

**CHAPTER 6**  
**DISCRIMINATION, HARASSMENT, AND RETALIATION**  
**COMPLAINT INVESTIGATIONS**

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## CHAPTER 6

### DISCRIMINATION, HARASSMENT, AND RETALIATION COMPLAINT INVESTIGATIONS

#### 1. INTRODUCTION.

a. The Department is committed to encouraging a workplace where employees are comfortable raising issues of inappropriate conduct and ensuring all investigations of formal complaints of discrimination, harassment, or retaliation are conducted in a fair, impartial, thorough manner.

b. An investigation of formal complaints of discrimination is an official inquiry into claims raised in a discrimination complaint and may include a variety of fact-finding methods such as interviews, interrogations, and document review. The investigation is a fact-finding process by which to develop an impartial and appropriate record upon which to make findings on the claims raised by the written complaint.

2. POLICY. It is the policy of the California Highway Patrol to initiate a prompt and effective investigation of any Equal Employment Opportunity (EEO) related issues concerning alleged discrimination, harassment, or retaliation in employment practices covering recruitment, selection, appointment, compensation, transfer, training, and other terms and conditions of employment. Once the CHP is aware of allegations of discrimination, harassment, or retaliation, the Department should take appropriate action to address and prevent inappropriate conduct.

a. Discrimination Complaint Investigation. The Department is committed to providing a workplace free of discrimination, harassment, or retaliation. Upon receipt of an alleged violation, the Department will determine if an investigation is necessary to assess whenever a violation of the Department's EEO policy has occurred. The discrimination complaint investigation is a neutral, fact-finding investigative process to determine if alleged actions occurred, and if the actions violate EEO policy. If the alleged actions warrant an adverse action or rejection during probation, a separate internal investigation, conducted either concurrently or consecutively, will be initiated in accordance with Highway Patrol Manual (HPM) 10.2, Internal Investigations Manual.

Note: The term "discrimination complaint" relates to all alleged violations of the Department's EEO policy, including harassment and retaliation.

b. Timeframe. Investigations shall be completed and submitted to the Equal Opportunity and Access Section (EOAS) through channels within 60 calendar days

of Division assignment. Extensions may be granted, on a case-by-case basis, by contacting the EOAS.

c. Primary EEO Investigator. The primary EEO investigator assigned to the case shall be a certified EEO investigator. The EOAS recommends staff assigned to assist with the investigation are also certified EEO investigators.

d. Separations During Investigations. If an employee separates from the Department during an investigation, the investigation shall be completed in its entirety and processed in accordance with this chapter.

3. INITIAL STEPS. The first actions of the investigator can have a profound effect on the outcome and quality of the investigation. The investigation of allegations of discrimination is often the focal point of a subsequent lawsuit. A timely, impartial, and thorough investigation, when accompanied by a prompt and appropriate remedial action, will generally ensure compliance with the Department's EEO policies.

Conversely, a cursory or incomplete investigation wherein the Department does not conduct a careful, comprehensive review of the appropriate facts will often form the basis for future litigation and potentially show the Department failed to take appropriate action. Further, it will discourage employees from bringing forward complaints and will also ultimately deprive the Department of the ability to address inappropriate workplace conduct.

The EEO investigator shall meet with the appropriate Division Commander (or designee) and establish an investigative plan. Once a plan has been agreed upon, the primary investigator should ensure the following steps are taken.

a. Begin Chronological Summary. This is a detailed chronological accounting of all actions taken and evidence obtained from the time the Department becomes aware of the complaint until the investigation is completed. A comprehensive chronological summary will document case progress and will demonstrate the Department's diligence in conducting a timely, impartial, and thorough investigation. Refer to section 7G.

b. Conduct Policy Review. In order to ensure an investigation is conducted in accordance with law, policy, and procedure, investigators should review the contents of this manual prior to beginning an investigation. Information is also available on the EOAS website. The assigned investigator should contact the assigned EOAS analyst who can provide any additional information or guidance to the investigator.

c. Conduct Public Safety Officers Procedural Bill of Rights/Policy Review. In order to ensure an investigation is conducted in accordance with policy and law, investigators should review the Public Safety Officers Procedural Bill of Rights Act (POBR) and the Internal Affairs Section (IAS) intranet website.

#### 4. INVESTIGATIVE PLAN.

a. Overview. A clear understanding of the allegations of the complaint will provide a framework for an investigator to ensure all aspects are identified and addressed. An investigative plan will improve efficiency and facilitate proper management of the investigation.

b. Formulation of Investigative Plan. Items to consider when planning an investigation should include:

(1) Allegations/Scope.

(a) Identify the Basis of the Complaint. Identify the type of EEO policy violation alleged (discrimination, harassment, and/or retaliation), the protected characteristic(s), or if any protected activity is involved through careful analysis of the complaint document(s). Refer to Chapter 2, Protected Characteristics, Activities, Terms and Definitions, Chapter 3, Discrimination, Harassment and Retaliation, and Chapter 4, Sexual Harassment and Abusive Conduct Prevention, of this manual to determine which issues will be investigated and identify what additional clarifying information is needed.

NOTE: Properly identifying the basis of the complaint is a difficult yet crucial part of the investigative plan. A detailed review of the complaint document(s) is necessary for this portion of the investigative plan. Oftentimes, it is only when the complainant has been interviewed by the investigators that all allegations are realized. The investigator should contact the assigned EOAS analyst to discuss the allegations and for assistance with identifying the basis of the complaint.

(2) Background.

(a) Review the complaint documents to ensure all allegations are addressed.

(b) Checklist of Essential Items for Information. Although the complainant provides the initial information concerning the basis of the complaint, the following is a checklist of essential information the investigator should

obtain from the complaint file and/or complainant. The information will be helpful in structuring the investigation.

1 The title and classification of the complainant's position and brief summary of the complainant's work history with the Department.

2 The name of the command(s) involved in the complaint.

3 A description of the events leading up to the alleged discriminatory employment action, policy, or practice.

4 The nature of the action, policy, or practice giving rise to the complaint, including a description of each specific alleged event of discrimination, harassment, and/or retaliation, the complainant has suffered and the date each alleged act occurred.

5 The identity of the respondent(s) (including the individual's protected characteristic(s), if applicable) responsible for the action, policy, or practice alleged to have been discriminatory.

6 The reason the Department/command gave the complainant for the alleged discriminatory employment action, policy, or practice, if applicable.

7 The identity of similarly situated employees who were treated the same as the complainant and those who were treated differently from the complainant, if applicable.

8 The identity of witnesses to the alleged acts of discrimination, harassment, and retaliation.

(3) Supplemental Questions. For external complaints, the compliance agencies may include a list of supplemental questions. The investigator, when investigating an external complaint, shall:

(a) Review the supplemental questions and determine what evidence needs to be collected.

(b) Identify if any of the questions should be included in interviews with any involved parties.

(c) Include necessary documentation referenced for answering the questions. Ensure the EEO investigation properly addresses the

supplemental questions. The EOAS analyst assigned to the case will work with the investigator to ensure the above tasks are completed.

(d) The EOAS will be responsible for formulating the responses to the supplemental questions and all correspondence with the external compliance agency.

(4) Evidence. Identify potential, relevant evidence needed or already obtained which will support or refute the allegation(s).

(5) Interviews/Interrogations.

(a) Establish a list of potential witnesses to be interviewed. Witnesses and the subject(s) of the investigation shall be listed on a CHP 7A, Involved Parties. The CHP 7A shall be listed as an exhibit.

(b) Check the shift hours, scheduled days off, vacation, and temporary work assignments of involved employees and investigators.

(c) Prepare an outline or checklist for each interview.

