

# Effective Investigation Reports

## ... Tips to Writing it Right!

Ethics, Compliance and Audit Services

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# Agenda

- **Types of investigations**
- **Purpose of the written report**
- **Structure of the report**
- **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

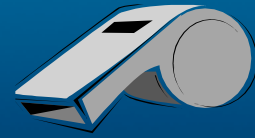


# Purpose of the Written Report

- To evidence a timely and impartial institutional response
- To accurately document the investigation conducted
- To provide decision-maker with facts needed to decide the matter
- To ensure a successful investigation
- To best defend the investigation



# “Protected Disclosure”

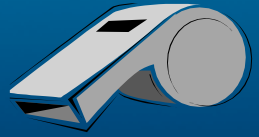


Protected Disclosure means any **good faith communication** that discloses

- **suspected improper governmental activity (IGA), or**
- **any significant threat to public/employee health or safety**



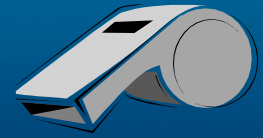
# “Improper Governmental Activity” (IGA)



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

# Burdens of Proof



Complainant -- “more likely than not” that:

- Complainant engaged in Protected Activity (PA)
- Complainant experienced some adverse employment action (AA)
- PA a “contributing factor” in the AA

Respondent -- “clear and convincing” evidence that:

- Respondent had “independent justification” for the adverse employment action, or
- Reasonable belief action was justified

# Organizing and Writing the Report

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





# The Critical Elements

- The factual issue
- The relevant policy
- The evidence
- The analysis
- The conclusion



# Basic Report Structure

## The Beginning

- Executive Summary
- Complaint Summary
- Investigation Summary
- Conclusion Summary

## The Middle

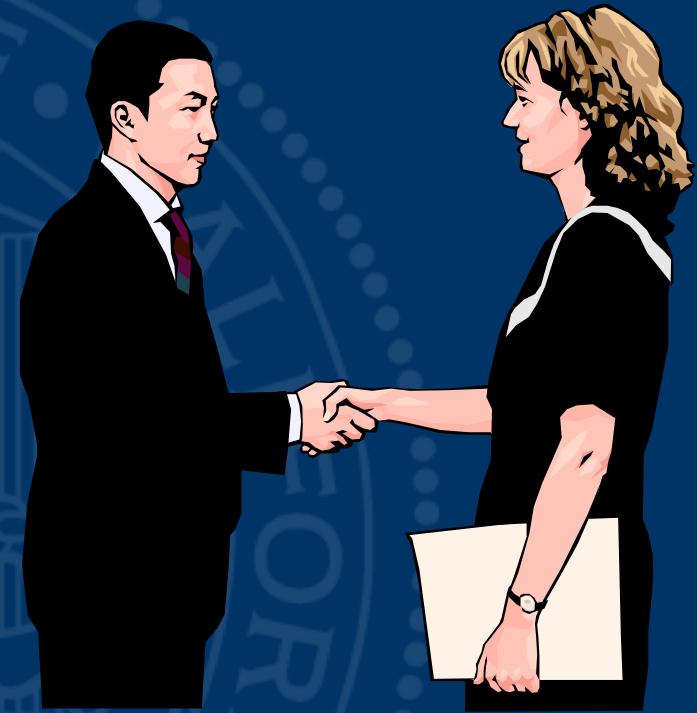
- Factual Background
- Scope of the Investigation
- Evidence Considered
- Analysis of the Evidence

## The End

- Findings of Fact
- Conclusion(s)
- Sign & Date
- Exhibits

# Executive Summary

- Brief complaint description
- Policy/rule at issue
- Investigative mandate
- Ultimate conclusion reached



# Allegations Analysis

- Review initial allegations/ complaint
- What are the policy requirements you will have to address?
- Create a report outline on Day 1 of the Investigation

# 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?



# Consider Scope Creep

- What are the initial allegations?
- Did additional allegations come to light during the investigation?
- If so, how should such allegations be addressed?
  - Referred to a separate investigation?
  - Included as part of the subject report?

# 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

# Analysis of the Evidence

- Acknowledge the positions of each party
- Describe the evidence in support of each position
- Weigh the facts
- Identify the relevant facts
- Dismiss the irrelevant facts
- As to disputed facts, assess credibility

# Assess Credibility

- Factors to consider
  - Inherent plausibility
  - Timeline of events
  - Corroborating evidence
  - Actual knowledge
  - Objective factors
- Avoid behavioral interpretations

# Reach Your Conclusions

- Re-state the policy standard for reaching a conclusion, generally
  - “substantial” evidence in IGA investigations
  - burden of proof in a workplace complaint as applied by the investigator
- Set out the Findings of Fact that are needed to reach each required conclusion
- State the Conclusion(s) reached with reference to the applicable policy standard



# Types of Conclusions

- Sustained: an allegation is sustained when an investigation reveals that the evidence satisfies the burden of proof in support of the allegation.
- Not Sustained: an allegation is not sustained when an investigation reveals that the evidence does not satisfy the required burden of proof.
- “Inconclusive?” “Unable to determine?”

# Conclusions – An Exercise

- “Preponderance of the evidence suggests that the allegation is true.”
- “There is no evidence that the accused stole computer equipment, therefore allegation is not sustained.”
- “Preponderance of the evidence suggests that the respondent violated Public Contract Code Section 10506.4. Allegation is substantiated.”
- “There is clear evidence that the respondent engaged in more than one improper governmental activity, therefore allegations are sustained.”
- “It was determined that there is no sufficient evidence to prove that the accused falsified his timesheet. Investigator was unable to determine whether the allegation has merit.”

