



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

Due diligence inquiries

- Investigation discretionary
- Evidence usually needs to be discovered
- No burden of proof
- Conclusion optional
- Timing – not a factor

Employee complaints

- Fact-finding as an employee right
- Evidence often provided by the parties
- Burden of proof applies
- Conclusion required
- Timing – always a factor

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?





Basic Report Structure

The Beginning	The Middle	The End
<ul style="list-style-type: none">• Intro• Purpose• Summary	<ul style="list-style-type: none">• Factual Background• Scope of the Investigation• Evidence Considered• Analysis (& Findings of Fact)	<ul style="list-style-type: none">• (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

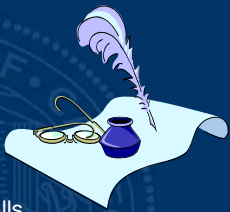
- Each tasked allegation and all emerging allegations are addressed
- Each allegation related to a policy/rule
- All aspects of the investigation are documented
- The factual story is told through the evidence
- Disputed facts are meticulously analyzed
- The “3 C’s” are satisfied.

Does it Satisfy the “3 C’s”

Clear	<ul style="list-style-type: none">• Clarity in language• Clarity in overall coherence and logic
Complete	<ul style="list-style-type: none">• Addresses/resolves all issues• Documents all aspects of the investigation
Concise	<ul style="list-style-type: none">• 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
- Shrunck 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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