(d) Steps to be Taken before Entering Work Site. Make contact with the affected Division/Area commander and develop open lines of communication. Advise the commander of the following:

1 Assignment to investigate a discrimination complaint involving the Division/Area.

2 Name of complainant and nature of complaint.

3 Date investigation will begin and projected completion date.

4 Preliminary parties/witnesses to be interviewed.

5 Request assistance with coordinating interview dates/times.

6 Request access to a private space where interviews can be conducted without interruptions.

7 Confidentiality and retaliation admonishment in Annex B.

c. Investigator Relationships.

(1) Division. Maintain ongoing contact with the Division Commander and bring forward any issues identified during the investigation. If any information found

might necessitate the initiation of an administrative investigation in accordance with HPM 10.2, Internal Investigations Manual, the primary investigator should notify the Division Commander as soon as practical. The investigator shall advise the Division Commander if time extensions will be needed.

(2) Affected Commander. The affected commander should be advised of the investigator's need to visit the site and interview specific employees, the need for privacy and need to access departmental records. The commander shall be cognizant of the need to protect any individuals involved in the investigation from any form of retaliation.

(3) Office of Equal Employment Opportunity. Each case will be assigned an analyst from the EOAS. The investigator shall maintain open lines of communication with the assigned analyst and utilize the analyst as a resource. Discuss any delays, unexpected issues, or dilemmas encountered during the investigation, and the need for an extension with the assigned analyst.

(4) Complainant. Advise the complainant of the investigation process and investigator's role, including internal vs. external complaint process. Advise the complainant of the right to be free from retaliation and to contact their commander or the investigator if they experience retaliation. Advise the complainant that at the conclusion of the internal complaint investigation, they will be issued a Letter of Determination (LOD) regarding any EEO policy violations. For external complaints, the complainant will be notified of the final determination by the compliance agency.

(5) Respondent. Without revealing specific allegations, advise the respondent of the nature of the complaint. Explain the investigative process, including the investigator's role. Advise the employee of POBR. Remind the employee retaliation against any individual involved in the investigation will not be tolerated. Advise the employee they will be issued a Memorandum of Findings (MOF) at the conclusion of the investigation. For external complaints, the respondent will receive an MOF from the Department, however, the Department does not make the final determination on externally filed complaints. The external compliance agency will notify the respondent of their final determination.

(6) Other Witnesses. Advise witnesses of the investigative process, including the investigator's role. Without revealing specifics of the complaint, discuss the purpose of the interview and the need to provide complete and factual information in response to questions presented. Advise the witness

individuals involved in the investigation have the right to be free from retaliation. Be aware of the witnesses' POBR rights.

(7) Compliance Agency. The investigator shall not contact the external agency (U.S. Equal Employment Opportunity Commission (EEOC), California Civil Rights Department (CRD), Department of Industrial Relations (DIR), Department of Labor (DOL), or State Personnel Board (SPB), directly without concurrence of the EOAS.

## 5. FACT/EVIDENCE COLLECTION.

a. Introduction. Documents play an important part in the investigation of a discrimination complaint. The investigator(s) is responsible for reviewing all available documents, records, and other information material to the investigation, or which may reasonably lead to discovery or development of material evidence, except as specifically prohibited.

(1) The investigator, in the pre-investigative review of the file, identifies documents which should be reviewed.

(2) As the investigation develops, additional documentation requiring review will become apparent. In addition, interviews with the complainant and other witnesses may often provide information about other documents which should be reviewed.

b. Types of Evidence. Evidence consists of testimony, writings, material objects, or anything presented to the senses and offered to prove or disprove a fact. Items shall be evaluated, collected, preserved, and entered into evidence in accordance with HPM 70.1, Evidence Manual.

(1) Documentary Evidence. Documentary evidence is in written form such as emails, text messages, manuals, employee files, correspondence, policies, and procedures. It is important to try to obtain metadata for any emails or electronic communications or evidence to verify reliability. The document can be used to indicate trends, identify contradictions, and support statements.

(2) Digital Media. Digital audio, video, or images shall be copied onto an appropriate digital storage device and securely placed in the investigative file as an exhibit.

(3) Interviews and Interrogations. A specific type of documentary evidence, which would include summaries of witness statements and interrogation transcriptions.

(a) Both the written documentation of the interview/interrogation (summary or transcription) and the digital recording of the interview/interrogation shall be included in the investigative file as exhibits.

(4) Policy and Law. Copies of relevant departmental policy, which may include HPMs, General Orders, Area Standard Operating Procedures, and selections of relevant statutes.

(a) If selections of policy are highlighted for purposed of oral narration during an interview or interrogation, an unaltered copy of policy or law must also be included in the exhibit.

NOTE: The EEO investigator has access to all pertinent records, files, parties, and witnesses. If the complainant has made medical records an issue in the complaint, the EEO investigator may access the appropriate records of the complainant (Refer to HPM 10.3, Personnel Transactions Manual, Chapter 30, Personnel and Medical Files.)

c. Employee History. Review the complainant's and respondent(s)' official personnel files for evidence of prior misconduct or performance issues which may be a factor in the complaint.

d. Exhibits. Copies of relevant documents gathered during the investigation shall be included in the investigative file. Exhibits include, but are not limited to, documents such as transcriptions, memoranda, copies of policies and procedures, and copies of employee attendance reporting. Exhibits shall be physically numbered or tabbed. Tabbed exhibits shall be arranged in the same order the investigator specified in the list of exhibits.

e. Analyzing and Evaluating Evidence. When the investigator determines all of the evidence on relevant issues has been obtained, they have the responsibility of analyzing and evaluating the evidence to determine whether there is sufficient evidence of a violation of the Department's EEO policy. However, the final determination will be made by the EEO Officer and/or Deputy Commissioner if the decision is appealed.

(1) Records. Records maintained by the Department in its day-to-day operations may give an indication of whether the claims are substantiated or not. Records properly selected and analyzed assist the investigator in the following areas:



- (a) Determining if the allegations are supported by actual practice and policy.
- (b) Identifying possible inconsistencies in the treatment of similarly situated individuals.
- (c) Clarifying complaint issues
- (d) Identifying inconsistencies/inaccuracies in the statements provided by the complainant or respondent. If, at any time, documents or records are determined not be relevant to the case, they should be identified in the chronological summary and noted where the originals are located. It is not necessary to include them in the investigative report. If the investigator determines an SPB rule or departmental policy is relevant evidence, only that portion of the rule or policy which is pertinent to the issues(s) in the complaint should be included in the file as an exhibit.

(2) Performance appraisals of other employees determined to be relevant to the complaint shall be included in a manner which prevents the identification of the employee. The investigator should include a narrative statement of the results of their review of the appraisals in the chronological summary.

(3) Mixed motives may be present with regard to the action taken against the complainant, meaning part of the employment action may be in accordance with CHP policy, but other aspects may not be. If mixed motives are present, the investigator must gather sufficient facts to determine whether the Department would have taken the same action against the employee/applicant absent any intent to violate the Department's discrimination policy.

EXAMPLE: An employee in a protected class supplies proof their employment was terminated because of their ethnicity or protected characteristic. The employer responds that they terminated the employee for some other legitimate reason, such as the employee lied about their qualifications, and they were therefore incapable of performing the work required of them.

(4) Disciplinary actions are often the reason why complainants file a discrimination complaint, and the investigator needs to address specific points to determine if mixed motives exist regarding the disciplinary action taken against the complainant.

(5) Evaluating Evidence. To determine if a violation of departmental policy exists, investigators will need to examine the contents of Chapter 3, Discrimination, Harassment, and Retaliation, and Chapter 4, Sexual Harassment and Abusive Conduct Prevention.

f. Evidence Preservation. Items shall be evaluated, collected, preserved, and entered into evidence in accordance with HPM 70.1. Evidence shall remain in the Division command which originally completed the investigation, regardless of any subsequent transfers of the involved employees.

(1) The assigned EEO case number shall be written on the CHP 36, Evidence/Property Receipt/Report. Evidence collection shall be recorded in the chronological summary. Items retained in the Division command's evidence storage facility shall be noted as an exhibit by the inclusion of the CHP 36 and recorded in the chronological summary.

