Effective Investigation Reports
... Tips to Writing it Right!

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Agenda

- Types of investigations
- Purpose of the written report
- Report structure
- Characteristics of a good report
- Producing and communicating the report

What Types of Investigations?

- Employee complaints, including
  - Discrimination
  - Sexual Harassment
  - Retaliation
- Suspected IGA
- Policy/Law violations
- Health or safety threats
- Research integrity concerns
- Audit matters
Investigation Types/Differences

<table>
<thead>
<tr>
<th>Due diligence inquiries</th>
<th>Employee complaints</th>
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<tbody>
<tr>
<td>• Investigation discretionary</td>
<td>• Fact-finding as an employee right</td>
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<tr>
<td>• Evidence usually needs to be discovered</td>
<td>• Evidence often provided by the parties</td>
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<tr>
<td>• No burden of proof</td>
<td>• Burden of proof applies</td>
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<tr>
<td>• Conclusion optional</td>
<td>• Conclusion required</td>
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<tr>
<td>• Timing – not a factor</td>
<td>• Timing – always a factor</td>
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Why a Written Report?

• To provide decision-maker with all facts relevant about a complaint to decide the matter
• To accurately document the investigation conducted
• To demonstrate that UC acted fairly, promptly and reasonably
• To ensure a successful investigation

Sexual Harassment Complaints

• Generally very sensitive subject matter
• Can present difficult fact-finding challenges (“He said; she said”)
• May involve vendors, contractors, visitors, students, patients, in addition to employees
• Requires consideration of the totality of the circumstances and context in which conduct occurred
UC SH Policy Elements

- Conduct of a sexual nature
- That is unwelcome
- Where submission to or rejection of the conduct
- Affects a person’s employment or education
- Unreasonably interferes with job or education performance
- Or that creates an intimidating, hostile, or offensive environment

Tips – SH Complaints

- Consider all available circumstantial evidence
- Must make a factual finding on impact element
- Apply “preponderance of evidence” standard
- Be timely — 60 days or less

WB Retaliation Complaints

Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (Whistleblower Policy) – WP

Policy for Protection of Whistleblowers from Retaliation and Guidelines for Reviewing Retaliation Complaints (Whistleblower Protection Policy) – WPP

Improper Governmental Activity – IGA

Local Designated Official for administering the Whistleblower Policies – LDO
WPP Protects Against

- Retaliation
- for having made a "protected disclosure,” or
- having refused an illegal order
- Interference in attempting to make a protected disclosure

Protected Disclosure

Protected Disclosure means

- Any good faith communication that discloses or demonstrates an intent to disclose information of
  - suspected Improper governmental activity (IGA), or
  - any significant threat to public/employee health or safety

Improper Governmental Activity (IGA)

Any activity undertaken by the University or a University employee performing official University duties that

- (1) Is in violation of any State or federal law or regulation including, but not limited to corruption, malfeasance, bribery, theft or misuse of University property or facilities, fraud, coercion, or conversion . . . , or
- (2) Is economically wasteful, or involves gross misconduct, gross incompetence, or gross inefficiency
**Tips – WBR Complaints**

- Be sure the asserted “protected activity” does qualify for protection under the WPP.
- When “refusing an illegal order” is the protected activity, be sure the order was, in fact, illegal.
- Focus on the “contributing factor” causal relationship element.
- Consider use of “even if” analysis.
- Apply “clear and convincing” evidence standard to respondent’s asserted independent justification.

**Organizing and Writing the Report**

- What are the likely sections?
- How should the sections be structured?
- What should be covered in each section?

