

CHAPTER 5
INVESTIGATION PROCESS
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CHAPTER 5

INVESTIGATION PROCESS

1. INTRODUCTION. An investigation is a systematic gathering of facts and evidence concerning a specific event or allegation of misconduct. All events, facts, and evidence must be verified and documented. Complaints shall be investigated to the degree necessary to reach a logical conclusion. There are no shortcuts to a sound investigation; however, the necessity to complete the investigation in a timely manner cannot be overemphasized. Commanders should consider releasing the investigator from routine tasks while conducting complex or sensitive investigations.

2. INITIAL STEPS.
 - a. General. The first actions of the investigator can have a profound effect on the quality and outcome of the investigation. Careful planning and good case management **skills** are essential to any successful investigation. Some initial steps an investigator should consider:
 - b. Meet with Commander. There should be a planning meeting to discuss the investigator's initial course of action and suspense dates, as well as to establish the commander's expectations. Planned absences by the investigator or unusually heavy workloads should also be addressed at this time.
 - c. Begin Chronological Log. This is a detailed chronological accounting of all actions taken by the investigator as they relate to the investigation. The chronological log "tells the story" of how the investigation was conducted and what was discovered. While only the Category I investigation format requires the inclusion of a chronological log, it is highly recommended that a log be utilized in all cases, since the outcome of an investigation may not always be what is initially anticipated. Having a chronological log will also greatly assist the investigator in preparing the narrative, as well as provide a starting point for someone else to complete the investigation should that become necessary. In addition, Category I complaints require a Chronological Summary as a part of the narrative.
 - d. Establish Investigation File. This is an investigator-maintained file that provides a common storage site for investigation-related documents and other evidence. Examples include excerpts of pertinent Area/Department policies, interviews, relevant documents, photographs, written orders, memorandums, and tapes or transcriptions of interrogations/interviews. This file should be maintained in a secure location, as it will often contain sensitive information.

e. Clarify Allegations. Perhaps the single most important step the investigator will take is to firmly establish the complainant's specific allegations. This should be accomplished as early in the investigation as practical. Whenever possible, the investigator should arrange an in-person meeting with the complainant at a mutually convenient location. Many complainants become dissatisfied when the investigation fails to address what they believe to be the most significant aspects of their complaint. Understanding the exact nature of a complainant's concerns can also make the task of the investigator easier.

EXAMPLE: A complainant was arrested for DUI and is upset about being handcuffed by Officer Smith. The investigator should determine if the complainant is expressing concern about the Department's policy on handcuffing all in-custody subjects (a Departmental complaint), or about Smith improperly applying the restraint (a Category I complaint against Smith).

3. INVESTIGATION PROCESS.

a. Overall Goal. It is not practical to provide detailed guidelines for all investigations, as each investigation is unique, guided by the allegations, facts, and evidence. The principal goal of all investigations is to reconstruct the incident in question as closely as possible to the actual event. The investigation process can be divided into three basic steps:

(1) Determine the Questions. Essentially, an investigator must ask him/herself what exactly it is they need to ascertain. This question, of course, is highly dependent on the nature of the allegations. That is, the information an investigator would attempt to acquire in a verbal discourtesy complaint is of a vastly different nature than what one would need for a sexual misconduct allegation. This distinction will also hold true for the overall scope and depth of the investigation as well. Still, the overall intent of the investigator remains, inasmuch as possible, to firmly establish what actually occurred.

(2) Determine the Answers. Once the investigator has determined what questions must be answered, the next step is to determine what information is needed to satisfy those questions. Coupled with this process is also determining from what sources such information can be gathered. Examples of possible sources include, but are certainly not limited to, the following:

(a) Persons. This would include the complainant(s), witnesses, involved employees, experts, etc.

(b) Documentation. This would include legal statutes, Department policy, local policy/procedures, medical records, toxicology results, arrest reports, booking records, citations, etc.

(c) Photographs. A photograph can often provide compelling, if silent, testimony. Examples include photographs of alleged injuries, scene of the incident, vehicles, etc.

(d) Physical Evidence. Examples include audio or video tape recordings, damage to vehicles, injuries, etc.

(3) Document the Results. All investigations must be thoroughly documented. This topic is covered in depth in Chapter 7.

b. Plan the Investigation. Without a detailed plan, an investigator may overlook valuable evidence or encounter unnecessary delays. Planning is especially important in large or complex investigations, as an investigator can be overwhelmed by the sheer quantity of information and lose sight of an important point or perhaps overlook a significant detail. The plan then, should provide the means through which the goal of the investigation will be achieved. Some items to consider when planning an investigation include:

(1) Be aware of the suspenses the commander has established.