(2) Digital media from recorded interviews and interrogations and all digital files shall be booked into evidence. The recorded interviews and interrogations shall be transcribed, and the transcription checked for accuracy.

(3) All gathered evidence shall be entered into evidence and a CHP 36 completed in accordance with HPM 70.1. The method used to obtain the evidence, and its relevancy to the investigation, shall be documented as an exhibit and included in the investigation file.

(4) The storage location of the evidence shall be provided as part of the appropriate chronological summary entry.

(5) Evidence gathered during an investigation shall be retained for a minimum of five years or the life of the investigation file, whichever is longer.

g. Legal Requirements for Evidence Preservation in a Discrimination Complaint. Government Code §12946 and Title 29 Code of Federal Regulations § 1602.14 require when a discrimination complaint has been served on the Department by an external agency, all payroll and personnel records and all documents relating to the complaint, must be kept until the agency closes its inquiry and until the time for filing a lawsuit or appeal has expired, or the proceeding has been resolved.

(1) California law requires employers to preserve relevant documents for four years, with an exception in cases where the employer has been notified a complaint has been filed with the CRD. Commanders should check with EOAS before purging any relevant documents. Upon notification of a formal EEO complaint, a memorandum will be sent to the Division Commander with directions on the transmission of pertinent records.

(2) As a result of the filing of a formal EEO complaint, the Department will preserve all documents which may be relevant to the complaint for a minimum

of four years. In some instances, the Department will preserve such documents beyond four years until the later of the following:

(a) The first date after the period of time for filing a civil action has expired.

(b) The first date after the complaint has been fully and finally disposed of and all administrative proceedings, civil actions, appeals, and/or related proceedings have terminated.

(3) All records, including but not limited to electronic mail, photographs, voicemails, payroll/personnel records, and reports pertaining to the those involved in the complaint process must be preserved by the EOAS. Once the involved command has provided the documents to the EOAS, the documents and all data, including electronic information, may be purged according to the regular retention schedules.

(4) Any confidential information, such as peace officer personnel information, should be preserved, retained, and transmitted in its original form. The EOAS, in conjunction with the Office of Legal Affairs (OLA), will review all materials and take the appropriate measures to ensure the release of any material complies with the law.

## 6. INTERVIEWS.

### a. Introduction.

(1) Interviews are statements in which complainant(s), witnesses, and respondent(s) provide information pertinent to the investigation. Objectivity is the key to conducting a successful interview. Investigators should be careful not to prejudge the circumstances and should approach the task with an open mind. The maintenance of a fair, unbiased demeanor is essential and is required by departmental policy.

(2) The totality of the circumstances, evidence, and facts of the case should determine if an administrative interrogation of any party or witness is necessary.

(3) Investigators may conduct an administrative interrogation of the complainant if warranted. If investigators want to conduct an administrative interrogation of the complainant, they should first contact EOAS for guidance.

(4) It should be the standard practice to conduct an administrative interrogation when interviewing/interrogating the respondent(s) to ensure rights afforded by POBR. The investigator shall adhere to policy outlined in

HPM 10.2, Internal Investigations Manual, Chapter 6, Interview, and Interrogation, while conducting an administrative interrogation.

(a) The respondent(s) should be the last individual(s) interviewed, after the investigator has had an opportunity to fully develop information relative to the complaint.

(5) Complainants will often identify witnesses to their complaint. Investigators are to choose witnesses because of their known or presumed ability to furnish information of significance to the complaint. The investigator should direct the interview so as to keep it in focus.

(a) Members of the Department who are witnesses in the investigation are obligated to fully cooperate with investigators and have an affirmative duty to answer questions during discrimination complaint investigations. Departmental employees who are witnesses do not have a right to know the nature of the investigation. Investigators should use their discretion when revealing those parts of the investigation they believe the witness needs to know to answer investigative questions.

(6) If, during any interview, evidence relating to possible misconduct is discovered which could result in an adverse action against the person being interviewed (as defined in HPM 10.2), the interview shall be immediately terminated to ensure there is not a violation of the employee's POBR rights. The appropriate Division Commander shall be notified immediately. The investigator will then follow this protocol:

(a) The complaint investigation shall continue and be completed in its entirety, as described in this manual.

(b) The investigator must utilize the CHP 8, Administrative Interrogation Record, to complete the investigation by interrogating the subject.

(c) Ensure compliance with POBR and continue to investigate all aspects of the complaint.

(d) Any questions regarding this process should be directed to the EOAS.

b. Confidentiality.

(1) Importance. Investigators have an obligation to maintain the confidentiality of a discrimination complaint investigation. This confidentiality specifically

includes interviews and/or interrogations conducted by the investigator(s). Such confidentiality is crucial to ensure investigations are not compromised. Confidentiality is mandated at all levels.

(2) All employee(s) interviewed or interrogated as part of a discrimination complaint investigation shall be admonished regarding the need for confidentiality, and violating confidentially may result in adverse action.

c. Information Security. The following shall be adhered to in order to maintain strict confidentiality of the investigation:

(1) Ensure all discussions, interviews, and interrogations regarding the investigation are conducted in a private location. When possible, conduct interviews and interrogations away from other personnel. This may require the use of off-site facilities when needed.

(2) Limit the amount of information which is divulged to witnesses to only those facts which are pertinent to their testimony.

(3) Advise all witnesses and subjects of discrimination complaint investigations that it is a confidential personnel matter. Departmental employees, upon receiving notification of an interview/interrogation (and at the conclusion of each), shall be given a direct order not to discuss their interview/interrogation with anyone other than their chosen representative, or a supervisor/manager within their chain of command so long as the supervisor or manager is not the respondent or the person(s) engaging in discriminatory, harassing, or retaliatory conduct.

(4) Non-departmental interviewees shall be requested to not discuss the interview with others. Refer to Annex B of this chapter for confidentiality admonishment.

(5) When unattended, ensure all investigative notes, items of evidence, and any and all other written documentation which pertains to the investigation are always secured, preferable in a locked drawer or file cabinet. Ensure all physical evidence is properly labeled as "Confidential" and chain of custody is maintained.

d. Recordings.

(1) All statements from departmental employees who are interviewed during a discrimination complaint investigation shall be recorded using a digital audio recorder. Prior approval to record a statement need not be obtained.



Questions regarding the inadvertent failure to record a statement (i.e., digital audio recorder fails) should be forwarded to the EOAS.

(a) Video Recordings. Unless previously approved by the Office of the Commissioner, video recordings shall not be made of discrimination complaint interviews/interrogations.

(b) Digital Recording. Due to their versatility, it is recommended digital audio recorders be used during interviews and interrogations. It is recommended for the investigator to use two digital audio recorders to allow for technical issues can arise. If a digital audio recorder is used to record an interview/interrogation, a copy of all recordings made shall be transferred to a compact disc or digital storage device.

(c) The employee being interrogated shall have the right to bring a personal audio recording device and record any and all aspects of the interrogation.

(2) Statements obtained from non-departmental employees shall be recorded unless the witness objects to the recording. When a non-departmental employee objects to having their statement recorded, the investigator should thoroughly explain to the witness the importance of the recording for producing an accurate, transcribed statement. In such instances where the non-departmental employee still objects to having their statement recorded, a memorandum shall be prepared by the investigator summarizing the statements. Ideally, the witness should read the summary and confirm the statement is accurate.

(3) The investigator should identify themselves to each person interviewed; informing the person they will be investigating a discrimination complaint and briefly outlining the procedures to be followed.

NOTE: An effective introductory statement will include comments on why the interview is necessary, the departmental procedures, the investigator's role as a neutral fact finder, confidentiality, retaliation issues, and the nature of the complaint. The investigator will record the interview and the witness should be so advised at this point.