**Report Components**

- Background
- Scope
- Evidence
- Analysis
- Findings
- Summary
- Conclusion
Basic Report Structure

The Beginning
- Intro
- Purpose
- Summary

The Middle
- Factual Background
- Scope of the Investigation
- Evidence Considered
- Analysis (& Findings of Fact)

The End
- (Findings of Fact & Conclusions
- Recommendations [?]
- Report Exhibits

Factual Background
- Departments or units involved
- Relevant activities of the unit
- Employees involved and employee relationships
- Background facts to the subject allegation or incident
- Factual issues to be resolved

Scope of the Investigation
- What was the matter at issue?
- What was the scope of review?
- What interviews were conducted?
- What other evidence was considered?
- What investigative process matters should be noted?
Setting Out the Evidence

- What interview circumstances should be reported?
- When is it important to set out the order of the interviews?
- What are the considerations for obtaining and handling other evidence?
- How is the evidence best summarized?

Evidence Considered

- Describe documents and other evidence gathered
  - Who offered or how obtained
  - Any authentication issues
  - Documents exchanged?
- Describe the interviews conducted
  - Who present, where, when, how
  - Any special admonitions given;
  - Any special witness concerns
  - Any witness availability issues

Summarize the Evidence

- Party and witness testimony
- Chronology of events, as appropriate
- Documentary and other evidence
- The undisputed facts
- The disputed or uncertain facts
Analysis and Findings

- Summarize party positions
- Analyze the facts
  - What is relevant and material
  - What is disputed, conflicting or uncertain
  - What is corroborating or contradicting
- Assess credibility, as necessary
- Weigh the probative value of the evidence
- Set out any mitigating evidence factors
- State findings of fact for each allegation

Conclusions

- Re-state the standard for reaching conclusions
  - "substantial" evidence in IGA investigations
  - burden of proof in workplace complaint as applied by the investigator
- Set out determinative Findings of Fact
- State Conclusion(s) reached

Tip – The Report Outline as Investigation Checklist

See:
Investigation Report Checklist Outline
Characteristics of a Good Report

- Each tasked allegation and all emerging allegations are addressed
- Each allegation related to a policy/rule
- All aspects of the investigation are documented
- The factual story is told through the evidence
- Disputed facts are meticulously analyzed
- The “3 C’s” are satisfied.

Does it Satisfy the “3 C’s”

- **Clear**
  - Clarity in language
  - Clarity in overall coherence and logic

- **Complete**
  - Addresses/resolves all issues
  - Documents all aspects of the investigation

- **Concise**
  - Direct and succinct
  - Eschews pretentious verbosity

Is it Well-Written

- Check grammar
- Check punctuation
- Use appropriate style
- Adopt the correct tone
- Avoid common writing pitfalls
Some Writing Pitfalls to Avoid

• Don’t fail to consider your audience
• Don’t write a “screenplay”
• Favor the active voice over the passive voice
• Don’t use verbs disguised as nouns

Tip – Writing Resources

• Fowler’s Modern English Usage
• Merriam Webster Dictionary of English Usage
• Shrunk and White’s The Elements of Style
• Garner’s Modern American Usage
• Garner’s Legal Writing in Plain English
• www.plainwriting.gov
• The Plain Writing Institute

Producing and Communicating the Report

• What draft review should be undertaken?
• What documents should be attached to the final report?
• What precautions should be taken for the electronic version of the report?
• Who should get the final report?
Producing the Report

• Review draft
  • By a “buddy”
  • By counsel/decision-maker
• The Final Report
  • Exhibits/attachments
  • File format
  • Securing the file
  • Delivering the report

Communicating the Report

• Transmittal letter
• Employee complaint matters
  • Final decision-maker
  • Parties and others
• IGA Investigations
  • Responsible officials
  • Responsible management
  • UCPD (for possible prosecution)

Summary

• The issue
• The charge or mandate
• The background
• The evidence
• The analysis
• The conclusion
Key Takeaways

• Your investigation can only be as good as your report of it.
• The rule or policy at issue should be used to frame the investigation and your report.
• Begin writing your report early in the investigation and use your report outline as an investigation checklist.
• Strive to document your factual, accurate and timely investigation in a report that is clear, complete and concise.

Thanks!

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