(2) Make a list of persons to be interviewed or interrogated.

(3) Check shift hours, days off, and vacations of involved departmental personnel to determine their availability.

(4) Make a list of locations to be visited and physical evidence needed.

c. Supplementary. Additional sources or factors an investigator may wish to consider:

(1) If relevant to the investigation, check criminal and OMV records of complainants. If appropriate, contact other law enforcement agencies for additional information.

(2) When planning a visit to the scene of the incident, consider arriving at approximately the same time of day as the occurrence. Observe the topographical layout and, if known, pinpoint specific locations of witnesses, victims, or employees. Determine lighting, weather, traffic patterns, and general characteristics of the area, e.g., residential, business, industrial, or open. Take photographs and/or prepare diagram if it appears they would be beneficial. Consider a re-enactment of the alleged act to gain additional insight.

(3) If the identity of the involved employee is unknown to the complainant or witnesses, investigators should consider utilizing the command's photograph roster to facilitate identification.

(4) Obtain pictures of witnesses or victims to assist other involved parties recall the details of the incident, if necessary.

4. INJURED PARTIES. When a complaint involves a purported injury to the complainant, every effort shall be made to thoroughly document such injuries. This may include photographing the complainant to demonstrate the existence, or absence, of physical signs of the injury. If applicable, copies of medical records relating to the treatment of the alleged injury should also be obtained. Refer to the Physical Evidence section in this chapter for additional information regarding the gathering of such records.

5. INTERVIEWS.

a. General. The interview is probably the single most important tool an investigator has at their disposal. As with the overall investigation, preplanning is essential in conducting a successful interview.

b. Witnesses. If feasible, available witnesses should be interviewed immediately after the investigation is initiated. This gives the investigator an opportunity to elicit information from witnesses before their statement becomes tainted, vague, or forgotten. Most importantly, it allows for the preservation of evidence before it is destroyed or lost. In the event it becomes difficult to locate and/or contact a witness, the investigation should proceed without extended delay. When telephonically scheduling an interview with a witness, briefly determine what information he/she can supply to the investigation. If the witness cannot contribute relevant information regarding the specific allegation(s), the telephonic interview may be sufficient. If a witness refuses a personal interview, a telephonic interview may have to suffice.

c. Complainant. It is advisable, although not always necessary, to conduct a personal interview with the complainant. If the complainant or his/her legal representative expresses a desire that they not be interviewed, or the complainant is hostile towards the Department, then the investigation should proceed based on the facts available. If a complainant is not interviewed, this fact shall be noted in the narrative portion of the investigation file.

d. Employee. Normally, an interview with the involved employee should be conducted after gathering all other available information. This permits the investigator to ask all questions necessary to conclude the investigation, and

minimizes the need for subsequent interviews in the event new information surfaces. The investigator should normally avoid confronting the employee immediately after receiving a complaint. It is more productive and less offensive to the employee to conduct an interview that focuses on the specific allegations of an incident. Refer to the following section for policy regarding recording an employee's interview or statement.

- (1) In accordance with existing case law, legal statute, and current Department of Personnel Administration guidelines, an employee is entitled to representation when a meeting is held with his/her superiors for the specific purpose of eliciting information which could lead to adverse action. If the complaint investigation is of a serious nature, and/or the facts indicate adverse action may reasonably result, the employee shall be afforded the right to representation.
- (2) Except as specified above, employees should not routinely be allowed representation during complaint investigations which do not meet such criteria. However, supervisors and managers must remain cognizant of the employee's perception of the nature of an interview or meeting. A belief on the employee's part that adverse action is being considered, irrespective of the interviewer's designs or intentions, may be sufficient grounds to warrant granting representation rights. As such, before refusing a request for representation, it is recommended that commanders and supervisors consult with the Office of Employee Relations (OER) or BIA for additional guidance (with the concurrence of Division, as appropriate).
- (3) If, during the course of a routine interview in which the employee does not have representation, information surfaces which indicates the employee may be faced with adverse action, the interview should be suspended and the employee shall be informed of his/her right to representation. If the employee requests a representative, the meeting should be rescheduled to allow him/her a reasonable opportunity to obtain one. Interviews which require representation should be conducted in accordance **with HPM 10.2, *Internal Investigations***.
- (4) To preclude any potential violation of the Public Safety Officers Procedural Bill Of Rights (POBR), the practice of directing an employee who is the subject of an investigation to complete a memorandum describing the employee's version of the matter in question is prohibited. However, subsequent to an interview, an employee may be directed to prepare a memorandum for the purpose of clarifying specific issues. In addition, this prohibition does not apply when the employee has been provided with a written interrogatory and afforded the opportunity to consult with a representative during its completion.

e. Tape Recording.