(4) Recordings of interviews shall be fully transcribed for inclusion as an exhibit in the investigation.

e. Summaries.

(1) Requirement.

(a) In the rare instance an interview for a discrimination complaint investigation needs to be summarized, it shall be summarized on a CHP 51, Memorandum. The summary shall be a concise summation of the information provided during the interview and shall not contain the investigator's opinion. Investigator's notes are not preserved as long as the information is incorporated into a memorandum summarizing the interview. The lead investigator shall be responsible for ensuring the accuracy of the summary. Ideally, the witness should read the summary and confirm that the statement is accurate.

(2) Elements.

(a) A proper summary is essential to ensure a quality investigation because others will be relying on the accuracy of the information contained in it. In general, information appears in a summary in the same order it was presented in the interview. When multiple subjects are discussed throughout an interview, the preferred method is to group the related topics together. Investigators should adhere to the following for all summaries:

- 1 Include direct quotes when needing to clarify an important point or when supporting or refuting a key issue.
- 2 Indicate who wrote the summary.
- 3 The summary shall be written in third person.

(3) Witness Review.

(a) For the summaries of witnesses, departmental, or otherwise, the investigator should request each witness review and sign the summary memorandum. For witnesses who refused to be recorded, the investigator should request the witness review and sign the summary memorandum.

(b) The memorandum shall contain a signature line for the witness and investigator as follows:

"I have reviewed this statement and I attest that it is an accurate summary of the statement I gave on (date)."

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
Date

“I have used all reasonable diligence in preparing this document and to the best of my knowledge the information contained herein is true and complete.”

\_\_\_\_\_  
(Investigator)

\_\_\_\_\_  
Date

f. Transcriptions.

(1) Transcriptions are verbatim written records of an interview or interrogation, completed through professional transcription services. Since there is no interpretation or filtering as in a summary, transcripts offer the best record of an interview.

(2) Care should be taken to ensure transcriptions are accurate to assure information is not taken out of context. The assigned investigator(s) shall be responsible for ensuring the accuracy of each transcription.

(3) All audio recorded interviews of persons involved in a discrimination complaint (complainant, witnesses[s], and respondent[s]) shall be transcribed.

(4) Transcription Services. The EOAS utilizes a contracted vendor for all transcription services. The assigned investigator will provide a copy of the digital audio recording to the assigned EOAS analyst, who will process the audio through the contracted transcription service for transcription. Once the audio recording has been transcribed, the EOAS analyst will provide the completed transcript to the investigator. The investigator is responsible for verifying the accuracy of each transcription.

(5) Requirements. The following characteristics shall be included in transcripts for the purpose of an EEO investigation:

(a) Each line will be numbered.

(b) The name or initials of each individual will be identified prior to the comment or statement. If an individual's initials are utilized, the header of the first page will contain a list of names and their corresponding initials.

(c) The transcriber should remove superfluous information such as verbal pauses (e.g., um, huh, ah) and material which is unintelligible must be marked as such in the transcript. The first page of the transcription shall contain the following statement:

The record reflects all relevant statements and conversations occurring during the course of the [insert interview or interrogation]

but is not verbatim. For clarity, superfluous words, phrases, verbal pauses, and/or inaudible tones have been eliminated.

(d) The name of the person who was interviewed will be included in the footer of each page.

(e) The name of the individual who prepared the transcription shall be identified on the transcription.

(6) Verification. All transcripts shall be verified by an investigator. The verifying investigator shall listen to the entire recording while simultaneously reviewing the transcript and correcting any errors and shall indicate in the body of the transcript the verifying investigator's name, ID, and date. The original transcription, prior to verification, shall also be booked into evidence in accordance with HPM 70.1, but it will not be included as an exhibit. The verified, corrected copy shall be included in the investigation as an exhibit.

(a) The conclusion of all transcripts shall include the following statement:

"I have used all reasonable diligence in reviewing this transcription and to the best of my knowledge the information contained herein is true and complete."

Date:

\_\_\_\_\_  
(Investigator)

g. Complainant.

(1) The complainant should be the first person interviewed in a discrimination investigation. It is important to gain the complainant's confidence and maintain an atmosphere which will facilitate two-way communication. Advise the complainant of the need for confidentiality and explain the "need-to-know" disclosure.

(2) The investigator should be familiar with all steps in the discrimination complaint process in order to answer any questions the complainant might have concerning the complaint process or their rights under applicable laws and regulations.

(3) Advise the complainant they have the right to be accompanied and advised by a representative of their choice during any process of the investigation.

Their chosen representative shall not be a person subject to or be a witness in the investigation.

Advise the complainant that any retaliatory actions or conduct towards them or any employee who participated in any way in the handling of the complaint is prohibited and will constitute a violation of departmental policy and law, and may result in adverse action. The investigator should have the complainant contact them, their chain of command, or chosen representative (as applicable), if they feel they have been subjected to retaliation during the investigation.

(4) Ask prepared questions. Questions can be prepared from the information provided from the complaint documents and with the assistance of the assigned EOAS analyst.

(5) Investigate all allegations in the complainant's statement thoroughly. The investigator should tell the complainant the case will be investigated as expeditiously as possible.

(6) If the complainant alleges additional issues which are unrelated to those issues already under investigation by the Department, the investigator shall advise the complainant that these issues may be filed as a separate complaint, should the complainant wish to pursue the new issues. The investigator should advise the Division Commander when any allegations of retaliation are made.

(7) Ask what outcome/remedy the complainant would like from the process.

(8) At the conclusion of all interviews, remind the complainant of the retaliation admonishment and confidentiality admonishment. Refer to Annex B in this chapter.

h. Witnesses.

(1) Witnesses should be interviewed after the investigator has interviewed the complainant and before the respondent(s). Admonish witness(es) of the requirement for confidentiality.

(2) Every witness should be interviewed in person and privately. When necessary, witnesses may be interviewed by telephone. If interviewed by telephone, a digital audio recording of the interview should still be obtained, if possible.

(3) Unless, or until the investigator believes the witness has been involved in misconduct and may be subject to adverse action relating to the investigation being conducted, POBR is not applicable.

(4) Advise the witness(es) that any retaliatory actions or conduct towards them or any individual who participated in any way in the handling of the complaint is prohibited and will constitute a violation of departmental policy and law and may result in adverse action.

(5) Witnesses will ordinarily include the individual who initiated or enforced the decision which is the basis of the complaint. A manager who can discuss any departmental policy related to an alleged discriminatory decision or action, or any party who observed the alleged behavior can be extremely beneficial in further determining what may have occurred.

(6) Ask prepared questions. Questions can be prepared from the information provided by the complainant and with the assistance of the assigned EOAS analyst.

(7) At the conclusion of all interviews, admonish the witness using the retaliation admonishment and confidentiality admonishment. Refer to Annex B in this chapter.

(8) Uncooperative Witness.

(a) The investigator may encounter a witness who states they have no information, direct or indirect, or who refuses to make a statement or, while making a statement, appears to hold back information concerning the issues in the complaint. If the investigator believes the witness is holding back necessary and important information, they should attempt to persuade the witness to cooperate, stressing the importance of the discrimination complaint investigation.

(b) If the uncooperative witness is a departmental employee and they are believed to have significant information about the allegations, the employee shall be informed that they may be subject to an administrative interrogation. They should be advised that statements are compelled in an administrative interrogation and failure to comply is considered insubordination. Investigators should consult with EOAS and IAS prior to conducting an administrative interrogation on a witness.

i. Hearsay Information. Occasionally, witnesses will make statements based on what they have heard from other people rather than incidents they have



personally observed. Although these statements may identify potential additional witnesses, such hearsay information is not dispositive. Hearsay information is acceptable as it may provide leads to other information and, therefore, should not be eliminated from a witness' statement since it may be of value as supporting or corroborating evidence.

j. Respondent(s).

