the testimony was clear and concise. It was obvious that Lt. Shea had concerns regarding the "lookups" Lt. Johnson performed and he had no axe to grind. Likewise, was the testimony of Natalie Turner and Randy Phillips. It was apparent that they simply wanted to do their jobs.

Lt. Johnson's testimony was also somewhat credible. His explanation on why he performed the searches was that after 9/11 he was trained by the Department of Transportation. He was appointed the safety coordinator for the Long Branch Police Department. Under that title, he was granted permission to utilize CJIS to bring the Second Baptist Church into compliance with Federal Motor Carrier Act. Lt. Johnson explained that he believed this authority was still in place and he admitted to using it again in February 2012, for the same purpose. This explanation was not

believable. It is not a lucid thought that a lieutenant with twenty years of experience believed that he still retained authority.

Also, his explanation of what constituted a “criminal justice purpose” to investigate individuals associated with the Housing Authority was even less clear and logical. I **FIND**, by a preponderance of credible evidence, that N.J.A.C. 13:59-1.1, states that “criminal justice purpose” means: 1. The detection, apprehension, detention, pretrial and post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders; 2. The hiring of persons for employment by criminal justice agencies or the granting of access to a criminal justice facility...” N.J.A.C. § 13:59-1.1 [Emphasis Added]. I **FURTHER FIND**, by a preponderance of credible evidence, the record and law supports that a CJIS search may only be performed by a police officer in New Jersey as part of a criminal investigation or to determine a criminal history background for purposes of bail. I **FURTHER FIND**, by a preponderance of credible evidence, that an officer will be in violation of the law if they perform a CJIS lookups without a “criminal justice purpose”.

I **FURTHER FIND**, that Lt. Johnson testified he performed a CJIS lookup on B. “[b]ecause I was asked to find out what happened in that particular case” [a domestic violence episode]. TR78:3. Johnson testified that he believed he was legally authorized to conduct a CJIS criminal history background lookup for any person who may have been involved in an incident on or near Authority property (or, for that matter, anywhere else in the United States). TR79. Lt. Johnson offered the same explanation for the January 2005, lookup on R.R. TR85.

I **FURTHER FIND**, that Lt. Johnson repeatedly attempted to justify lookups in order to “potentially” put persons on the Housing Authority no trespass list. TR6:14; TR25-26. He testified that it was legally permissible to do a CJIS lookup for someone who filed an appeal to be removed from the no trespass list or to gather information for evictions of Housing Authority residents. TR62-67. However, that is not a “criminal justice purpose”.

I **FURTHER FIND**, Lt. Johnson expanded his justification for CJIS lookups to in a “stop and question anybody that was around their property that didn’t belong there” (TR105:17) as well as “a purpose related to Housing Authority operations”. TR6:14.

I **FURTHER FIND**, as the Housing Authority Liaison, Lt. Johnson could not legally request a CJIS lookup for a visitor the Housing Authority to determine if the person belongs on the Authority’s “no trespass” list because creation and/or modification of the list is not an investigative “criminal justice purpose”. He continually changed his rationale and justification for the searches. That inconsistency was difficult to follow and understand. Moreover, it was not a lucid explanation. I found his efforts to explain these rationale as an attempt to “sell” his justification for the searches. It was not successful and detracted from any modicum of credibility.

LEGAL ANALYSIS AND CONCLUSIONS OF LAW

Civil service employees' rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex Cnty. Park Comm'n, 46 N.J. 138, 147 (1965). However, consistent with public policy and civil-service law, a public entity should not be burdened with an employee who fails to perform his or her duties satisfactorily or who engages in misconduct related to his or her duties. N.J.S.A. 11A:1-2(a). A civil-service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline, including removal. N.J.S.A. 11A:2-6; N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2. The general causes for such discipline are set forth in N.J.A.C. 4A:2-2.3(a).