(1) When Required. Statements by complainants and witnesses shall be recorded in potentially serious cases, as determined by the commander. Given the inherent advantages of having a completely objective version of the event, the recording of statements and interviews should be considered in virtually all instances.

(2) Transcripts. When appropriate these statements should then be transcribed. In less serious cases where statements are not recorded or transcribed, statements shall be summarized. It is the responsibility of the primary investigator to ensure transcriptions are accurate.

(3) Surreptitious Recording. Both Federal and state law, in most cases, provide for law enforcement personnel to record contacts with members of the public without their knowledge. However, in the interest of public confidence, the surreptitious recording of members of the public should be limited to those situations which indicate it is warranted. Questions regarding the appropriateness of using a recorder should be directed to BIA to be resolved on a case by case basis.

(4) Recording by Complainants and Witnesses. Complainants or witnesses who desire to use an audio tape recorder to record an interview or discussion with an investigator shall be allowed to do so. However, to preclude such a recording from being adulterated and thereby used inappropriately, anytime a complainant or witness uses a tape recorder, the investigator shall also record the interview or statement.

(5) Recording of Employee Interview. Should a supervisor desire to tape record an interview with an employee, outside the scope of a formal Administrative Interrogation, prior permission must be obtained from the employee. This is intended to avoid the possible perception on the employee's part that an Administrative Interrogation is indeed being conducted. If consent is granted, the employee shall also have the right to concurrently record the interview. If consent is not granted and the investigator believes obtaining a recorded statement is absolutely necessary, then an Administrative Interrogation must be held.

f. Conducting Interviews. 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 attitude is essential. The following guidelines have been established to assist the investigator.

- (1) Become thoroughly familiar with the allegations prior to the interview. Review the investigation file and plan the interview carefully, possibly creating a list of questions that need to be asked in order to arrive at a logical conclusion. Be certain all questions are answered.
- (2) Schedule the interview as soon as possible after contacting the person to be interviewed. If the person to be interviewed makes himself/herself unavailable, document the attempts made and continue with the investigation.
- (3) Consider tape recording all interviews, as described above. If written statements are obtained instead, they should be signed and dated.
- (4) Maintain self-control. Do not allow inflammatory comments to affect your composure. Be respectful and courteous at all times during the interview.
- (5) Document the interviewed person's full name, residence and/or business address, and telephone numbers on the CHP 240 or CHP 240C, *Witness List*, as applicable.
- (6) Start the interview by giving an explanation for your presence. A preliminary conversation concerning the incident may eliminate unnecessary verbiage during a tape recorded formal interview.
- (7) Allow the person being interviewed to relate his/her version of the incident without interruption. Listen carefully to the statement and refer to your list of questions to be sure all available information is obtained. Ask questions to clarify specific statements.
- (8) Verify the location of each witness, what they observed, and determine if they were in a position to observe the incident as they recall.
- (9) Ascertain any relationship between the witness and other involved parties, including departmental employees, which might bias his/her statement.
- (10) Direct questions to the specific allegations. Be certain to ask if the specific allegation(s) did, in fact, occur. Other questions could be: Who did it? Did you see/hear it? If it would have happened, would you have seen/heard it? If not, why not? What was your location? What were the locations of other witnesses? What was their ability to perceive it? When applicable, be certain to cover lighting, weather, traffic, ground conditions, etc. Make notations as to any discrepancies.
- (11) Follow-up on any new allegations or other information revealed during the course of an interview.

(12) Obtain physical descriptions of involved employees, when applicable.

(13) Inquire if there were any other witnesses or evidence. Obtain other witnesses' names, addresses, telephone numbers, and ages, when appropriate.

(14) Do not routinely discount information which may appear to be irrelevant, since it may later open other avenues which need to be investigated.

(15) When it appears adverse action may be warranted, ask the complainant or witness if he/she will testify at a State Personnel Board hearing, and incorporate their response into the investigation narrative.

(16) Document the interview in detail as soon as possible after its completion. Be certain all allegations are thoroughly explored. Any concerns regarding credibility should be discussed in the investigative narrative.