(1) The respondent(s) should be the last individual(s) interviewed, after the investigator has had an opportunity to fully develop information relative to the complaint. The employee(s) shall be advised of the need for confidentiality.

(2) Advise the respondent(s) that any retaliatory actions or conduct towards the complainant, any witnesses, or any individual who participated in any way in the handling of the complaint is prohibited and will constitute a violation of departmental policy and law and may result in adverse action.

(3) Advise the respondent they have the right to be accompanied and advised by a representative of their choice during any process of the investigation. Their chosen representative shall not be a person subject to or be a witness to the investigation.

(4) The respondent(s) shall be advised the interview will be recorded to ensure the accuracy of the record and to protect both the interviewee and the investigator.

(5) Discuss each allegation in sufficient detail to enable a full response.

(a) When interviewing the respondent(s), the investigator should fully inform the employee of the nature of the allegation against them, the identity of the complainant, and the interviewee's rights under POBR. The investigator should take a statement from the employee(s) of the facts, as the employee(s) knows them, regarding the allegations presented against them.

(b) The investigator should conduct an interrogation, rather than an interview. This will ensure the POBR is not violated.

(6) The investigator should be thoroughly familiar with the allegations and the necessary information which relates to these allegations. This contact with the respondent(s) should also be used to obtain information to assist in the investigation. The investigator should be prepared for the respondent(s) to provide additional witnesses or mitigating information.

Fairness, impartiality, and objectivity must be paramount in all of the investigator's actions. The respondent(s) must be given a full opportunity to present their views, as well as the facts as they understand them related to allegations made against them in the statements of the complainant or by other witnesses.

(7) At the conclusion of all interviews, admonish the respondent using the retaliation admonishment and confidentiality admonishment. Refer to Annex B of this chapter.

k. Follow-Up Interviews. If after all interviews are conducted, the investigator determines they need to verify information obtained through other interviews or documents, they may need to schedule follow-up interviews. The investigator shall keep the source of the contradictory information confidential if the investigation allows.

l. Administrative Interrogations. Each administrative interrogation shall be conducted in accordance with HPM 10.2, Chapter 6.

## 7. DOCUMENTATION.

a. All EEO investigations shall be documented in accordance with the manner described in this chapter.

b. Narrative Format. The following narrative components shall be utilized in documenting an EEO investigation. The font used shall be Arial, 12 point.

(1) Title Page. The completed investigation shall contain a title page with the following information:

(a) Equal Employment Opportunity Investigation.

(b) Applicable case numbers (differentiate between Division and EEO case numbers).

(c) The word "CONFIDENTIAL."

(2) Table of Contents. The investigation shall have a table of contents. The table of contents shall contain each heading included in the report, corresponding page number, and a list of exhibits.

c. Exhibits. Copies of relevant documents gathered during the investigation shall be included in the investigative file. Exhibits include, but are not limited to, documents such as transcriptions, memoranda, copies of policies and procedures,



copies of employee attendance reporting, copies of comparative information. Exhibits shall be physically numbered or tabbed. Tabbed exhibits shall be arranged in the same order the investigator specified in the list of exhibits. The exhibits shall include, but are not limited to, the following:

(1) Complaint Documents. The CHP 612, Formal Complaint of Discrimination, Harassment, and/or Retaliation; the CHP 612B, Informal Complaint of Discrimination, Harassment, and/or Retaliation; or the external agency complaint correspondence shall be included as an exhibit. The complaint document(s) should be the first listed exhibit.

(2) Physical Evidence. Copies of any CHP 36, or CHP 36B, Evidence/Property Log, which will list all physical evidence and indicate the location stored, shall be included as an exhibit. All evidence shall be processed in accordance with HPM 70.1. The assigned EEO case number shall be added to all evidence and all evidence documentation.

(3) Documentary Evidence. Documentary evidence may include printed emails, memoranda including notices, performance appraisals, receipts, vouchers, maps, diagrams, and copies of any other pertinent records shall be included as part of the investigative file.

(4) CHP 8 including notification memorandums.

(5) Notice of Leave of Absence with or Without Pay.

(6) Policy and Law. Copies of relevant departmental policy, which may include HPM, General Orders (GO), Area Standard Operating Procedure (SOP), and selections of relevant statutes, shall be included as an exhibit. If selections of policy are highlighted for purposes of oral narration during an interview or interrogation, an unaltered copy of the specific policy or law shall also be included in the exhibit.

d. Complainant Summary. This section is used to provide the reader with a brief overview of the complainant's background and employment history with the Department. The following information shall be included:

(1) The employee's full name and identification number.

(2) The employee's gender.

(3) The employee's age.

- (4) The employee's ethnicity.
- (5) The employee's rank/classification.
- (6) The employee's Area of assignment.
- (7) The number of years the employee has been with the Department.

e. Investigative Summary. This section is used to provide an overall description of the discrimination allegations, with sufficient detail for the reviewer to have a basic understanding of the case. The size of the section will, in most instances, be proportional to the length and/or complexity of the investigation. The Investigative Summary shall include:

- (1) A description of the basic facts from the incident or problem which resulted in the initiation of the investigation.
- (2) How and when the Department became aware of the incident or problem.
- (3) Name of the Division Commander initiating the investigation and date the investigation was initiated.
- (4) Description of any corresponding criminal investigation and disposition thereof.
- (5) Numerical list of the specific allegation(s) investigated. Where there are multiple allegations and respondents, separately list the allegations investigated for each respondent.
- (6) Refer to Annex A for Investigative Summary example.

f. Findings. This section details the investigator's determination as to whether there is sufficient evidence for each allegation per respondent, including a detailed justification of such determinations. The investigator should identify the remedy requested by the complainant in this section, if applicable.

- (1) The following sentences shall be included at the beginning of each finding:

There was [insert insufficient or sufficient] evidence to substantiate a violation of the Department's EEO policy. There was [insert no or an] adverse employment action identified for which [insert protected characteristic] was a motivating factor relating to [insert complainant's

name] allegation of [insert discrimination, harassment, or retaliation] as presented in their complaint.

(2) The investigator will then provide a narrative which describes whether or not the allegation actually took place. A basis for the finding shall include sufficient evidence to justify how the investigation came to that conclusion. This section will include all relevant evidence considered in making the finding. When a particular item of evidence is referenced, it shall include the exhibit number. If the exhibit has multiple pages, or it is a transcript or other document with numbered lines, the referenced exhibit shall contain the exhibit number, page number, and line number(s), for example, (Exhibit 1, page 2, lines 3-4).

g. Chronological Summary. The chronological summary is a detailed sequential accounting of all investigative steps taken and evidence obtained from the Division aware date of the alleged EEO policy violation until the investigation was completed. Entries made to the chronological summary should be concise but understandable. Chronological summary entries are to be written in third person and shall include the date, time and individuals present, if applicable, and a description of the event that transpired prompting the entry. The chronological summary shall at a minimum, include the following:

(1) The date, source, circumstances under which the Division and/or EOAS became aware of the complaint.

(2) The date notification was made to the appropriate Division Chief about the complaint.

(3) The date and assignment of the primary, and if necessary, secondary investigator.

(4) The date and approximate time investigative steps were taken, and evidence obtained.

(5) Contacts and attempted contacts with witnesses and other parties, whether successful or not, either in person, telephonically, or via e-mail.

(a) The first time a departmental employee is named in the investigation, identify the employee by rank, classification, or title, first and last name, ID number, and assigned command. Subsequent name references may be made by rank/classification or title and last name of the employee (unless a first initial is needed for those with the same last name).

(b) For individuals who are not departmental employees, the first reference to the individual will be with their title and full name.

(6) Interviews and interrogations shall be documented in the chronological summary. The chronological summary shall identify each person present, provide a description of the location of the interview/interrogation, state whether the interview/interrogation was transcribed or summarized, identify the corresponding exhibit number, and specify where the digital copy of the interview/interrogation was stored as evidence.