This matter involves a major disciplinary action brought by the respondent appointing authority against the appellant. An appeal to the Merit System Board requires the OAL to conduct a hearing de novo to determine the appellant's guilt or innocence as well as the appropriate

penalty, if the charges are sustained. In re Morrison, 216 N.J. Super. 143 (App. Div. 1987). Respondent has the burden of proof and must establish by a fair preponderance of the credible evidence that appellant was guilty of the charges. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the fact alleged and generates a reliable belief that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959), overruled on other grounds, Dwyer v. Ford Motor Co., 36 N.J. 487 (1962).

The respondent sustained a charge of N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming. "Conduct Unbecoming a Public Employee" is an elastic phrase, which encompasses conduct that adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services. Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); see also In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins, supra, 152 N.J. at 555 (quoting In re Zeber, 156 A.2d 821, 825 (1959)). Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) (quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)). Suspension or removal may be justified where the misconduct occurred while the employee was off duty. Emmons, supra, 63 N.J. Super. at 140.

It is difficult to contemplate a more basic example of conduct which could destroy public respect in the delivery of governmental services than the image of a Police Lieutenant performing more than fifty-five CJIS lookups without a "criminal justice purpose" when other avenues of searching were available. I **CONCLUDE** that

appellant's actions constitute Unbecoming Conduct, and the charge of N.J.A.C. 4A:2-2.3(a)(6) is hereby **SUSTAINED**.

CONCLUSION

I **CONCLUDE** that respondent has met its burden of proof by demonstrating Lt. Johnson performed more than fifty-five CJIS lookups without a "criminal justice purpose".

I **FURTHER CONCLUDE** for the reasons set forth herein respondent has proven by a preponderance of the evidence that petitioner acted in a manner that constituted a violation of N.J.A.C. 4A:2-2.3(a)(6) Conduct Unbecoming and that charge is **SUSTAINED**. Likewise, I **CONCLUDE** for the reasons set forth herein respondent has not proven that appellant had notice of the charges in the PNDA and those charges are **DISMISSED**.

PENALTY

Where appropriate, concepts of progressive discipline involving penalties of increasing severity are used in imposing a penalty and in determining the reasonableness of a penalty. West New York v. Bock, *supra*, 38 N.J. 523-24. Factors determining the degree of discipline include the employee's prior disciplinary record and the gravity of the instant misconduct.

However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. See Henry v. Rahway State Prison, 81 N.J. 571 (1980). It is settled that the theory of progressive discipline is not a fixed and immutable rule to be followed without question. Rather, it is recognized that some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. See Carter v. Bordentown, 191 N.J. 474 (2007).

The record reflects that appellant has a significant prior disciplinary history. I somewhat agree with appellant when he argues that “if this Court were to find that some violation occurred, the reasonableness of appellant’s conduct in the course of performing what he reasonably and honestly believed were proper lookups for a lawful purpose is not egregious or offensive.” I do not agree that “remedial training or a verbal reprimand, or at most a suspension, would be far more appropriate.”

It is settled that “[t]here is no constitutional or statutory right to a government job.” State-Operated Sch. Dist. of Newark v. Gaines, 309 N.J. Super. 327, 334 (App. Div. 1998). (NOTE: Gaines had a substantial prior disciplinary history, but the case is frequently quoted as a threshold statement of civil service law.)

“In addition, there is no right or reason for a government to continue employing an incompetent and inefficient individual after a showing of inability to change.” Klusaritz v. Cape May County, 387 N.J. Super. 305, 317 (App. Div. 2006) (termination was the proper remedy for a county treasurer who couldn’t balance the books, after the auditors tried three times to show him how).

In reversing the MSB’s insistence on progressive discipline, contrary to the wishes of the appointing authority, the Klusaritz panel stated that “[t]he [MSB’s] application of progressive discipline in this context is misplaced and contrary to the public interest.” The court determined that Klusaritz’s prior record is “of no moment” because his lack of competence to perform the job rendered him unsuitable for the job and subject to termination by the county.