6. EMPLOYEE HISTORY.

a. The employee's complaint history shall be examined in order to determine the existence of previous complaints which would be relevant to the current investigation. Of specific concern would be complaints in which an allegation was Sustained or found to be an Unintentional Error, or in which a definitive finding could not be reached. This does not mean however, that previous complaints which have other findings should not also be considered, specifically including Other complaints (such as Frivolous or Rescinded).

EXAMPLE: Officer Smith is accused of using a specific profane term when dealing with the complainant. The investigator finds two previous exonerated complaints in which Smith was accused of using the exact same term. Lacking other evidence to the contrary, this may lead the investigator to give more credence to the complainant's version of events.

b. If the employee's complaint history does not reveal any information which is pertinent to the current investigation, the investigator may simply check the appropriate box on the CHP 240. If, however, the complaint history reveals certain trends or other information which is used in determining the findings of the current complaint, then such prior complaints should be referenced in the 'Findings' section of the narrative.

c. Commands and investigators should be aware that in the event an investigation is released through legal discovery, specifically identified previous complaints may then also become discoverable. Accordingly, it is recommended that only generic statements be made regarding previous complaint findings, unless a more specific reference is warranted to support a particular finding.

7. PHYSICAL EVIDENCE.

a. Preservation. The method used to obtain the evidence and its relevance to the investigation should be documented in either the Chronological Summary section (Category I format) or the Complaint Summary section (Category II and Other complaint formats), and then included as an exhibit in the investigative file. The collection and preservation of evidence in an administrative investigation shall be in accordance with HPM 70.1, *Evidence Manual*, and the additional administrative requirements contained in HPM 10.2, *Internal Investigations*. An administrative interview is a form of evidence. As a result, any tapes of interrogations or witness interviews should be stored in the command's evidence storage site, **with** the CHP 36, *Evidence/Property Receipt/Report*, included as an investigation exhibit.

(1) Evidence pertaining to an investigation conducted in accordance with this manual shall be stored for a period of five years, beginning **with** the date the complaint is filed.

(2) To ensure evidence is not inadvertently destroyed prematurely, the CHP 36 shall be annotated with the appropriate date of destruction when the evidence is stored.

(3) Evidence shall remain in the command which originally completed the investigation, regardless of any subsequent transfers of the involved employees.

b. Request for Polygraph. Refer to HPM 10.2 for guidance.

c. Medical Information. If the release of medical records should become necessary during the course of the investigation, the individual whose records are sought must grant permission. Due to the nature of such records, the utmost care must be employed to ensure sufficient confidentiality, and only pertinent portions of any record should be included as an investigation exhibit. A sample medical information release form is provided in Annex M.

d. Searches. All searches conducted by the investigator must comply with the Public Safety Officers' Procedural Bill of Rights or legal statute concerning search and seizure (refer to HPM 10.2, Chapter 4).

e. Employee Tape Recordings. Any existing audio and/or video recordings made by uniformed employees relating to any enforcement activity shall be provided to the Department upon request. This requirement shall include recordings which were made surreptitiously (without the other party's knowledge). The employee shall be provided with either a new tape as a replacement, or the original recording may be returned after duplication as needed.

8. ADDITION OF EMPLOYEES. During the course of an investigation, it may become apparent that the misconduct alleged is not the responsibility of the employee (named by the complainant). In such cases, the employee who is determined to be proximately related to the cause of the allegation should be added as a named employee to the complaint.

EXAMPLE: Officer Smith stores a vehicle for expired registration, which he had verified as 15 months overdue via radio with the Communications Center. The registered owner files a complaint against Smith since the registration was actually only three months expired. During the course of the investigation, it is determined the Communications Operator inadvertently provided the incorrect expiration information to Smith. The Communications Operator should be added to the complaint (with a probable finding of Unintentional Error) and Smith should be Exonerated.

9. CRIMINAL MISCONDUCT COMPLAINTS. **All** complaints with allegations of criminal misconduct which have been given a finding of Sustained or Unintentional Error shall be referred to the respective prosecuting district attorney's office for review. The results of such a review shall be discussed in the corresponding Recommendations section of the narrative. Deviations from this policy shall be approved by BIA.

10. REQUEST FOR ADVERSE ACTION. Should the facts of an investigation indicate that a request for Adverse Action against an employee will be sought, the complaint investigation shall be completed in its entirety, as described in this manual. Once this has been accomplished, the investigation will then become an exhibit in the *separate* Adverse Action package, completed in accordance with HPM 10.2. Any questions regarding this process should be directed to BIA.