EXAMPLE: On July 31, 2029, at approximately 1410 hours, Captain Thomas and Lieutenant Rogers conducted an interview of the complainant, Mr. Sam Jones, of the Rocky Flat Area Communications Center. The interview was conducted in the living room of Mr. Jones' personal residence. The interview was recorded and placed into Division evidence (Exhibit 19).

(7) A brief description of all exhibits (e.g., transcriptions, memoranda, attendance reports, disciplinary actions, and copies of policies and procedures) which were collected, their relevance, and their exhibit number. All exhibits in the investigation shall be accounted for in the chronological summary.

EXAMPLE: On August 7, 2029, at approximately 1730 hours, Captain Robert Smith obtained a copy of Highway Patrol Manual (HPM) 10.12, Equal Employment Opportunity Manual, Chapter 5, Discrimination, Harassment and Retaliation Complaint Process (Exhibit 18).

(8) Briefly describe all evidence collected (i.e., material objects, audio recordings, photographs) its relevance, where the evidence is being retained, and the evidence number.

(9) Explain lengthy investigation delays which would include investigator absences, the complainant being non-responsive to requests for information, or the unavailability of a key witness.

(10) Case management meetings conducted as needed in order to discuss the status of the investigation with the Division Commander.

EXAMPLE: On August 8, 2029, Captain Smith met with Assistant Chief George Armstrong to discuss the progress of the investigation and receipt of the letter from Mr. Jones. A conference call was placed to EOAS to further discuss the relevance of the letter submitted as additional information.

h. Attestation. At the conclusion of the investigative narrative, after the chronological summary, the primary investigator shall sign and date the following attestation:

I have used all reasonable diligence in preparing this investigation. To the best of my knowledge, the information contained herein is a true and complete representation of my investigative efforts and includes all information.

\_\_\_\_\_  
[insert Investigators rank, name, ID]

\_\_\_\_\_  
Date

i. Header. Each page after the table of contents shall have a header in the upper left corner of the page containing the following information:

(1) The last name of the complainant followed by the words 'EEO Investigation'.

(2) The assigned case number(s).

(3) The page number.

(a) The first page after the table of contents is page 1.

j. Investigator's Notes. Investigator's notes shall be formatted in the following manner:

(1) The sentence should start with the following text:

(a) "Investigator's Note:"

(2) The term "Investigator's Note:" should be bolded.

(3) The font should be two sizes smaller than the main text (i.e., Arial 10 point).

(4) The entire sentence or paragraph should be italicized. EXAMPLE:

***Investigator's Note: On April 17, 2030, at approximately 1300 hours Lieutenant Sanchez attempted to contact Officer Jones. Officer Jones was not available, and Lieutenant Sanchez left a message to please return call.***

## 8. SUBMISSION OF INVESTIGATION.

a. Confidential Handling. Report and file contents generally remain confidential, and are not released to any party, including the complainant or respondent(s). California Penal Code (PC) Section 13510.9 requires the Department to notify the Commission on Peace Officer Standards and Training of any complaint, charge, or allegation of conduct against a peace officer employed by that agency that could render a peace officer subject to suspension or revocation of certification by the commission pursuant to Section 13510.8. Additionally, PC Section 832.7 requires the Department to make the following records available for public inspection pursuant to the California Public Records Act (Division 10 [commencing with Section 7920.000] of Title 1 of the Government Code):

“(b)(1)(D) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

(b)(3) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, whether the officer’s action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Records that shall be released pursuant to this subdivision also include records relating to an incident specified in paragraph (1) in which the peace officer or custodial officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident. Other requests for records pertaining to investigations conducted pursuant to this policy can be directed to EOAS. OLA is available to assist EOAS with records requests if needed.”

Any request for release of an EEO investigation through a Public Records Act request or similar request shall be directed to the EOAS. The EOAS shall not

disclose personnel records except through proper legal procedure and after consultation with the OLA and the Public Records Section.

- (1) Only departmental employees with a legitimate need to know as a part of their duties may have access to an internal investigation.
- (2) As the Department's legal representatives, a copy may be released to the State Compensation Insurance Fund, Office of the Attorney General, or other counsel as confirmed by the OLA. Normally, such releases will be coordinated through the OLA.
- (3) The Department may release internal investigations with allegations of serious misconduct to the Commission on Peace Officer Standards and Training, as required by Penal Code Section 13510.8.
- (4) Penal Code Section 832.7(b) provides that certain investigations are subject to public release. Refer to HPM 11.1, Administrative Procedures Manual, Chapter 13, Information Disclosures – Public Records and Rights of Privacy.
- (5) Penal Code Section 832.7(e) provides the Department may release factual information concerning a disciplinary investigation if the officer who is the subject to the disciplinary investigation, or the officer's agent or representative, publicly makes a statement they know to be false concerning the investigation or the imposition of disciplinary action.
- (6) Any unauthorized disclosure of peace officer personnel records in violation of PC Section 832.7 may constitute a criminal act. Additionally, individuals may be subject to disciplinary action and/or civil liability.

b. The CHP 26, Classified Document Notice, shall be included with the investigative report. (Refer to HPM 11.1 Chapter 26, Classified Materials, for document classification and appropriate handling procedures.)

- (1) When information is obtained during the course of an EEO investigation, and it has been determined that there has not been a violation of the Department's EEO policy, but other departmental policy has been violated, the related Letter of Determination and/or Memorandum of Findings issued shall, if warranted, be included and used as the basis for an internal investigation based on guidelines set forth in HPM 10.2.
- (2) Upon completion of the investigation, the investigator shall ensure the investigation file is reviewed for accuracy and thoroughness prior to transmittal to the Division Commander as the next level of review. Refer to Chapter 7, Review, Approval, and Closing Documentation, of this manual.

**ANNEX A**

**EEO INVESTIGATION EXAMPLE**

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**EXHIBITS**

1. On December 10, 2048, an EEOC Form 5, Charge of Discrimination, form was received by the Equal Opportunity and Access Section (EOAS) from the Civil Rights Department (CRD).
2. Transcription of interview with Officer Karie Henshaw, ID 30977, conducted on January 9, 2049.
3. Transcription of interview with Sergeant Michael Redmond, ID 29002, conducted on January 18, 2049.
4. G.O. 0.1, Departmental Mission Statement and Organizational Values.
5. G.O. 0.8, Professional Values.
6. CHP 51, Notice of Administrative Interrogation, dated January 21, 2049, to Sergeant William Cotter, ID 29865.
7. Transcription of interrogation with Sergeant Cotter, conducted on January 24, 2049.
8. CHP 51, Notice of Administrative Interrogation, dated January 22, 2049, to Captain Phillip Kensington, ID 26701.
9. Transcription of interrogation with Captain Kensington, conducted on January 25, 2049.

## ANNEX A

### EEO INVESTIGATION EXAMPLE *(continued)*

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#### **COMPLAINANT SUMMARY**

Officer Karie Henshaw, ID 30977, is a White female, and was 40 years old at the time of this investigation. She was hired by the California Highway Patrol (CHP) on July 2, 2032, and was assigned to the Cascade Area office. On October 5, 2037, she was assigned to the Oakview Regional Gang Task Force. On December 1, 2041, she was assigned to the CHP Academy as an instructor. On January 1, 2044, she transferred back to the Cascade Area where she is currently assigned. Officer Henshaw has been an employee of the CHP for 16 years.

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### EEO INVESTIGATION EXAMPLE *(continued)*

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#### **INVESTIGATIVE SUMMARY**

Officer Karie Henshaw, ID 30977, alleged she was discriminated against due to her gender when she was not selected for a position in a gang task force in August of 2048. Officer Henshaw stated she applied for an officer vacancy within the Oakview Regional Gang Task Force, a position in which she previously worked for four years. Officer Henshaw alleged the supervisor for the task force, Sergeant William Cotter, ID 29865, discriminated against her due to her gender when Sergeant Cotter selected a male officer with no experience in criminal gang investigations.

