

CHAPTER 3 INVESTIGATIONS

1. Introduction

The Council of the Inspectors General on Integrity and Efficiency (CIGIE) “Quality Standards for Investigations,” dated November 2011, establishes the professional standards and principles for investigators of the Federal Offices of Inspectors General. CIGIE standards require that investigators conduct investigations in a timely, efficient, thorough, and objective manner.

a. Independence. Under the CIGIE general standards for “independence,” the investigative organization must be free, both in fact and appearance, from impairments to independence. Accordingly, under 10 U.S.C. 1034, the Inspector General conducting the investigation must be outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.

b. Due Professional Care. The CIGIE Standards require that “due professional care” be used in conducting investigations. Due professional care requires:

Thoroughness. All investigations must be conducted in a diligent and complete manner, and reasonable steps should be taken to ensure pertinent issues are sufficiently resolved.

Objectivity. Evidence must be gathered and reported in an unbiased and independent manner in an effort to determine the validity of an allegation or to resolve an issue.

Timeliness. All investigations must be conducted and reported with due diligence and in a timely manner. This is especially critical given the impact investigations have on the lives of individuals and activities of organizations.

Documentation. The investigative report’s findings must be supported by adequate documentation.

Legal. Investigations should be conducted in accordance with all applicable laws, rules and regulations, and with due respect for the rights and privacy of those involved.

This chapter guides the investigator in conducting a reprisal investigation in a manner consistent with the CIGIE professional standards.

2. Planning the Investigation

Investigators should develop an investigative plan at the initiation of the investigation (see Appendix C for the investigative plan template). The first CIGIE Qualitative Standard is planning, which provides that “case-specific priorities must be established and objectives developed to ensure that individual case tasks are performed efficiently and effectively.”

In reprisal investigations, the investigative plan should be focused on the elements of reprisal.

a. Element 1, Protected Communication (PC): Did Complainant make or prepare to make a protected communication, or was Complainant perceived as having made or prepared to make a protected communication?

Identify each PC with specific information including the date the PC was made, the individual or organization that received the PC, and the specifics of the PC.

b. Element 2, Personnel Action (PA): Was an unfavorable personnel action taken or threatened against Complainant, or was a favorable personnel action withheld or threatened to be withheld from Complainant?

Identify each PA alleged to be reprisal by the complainant including the date of the PA and the Responsible Management Official (RMO) who took, threatened, or withheld the PA.

c. Element 3, Knowledge: Did the responsible management official(s) have knowledge of Complainant's protected communication(s) or perceive Complainant as making or preparing protected communication(s)?

Identify all RMOs including their rank, title, and organization. Identify whether those who were involved in the PA(s) were likely to have known about the PCs or have perceived Complainant to have made the PCs.

d. Element 4, Causation: Would the same personnel action(s) have been taken, withheld, or threatened absent the protected communication(s)?

Plan the investigation to determine the following information in order to reach a conclusion whether reprisal occurred:

Reason stated by each RMO for taking, withholding, or threatening action.

Timing between the PC(s) and PA(s) – Was the PA taken after the PC?

Motive on the part of the RMO(s) for deciding, taking, or withholding the PA. What bearing, if any, did the PC have on the decision to take or withhold the PA? Did the Complainant's PC allege any wrongdoing by any of the RMOs or otherwise implicate or criticize their performance, integrity, competence, or leadership? In addition, have any of the RMOs exhibited or expressed animosity toward the complainant for making the PC, or have they expressed animosity regarding the very idea of, for example, filing an IG complaint or contacting a member of Congress?

Disparate treatment of Complainant as compared to other similarly situated individuals who did not make PCs: how did the RMO(s) respond in the past to similarly situated personnel who did not make PCs? Are their actions in the case of the Complainant consistent with past actions, or did they handle the matter differently? If the RMO(s)

deviated from the way they normally acted in the past, you must explain the difference and determine whether the reasons are credible under the circumstances.

The investigator should assess what evidence is needed in order to resolve each element of reprisal.

- witnesses to be interviewed;
- documentary and other relevant evidence to be collected;
- investigation milestones; and
- steps necessary to execute a timely, efficient, thorough, and objective investigation

e. Develop a List of Documents. During the planning phase of your investigation identify documentary evidence that you believe will help resolve the allegation(s). Organize the documents needed by each PC and PA.

Examples of documents in reprisal investigations include copies of the PC to an IG, member of Congress, or Equal Opportunity office; copies of the PA, which may be found in official personnel files, as well as performance evaluations, counselings, awards; copies of disciplinary actions including letters of reprimand; and copies of separation, re-enlistment, and reduction actions. Emails, memorandums, other correspondence, and staffing packages are also often useful as evidence.

f. Develop a Witness List. The Investigative Plan should include a list of witnesses to be interviewed. It may be helpful to use an investigative planning tool like the Evidence Matrix at figure 3.1 below to accomplish this task. A list of witnesses can be developed based on the intake interview with the complainant, a review of documents obtained at the intake stage, and by performing research about the people and organizations involved in the investigation. Whenever possible, review documents that show the organizational structure and the chain of command.