[In re Herrmann, 192 N.J. 19, 35-36 (2007) (citations omitted).]

Furthermore, police officers are held to a higher standard of conduct than ordinary public employees. In re Phillips, 117 N.J. 567, 576–77 (1990). Both police officers and correction officers represent “law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public.” Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966). Here, general progressive disciplinary

standards make clear that removal can be imposed. Given the high standard of conduct required, I **CONCLUDE** that the Department has demonstrated that the removal is warranted.

The record in the above case coupled with commonsense reflects inexcusable Conduct Unbecoming. Considering the record in the present matter including the appellant's disciplinary record, the nature of the job duties and the nature of the charges, I **CONCLUDE** that the respondent's action Terminating and Removing appellant was justified.

DECISION AND ORDER

I **ORDER** petitioner's appeal be **DENIED** and the charge levied against Lt. Johnson, Conduct Unbecoming be **SUSTAINED**. I **FURTHER ORDER** respondent's imposition of removal is **AFFIRMED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 23, 2017 _____

DATE



DEAN J. BUONO, ALJ

Date Received at Agency:

8/23/17

Date Mailed to Parties:

8/23/17

/vj

APPENDIX
WITNESSES

For Appellant:

Lieutenant Lyndon Johnson

For Respondent:

Lieutenant Thomas Shea

Natalie Turner

Randy Phillips

EXHIBITS

For Appellant:

- A-1 February 10, 1994, letter from Randy Phillips to F.H.
- A-2 February 28, 1996, letter from D.B. to Judge Cieri
- A-3 June 11, 2003, letter from Tyrone Garrett to W.R.
- A-4 July 30, 2004, memo from Tyrone Garrett to Natalie Turner
- A-5 July 22, 2003, letter from S.R., Esq. to W.R.
- A-6 July 29, 2003, letter from S.R., Esq. to Long Branch Police Department
- A-7 December 19, 2003, letter from Tyrone Garrett to Michael Cunningham, Esq.
- A-8 September 28, 2006, letter from Tyrone Garrett to Monmouth County Prosecutor Louis Valentin

- A-9 September 29, 2006, letter from Tyrone Garrett to Steven C. Rubin, Esq.
- A-10 June 2, 2005, letter from Tyrone Garrett to W.R.
- A-11 September 2005 Sergeant Lyndon Johnson "Official Commendation"
- A-12 2005 NAHRO National Award of Merit to Long Branch Housing Authority
- A-13 Lyndon Johnson "LBHA Criminal History Log Notes"
- A-14 Lyndon Johnson "Dissemination log notes"
- A-15 Lt. Johnson list of "LBPD Officers who ran criminal histories with no case numbers or information"
- A-16 Long Branch Housing Authority emails
- A-17 November 30, 2011, email from Tyrone Garrett to Natalie Turner
- A-18 December 11, 2003, letter from Sgt. Lyndon Johnson to K.R.
- A-19 March 31, 2004, memo from Lyndon Johnson to Randy Phillips
- A-20 July 20, 2006, memo from Lyndon Johnson to Tyrone Garrett
- A-21 Emails between LBHA and LBPD
- A-22 Sample letter re "Baring List"
- A-23 Sample Acknowledgment Form of hearing date to be allowed on Housing property