Officer Henshaw alleged that she was discriminated against due to her gender and age when she was not selected for the Public Information Officer (PIO) position in December of 2048. Officer Henshaw related she applied for the PIO position at the Cascade Area office. Officer Henshaw alleged that Captain Phillip Kensington, ID 26701, discriminated against her due to her gender and age when she was not selected for the PIO position. Officer Henshaw alleged she overheard Captain Kensington tell Sergeant Michael Redmond, ID 29002, "*I think selecting a younger officer could really help with our recruitment efforts.*" Sergeant Redmond replied, "*Right? Nobody wants to see some old dog running a booth at a community event. If we want more bodies, we need to have a young officer representing us.*" Officer Henshaw alleged that two days later, she overheard Captain Kensington speaking to someone on the phone. Officer Henshaw alleged Captain Kensington said, "*I don't want a female working for me. I don't need any more drama in my life.*" Officer Henshaw stated a younger, male officer was selected for the PIO position.

*The specific allegations arising from this investigation are:*

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### EEO INVESTIGATION EXAMPLE *(continued)*

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- 1. Discrimination – Age: Officer Henshaw alleged she was discriminated against based on her age by Captain Kensington when she was not selected for the PIO position and instead a younger male officer was selected for the position. Officer Henshaw alleged she overheard Captain Kensington tell a sergeant at the Cascade Area, “I think selecting a younger officer could really help with our recruitment efforts.”**
- 2. Discrimination – Gender: Officer Henshaw alleged she was discriminated against based on her gender during the following:**
  - a. Captain Kensington did not select her for the PIO position and instead a younger male officer was selected for the position. Officer Henshaw alleged she overheard Captain Kensington speaking to someone on the phone when Captain Kensington said, “I don’t want a female working for me. I don’t need any more drama in my life.”**
  - b. Sergeant Cotter did not select her for a position in the Oakview Regional Gang Task Force and instead a lesser-qualified male officer was selected for the task force position.**

*Note: The specific allegations shall be listed in order of findings where there was a violation of the Department’s EEO policy, followed by findings where there was no violation of the Department’s EEO policy.*

**In this scenario, discrimination based on gender was alleged in two separate occurrences. The two occurrences need to be addressed under the “Discrimination – Gender” section. Even though discrimination based on gender and age were alleged in one occurrence, the two will be separated in the findings because they are different protected categories.**

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### EEO INVESTIGATION EXAMPLE *(continued)*

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#### FINDINGS

- 1. Discrimination – Age: Officer Henshaw alleged she was discriminated against based on her age by Captain Kensington when she was not selected for the PIO position and instead a younger male officer was selected for the position. Officer Henshaw alleged she overheard Captain Kensington tell a sergeant at the Cascade Area, “I think selecting a younger officer could really help with our recruitment efforts.”**

There was sufficient evidence to substantiate a violation of the Department’s EEO policy. There was an adverse employment action identified for which age was a motivating factor relating to Officer Henshaw’s allegation of discrimination as presented in her complaint filed with CRD.

This finding was based on the following:

On January 9, 2049, at 1300 hours, an interview was conducted by Assistant Chief Kristopher Trolinski, ID 26402, with Officer Karie Henshaw. During the interview, Officer Henshaw was able to provide specific information regarding the alleged discriminating comments, specifically the date and approximate time they were made, and who she believed was present in the sergeants’ office when the comments were made. Officer Henshaw related that on December 3, 2048, at approximately 1030 hours, she was walking past the Cascade Area sergeants’ office when she overheard Captain Phillip Kensington, ID 26701, state, “*I think a younger officer could really help with our recruitment efforts*” (**Exhibit 2, page 32, lines 14 through 18**). Officer Henshaw then heard Sergeant Michael Redmond, ID 29002, state “*Right? Nobody wants to see some old dog running a booth at a community event*” (**Exhibit 2, page 75, lines 8 through 10**). Sergeant Redmond was the only other person present in the sergeants’ office with Captain Kensington when Officer Henshaw overheard the alleged discriminatory comments. Officer Henshaw related she has been on the Department for 16 years as an officer, and has extensive experience with the media, and has attended community meetings and events. The male officer selected for the PIO position over her “*is barely off probation and has no experience dealing with the public or the media*” (**Exhibit 2, page 42, lines 10 through 12**).

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### EEO INVESTIGATION EXAMPLE *(continued)*

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On January 18, 2049, at 1300 hours, an interview was conducted by Assistant Chief Trolinski, with Sergeant Redmond. During his interview, Sergeant Redmond related Captain Kensington did talk to him about wanting to hire a younger officer. He did not recall the exact verbiage, but Sergeant Redmond related that Captain Kensington did believe a younger officer would be better at recruiting new officers. Sergeant Redmond stated he agreed with Captain Kensington's statement because, "*he is the boss*" (**Exhibit 3, page 48 line 3**). Sergeant Redmond added that Officer Henshaw was more experienced and better qualified for the PIO position than the male officer that was selected (**Exhibit 3, page 48, lines 8 through 10**).

On January 25, 2049, at 1000 hours, an interview was conducted by Assistant Chief Trolinski, with Captain Kensington. During his interview, Captain Kensington related he did make the comment about hiring a younger officer, because he believed it was the best way to fulfill the Department's goal of trying to hire 1,000 new officers (**Exhibit 9, page 96 lines, 16 through 17**).

There was sufficient evidence to substantiate a violation of the Department's EEO policy by Captain Kensington as it relates to Officer Henshaw's allegation of discrimination based on age. There was sufficient evidence to substantiate Officer Henshaw's age was a motivating factor in the selection process for the PIO position at the Cascade Area.

- 2. Discrimination – Gender: Officer Henshaw alleged in her complaint filed with CRD she was discriminated against based on her gender:**
  - b. Captain Kensington did not select her for the PIO position and instead a younger male officer was selected for the position. Officer Henshaw alleged she overheard Captain Kensington speaking to someone on the phone when Captain Kensington said, "I don't want a female working for me. I don't need any more drama in my life."**

## ANNEX A

### EEO INVESTIGATION EXAMPLE *(continued)*

Henshaw EEO Investigation 555-2010-05555

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There was sufficient evidence to substantiate a violation of the Department's EEO policy by Kensington. There was an adverse employment action identified for which gender was a motivating factor relating to Officer Henshaw's allegation of discrimination as presented in her complaint filed with CRD.

This finding was based on the following:

On January 9, 2049, at 1300 hours, an interview was conducted by Assistant Chief Trolinski with Officer Henshaw. During the interview, Officer Henshaw was able to provide specific information regarding the alleged discriminating comments, specifically the date and approximate time they were made, and another witness who she believed overheard the comment. Officer Henshaw related that on December 2, 2048, at approximately 1330 hours, she was walking near Captain Kensington's open office door, when she overheard part of a telephone conversation between Captain Kensington and an unknown party. Officer Henshaw alleged that she overheard Captain Kensington state, "*I don't want a female working for me. I don't need any more drama in my life*" (**Exhibit 2, page 58, lines 17 through 19**). Officer Henshaw related upon hearing the comment she looked to her right at Office Services Supervisor (OSS) I Julia Martinez, ID A25622, who was seated in her cubicle approximately 10 feet from Captain Kensington's office. Officer Henshaw related that OSS I Martinez had an angry look on her face. OSS I Martinez then whispered to Officer Henshaw, "*I am not surprised.*" Officer Henshaw related she has been on the Department for 16 years as an officer and has extensive experience with the media and has attended community meetings and events. The male officer selected for the PIO position over her, "*is barely off probation and has no experience dealing with the public or media*" (**Exhibit 2, page 75, lines 7 through 9**).