# What Makes a Good Report?

## Does it Satisfy the “3 C’s”

### Clear

- Clarity in language
- Clarity in overall coherence and logic

### Complete

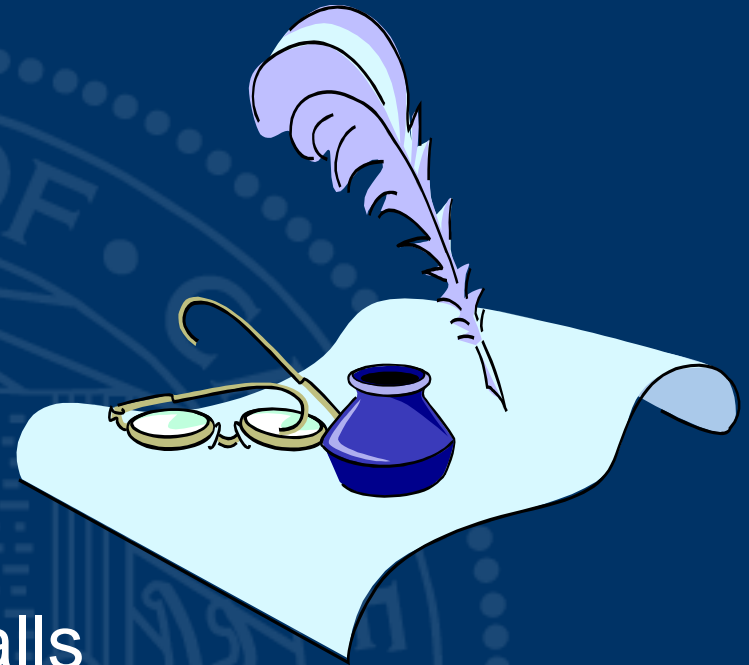
- Documents all aspects of the investigation
- Addresses/resolves all issues

### Concise

- Direct and succinct
- Simple and straightforward to read
- Eschew pretentious verbosity

# Is it Well-Written?

- Use appropriate style
- Adopt the correct tone
  - Be impartial
  - Be professional
- Avoid common writing pitfalls



# Some Writing Pitfalls to Avoid

- Consider your audience
- Don't write a "screenplay"
- Don't use verbs disguised as nouns
- Make findings that relate to the relevant policy
- Do not purport to draw conclusions of law





# Words Matter

- Use impartial and neutral verbs
- Use exactly descriptive verbs
- Avoid passive tense
- Be consistent in tense
- Avoid unnecessary adjectives
- Readability Analysis
- Avoid extraneous information
- Don't forget grammar & punctuation

Be Direct ... Write Small ... Simplify ...

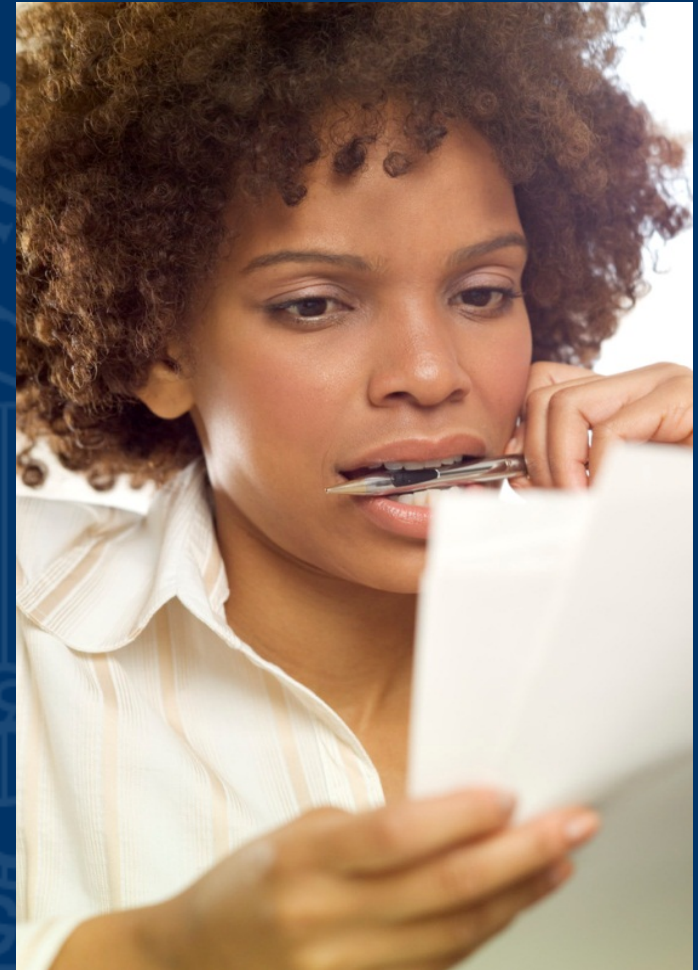
“The most valuable of all talents is that of never using two words when one will do.” Thomas Jefferson

# 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



# Report Exhibits: All-in . . . or Not?

- Common practice:
  - include as part of the report all exhibits and documents relied upon as exhibits
- Stand Alone view:
  - Keep all (non-essential) documents and other evidence relied upon in a separate file to be provided to decision-maker as needed but not as part of the report



# Tip – Securing your Report File

- Encrypt your file
- Use Microsoft's Document Inspector to remove hidden text from MS Word documents
- Use Adobe Protection Options to secure your Adobe PDF files



# Communicating the Report

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



# Key Takeaways

- Remember that your investigation can only be as good as your report of it
- Begin your investigation with a **exemplar report outline** to serve as a **checklist** for your investigation
- **Frame** the investigation and your report on the **rule or policy at issue**
- **Begin the actual writing of your report** with background, scope, and issue statements early in the investigation
- Strive to document your factual, timely, and thorough investigation in a **clear, complete** and **concise** report

# Thanks!

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