- A-24 Sample letter re "Barring Policy"
- A-25 Barring Policy Appeal Form
- A-26 LBHA Trespassing List
- A-27 LBHA "Barring" form
- A-28 Long Branch Housing Authority "One Strike and You're Out" Policy
- A-29 Long Branch Housing Authority "Vigorous Enforcement Policy Resolution and Criminal Trespassing/Barring Policy"
- A-30 **[INTENTIONALLY OMITTED]**
- A-31 April 19, 2005, Resolution re admission to Housing Authority
- A-32 August 3, 2004, "Notice to Cease" letter from Natalie Turner to R.R.
- A-33 November 21, 2003, "Notice to Quit" from Randy Phillips to V.S.
September 29, 2006, memo from Lt. Johnson (recipient unclear)
- A-34 2003-2007 inclusive Long Branch Housing Authority "No trespass" list
- A-35 September 13, 2004, memo from Tyrone Garrett to W.R. re trespass list update
- A-36 August 2, 2004, memo from Natalie Turner to Sgt. Lyndon Johnson re trespass list update
- A-37 February 4, 2000, memo from Randy Phillips to Long Branch Police Dept.
2002-2006 "One Strike Evictions"

- A-38 November 28, 2011, letter from K.K. to Lt. Johnson and P.O. Bataille
February 3, 2006, letter from K.K. to Lt. Johnson
- A-39 2006 Blank "Memorandum of Understanding" between LBHA and LBPD
- A-40 February 15, 2005, memo from K.G. to Tyrone Garrett
- A-41 Long Branch Housing Authority "Vehicle" form
A-42 Blank letter from LBPD to vehicle owner
- A-43 May 2, 2000, memo from Lt. Johnson to Randy Phillips
- A-44 July 20, 2003, memo from Lt. Johnson to Tyrone Garrett
- A-45 July 28, 2003, memo from Lt. Johnson to Tyrone Garrett
- A-46 September 3, 2003, memo from Lt. Johnson to Tyrone Garrett
- A-47 September 19, 2003, memo from Lt. Johnson to Randy Phillips
- A-48 September 5, 2003, memo from Lt. Johnson to Tyrone Garrett
- A-49 October 26, 2003, memo from Lt. Johnson to Lt. G.H.
- A-50 September 8, 1997, letter from C.T. to D.B.
- A-51 August 26, 2003, letter from K.K. to Lt. Johnson
- A-52 October 13, 2007, news article re Long Branch Housing Authority eviction
- A-53 2006 "Public Housing Safety Initiative" article

- A-54 April 25, 1996, letter from L and C. T. to LBPD
- A-55 September 18, 1996, letter from T.Y. to Lt. Johnson
- A-56 May 3, 2000, letter from G and E. T. to LBPD
- A-57 October 26, 2003, letter of complaint from Rockwell Avenue homeowners to the City of Long Branch
- A-58 May 3, 2006, letter from H.S. to LBPD
- A-59 May 1, 2014, news article regarding guilty plea by NJ State Police Sergeant

For Respondent:

- R-1 January 25, 2013, Preliminary Notice of Disciplinary Action
- R-2 August 12, 2013, Final Notice of Disciplinary Action
- R-3 September 4, 2012, Shea Internal Affairs Investigative Report
- R-4 May 31, 2012, Lt. Johnson Internal Affairs Interview ("Church lookups")
- R-5 29 C.F.R. §960.203 and 204
- R-6 June 2, 2003, Lt. Johnson Personnel Order
- R-7 October 7, 2008, Lt. Johnson Personnel Order
- R-8 December 20, 2004, CJIS Police memo

- R-9 2003-2008 Lt. Johnson "lookup" list
- R-10 July 2011 Long Branch Housing Authority "Trespass List"
- R-11 2003 Criminal History Dissemination Log
- R-12 2004 Criminal History Dissemination Log
- R-13 2005 Criminal History Dissemination Log
- R-14 2006 Criminal History Dissemination Log
- R-15 2007 Criminal History Dissemination Log
- R-16 2008 Criminal History Dissemination Log
- R-17 D.Q. Curriculum Vitae
- R-18 NJCJIS Security Policy
- R-19 §53:1-20.6 Rules concerning dissemination of information; fees
- R-20 Administrative Code – N.J.A.C. 13:50-1.1 (2012)
- R-21 Administrative Code – N.J.A.C. 13:59-1.2 (2016)