On January 20, 2049, at 1330 hours, an interview was conducted by Assistant Chief Trolinski, with OSS I Martinez. OSS I Martinez has worked with Captain Kensington since his promotion into the office 14 months ago. OSS I Martinez related she was seated at her cubicle, directly outside Captain Kensington's office,

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### EEO INVESTIGATION EXAMPLE *(continued)*

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when she overheard Captain Kensington state “*I don’t want a female working for me. I don’t need any more drama in my life*” (**Exhibit 10, page 34, lines 17 through 20**). OSSI Martinez related she has overheard him make several sexist comments against women in the past. (**Exhibit 10, page 59, line 18**).

On January 25, 2049, at 1000 hours, an interview was conducted by Assistant Chief Trolinski, with Captain Kensington. Captain Kensington related during his interview that he did say “*I don’t want a female working for me. I have enough drama in my life,*” but he was not serious. He was on the phone with his CHP Academy roommate and was, “*just kidding around.*” Captain Kensington confirmed he was referring to Officer Henshaw when he made the comment (**Exhibit 9, page 58, lines 18 through 21**). Captain Kensington added that Officer Henshaw was more experienced and better qualified for the PIO position than the male officer that was selected (**Exhibit 9, page 105, lines 12 through 15**). During the interview, Captain Kensington was asked if he prefers males over females working in his command. He replied, “If they are working directly for me, then I prefer a male. I’m just being honest.”

There was sufficient evidence to substantiate a violation of the Department’s EEO policy by Captain Kensington as it relates to Officer Henshaw’s allegation of discrimination based on gender. There was sufficient evidence to substantiate Officer Henshaw’s gender was a motivating factor in the selection process for the PIO position at the Cascade Area.

- b. Sergeant Cotter did not select her for a position in the gang task force and instead a lesser-qualified male officer was selected for the task force position.**

There was insufficient evidence to substantiate a violation of the Department’s EEO policy by Sergeant Cotter. No adverse employment action was identified for which gender was the motivating factor relating to Officer Henshaw’s allegation of discrimination as presented in her complaint filed with CRD.

## ANNEX A

### EEO INVESTIGATION EXAMPLE *(continued)*

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This finding was based on the following:

On January 9, 2049, at 1300 hours, an interview was conducted by Assistant Chief Trolinski, with Officer Henshaw. During the interview, Officer Henshaw was unable to provide any evidence supporting her position that she was discriminated against based on her gender when she was not selected for the Oakview Regional Gang Task Force position **(Exhibit 2, page 33, lines 12 through 14)**.

Officer Henshaw related she had four years of prior experience with the Oakview Regional Gang Task force, and numerous training classes in completing complex investigations **(Exhibit 2, page 78, lines 9 through 14)**. Officer Henshaw strongly believed she was the most qualified person for the position, and she believed the only reason that she was not selected for the position *“had to be because I am a woman”* **(Exhibit 2, page 33, line 16)**. When asked if she knew the background of the male officer who was selected for the position, she related she did not, but stated *“he only has like seven or eight years on the job”* **(Exhibit 2, page 74, line 18)**.

On January 24, 2049, at 0900 hours, an interview was conducted by Assistant Chief Trolinski with Sergeant Cotter. During the interview, Sergeant Cotter related he never discriminated against Officer Henshaw based on her gender, or for any other reason **(Exhibit 7, page 28, lines 14 through 16)**. Sergeant Cotter related he hired Officer Abraham Johnson, ID 32414, over Officer Henshaw for several reasons, including his much stronger interview, his previous experience as a police officer with the Maple City Police Department which included seven years on the gang task force, and his prior military experience which included intelligence work with the United States Army. Sergeant Cotter said, *“His experience and training was very impressive”* **(Exhibit 7, page 58, lines 17 through 20)**.

There was insufficient evidence to substantiate a violation of the Department’s EEO policy by Sergeant Cotter as it relates to Officer Henshaw’s allegation of discrimination based on gender. No adverse employment action was identified for which gender was the motivating factor relating to Officer Henshaw’s allegation of discrimination as presented in her complaint filed with CRD.

## ANNEX A

### EEO INVESTIGATION EXAMPLE *(continued)*

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#### **CHRONOLOGICAL SUMMARY**

1. On December 10, 2048, an EEOC Form 5, Charge of Discrimination, form was received by the Equal Opportunity and Access Section (EOAS) from the Civil Rights Department (CRD) (**Exhibit 1**).
2. On December 12, 2048, at 0940 hours, Cambridge Division Special Services Assistant Chief Kristopher Trolinski, ID 26402, was assigned as the Equal Employment Opportunity (EEO) investigator by Cambridge Division Chief Steven Lincoln, ID 26231. Assistant Chief Trolinski spoke with Cambridge Division Assistant Chief Felicity Melborne, ID 28842, regarding the investigative workplan. Assistant Chief Melborne provided the EEOC Form 5, Charge of Discrimination, for Officer Karie Henshaw, ID 30977.
3. On December 16, 2048, Assistant Chief Trolinski reviewed HPM 10.12, Equal Employment Opportunity Manual, Chapter 1, Policy and Program Responsibilities (**Exhibit 19**); Chapter 2, Protected Characteristics, Activities, Terms, and Definitions (**Exhibit 20**); Chapter 6, Discrimination, Harassment and Retaliation Complaint Procedures (**Exhibit 21**); Chapter 7, Discrimination, Harassment and Retaliation Complaint Investigations (**Exhibit 22**); Chapter 3, Discrimination, Harassment and Retaliation (**Exhibit 23**); the Office of Equal Employment Opportunity's website, and conducted additional resource review.
4. On December 17, 2048, at 1525 hours, Assistant Chief Trolinski spoke with EOAS Analyst Sergeant Allan Clemens, ID 34287, by telephone regarding the investigative workplan and resources available to assist in the investigation.
5. On December 18, 2036, at 0851 hours, Assistant Chief Trolinski discussed the investigative workplan with Assistant Chief Melborne by telephone.

**ANNEX A**

**EEO INVESTIGATION EXAMPLE (continued)**

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*“I have used all reasonable diligence in preparing this investigation. To the best of my knowledge, the information contained herein is a true and complete representation of my investigative efforts and includes all information.”*

\_\_\_\_\_  
Assistant Chief Kristopher Trolinski

\_\_\_\_\_  
Date

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## ANNEX B

### CONFIDENTIALITY AND RETALIATION ADMONISHMENTS

**Confidentiality:** Admonish all complainants, respondents, witnesses, and subjects of discrimination complaint investigations that it is a confidential personnel matter. At the conclusion of each interview or interrogation, departmental employees shall be directed not to discuss its existence with any member of this Department, other than his/her chosen representative and/or supervisors and managers within his/her chain of command. Non- departmental interviewees shall be requested to not discuss the interview with others.

***Admonishment: Due to the sensitivity of this investigation, you are directed not to discuss its existence with any member of this Department other than your chosen representative or your chain of command. A violation of this order may result in disciplinary action against you.***

***Advisement: I (the Department) will strive to maintain confidentiality to the extent possible as the law allows and does not impede the investigation, however I cannot guarantee confidentiality. The information will be limited to personnel with the “need to know” only.***

**Retaliation:** Caution the complainant, witnesses, and respondent(s) that retaliation against anyone involved in the investigative process (complainant, witnesses, investigators, etc.) is prohibited and may result in adverse action.

***Admonishment: As a person involved in this investigation, any form of retaliation is prohibited. You shall not be subjected to retaliation, nor shall you retaliate against anyone involved in the investigation process (complainant, witnesses, respondents, investigators, etc.) Retaliation can be anything affecting your employment such as threats, unjustified negative evaluations, coercion, intimidation, harassment, or interference in a protected group activity (18 protected groups). If you feel you have been retaliated against due to your involvement in this investigation, please contact me, your chain of command or your chosen representative (if applicable). A violation of retaliation may result in disciplinary action.***

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