The investigative plan should also address: Whom are you going to interview? In what sequence are you going to conduct the interviews? How many witnesses will need to be interviewed to ascertain the facts in the case? In order to conduct an objective investigation, investigators should interview the complainant, the RMOs, and relevant witnesses.

g. Develop a Chronology. Investigators will develop a chronology during the planning process. The chronology should contain details on who, what, when, where, how, and why things happened the way they did. The chronology will be updated and maintained throughout the investigation and will be critical in performing the timing analysis required to reach conclusions on whether reprisal occurred.

h. Planning Tools. There are planning tools that can help you organize your investigation. Lists of the documents to be obtained and witnesses to be interviewed are a good place to start. The evidence matrix below in Figure 3.1 is another tool that can help plan and organize the evidence. List the elements of reprisal along the horizontal axis. The vertical axis contains a list of witnesses, documents, and RMOs. Initially, where you expect a witness, document, or RMO

to provide evidence will be marked with an “X.” After you gather evidence, then the investigator can replace the “X” with the relevant credible evidence gathered. Additionally, you can place a “-” if you believe they may be knowledgeable about the allegation. A marking, “~” means do not discuss this part of the allegation with this witness.

Figure 3.1 - Evidence Matrix

Evidence Matrix				
Witness or Document	PC	PA	Knowledge	Causation
CDR Teller (Complainant)	X	X	-	
Col Abel (Chief of Staff)	X	~	-	
RADM Thomas (Commander)	X	~	-	
Mr. Dawn (Co-worker)	~	~	-	
Performance Evaluation	~	~	-	
Col Kenny (Subject)	X	X	X	X
Ms. Fawn (Subject)	X	X	X	X

X = Primary Witness - = Discuss if knowledgeable ~ = Do not discuss

3. The Investigation Process. The following steps of the investigative process are mandatory for all investigations.

a. Interview the Complainant. The complainant must always be interviewed. Frequently, follow-up interviews may be needed to go over new evidence or information developed during the investigation, and to clarify conflicts in testimony or ambiguities.

b. Obtain Relevant Documentation. Make sure to obtain relevant documentation whenever such documentation exists and is available to you.

c. Interview Knowledgeable Witnesses. Witnesses with knowledge of the events under investigation should be interviewed. It is important to interview relevant witnesses identified by the complainant and those identified by the RMO in order to be objective.

d. Interview the RMO. It is important to interview the RMO. This affords the RMO the opportunity to respond to the allegations made against them, to identify witnesses and evidence that may be material to the elements of reprisal. However, if initial fieldwork reveals that there was, in fact, no PC, interviewing the RMO will not be necessary.

e. Obtain a Legal Review. All final reports of investigation must undergo a legal review by an attorney with the servicing Staff Judge Advocate or General Counsel.

4. Interrogatories. Preparation is the key to timely, efficient, thorough, and objective interviews. Prepare an interrogatory before every interview. A well thought-out interrogatory is critical to a successful interview because it can help keep you properly focus on the issues under investigation. Referring to your well-developed interrogatory can also help you get back on track with your interview when unexpected issues or allegations arise. Always prepare your interrogatory before the interview, give thought to the order of your questions, and prepare open-ended questions whenever possible.

Building an interrogatory begins with the elements of reprisal and your assessment of the evidence you believe the witness possesses. The interrogatory provides a road map for the interview and helps ensure that the interview is thorough, accurate, and complete. If you plan to have the witness comment on documentary evidence, ensure that you have the documents ready and organized for introduction during the course of the interview. Build topics of questioning around the elements of reprisal, anticipate possible answers the witness might provide, and be prepared to ask appropriate follow-up questions. Interviewers who adequately prepare are rarely surprised and usually get better information from interviews.

In general, the questions below will form the foundation of your interrogatories, adapted to the type of witness being interviewed.

Element 1, Protected Communication (PC): Did Complainant make or prepare to make a protected communication, or was Complainant perceived as having made or prepared to make a protected communication?

- What was the PC? Describe the details of the communication. Provide a copy.
- Who was the PC made to?
- When was the PC made? Give the specific dates.
- If complainant prepared a PC or expressed intent to make a PC, ask:
 - Who knew about your preparation of the PC, or who knew you intended to make the PC?
 - How did they know?
 - Were there other witnesses?

Element 2, Personnel Action (PA): Was an unfavorable personnel action taken or threatened against Complainant, or was a favorable personnel action withheld or threatened to be withheld from Complainant?

- What personnel action(s) were taken or were withheld or were threatened?
- Who was the RMO who took, withheld, or threatened the action?

- Did other officials or members of the chain of command recommend or approve the action?
- On what date(s) did the action occur?
- Why would the action taken affect Complainant's position or career?
- Provide copies of all documents and related correspondence and emails.

Element 3, Knowledge: Did the responsible management official(s) have knowledge of Complainant's protected communication(s) or perceive Complainant as making or preparing protected communication(s)?

- Ask complainant:
 - Why do you believe that RMO knew about the PC?
 - Who did you tell about making or preparing a PC?
 - Who can testify that RMO knew about the PC?
 - Do you have any documents that show RMO knew about the PC?
- Ask witnesses:
 - Did you know that Complainant made a PC?
 - How did you find out?
 - When did you find out?
 - Did you tell anyone else?
 - Who else may know that the Complainant made a PC?
 - Do you have information that shows that the RMO knew that the Complainant made a PC?
 - Do you have any documents that show the Complainant made a PC?

- Ask the RMO:
 - Were you aware that the Complainant made or prepared a PC?
 - When did you become aware?
 - How did you become aware?
 - Did you suspect that the Complainant made a PC?
 - Did you hear rumors that the Complainant made a PC?

Element 4, Causation: Would the same personnel action(s) have been taken, withheld, or threatened absent the protected communication(s)?

- Ask the complainant:
 - What reasons did the RMO give you for taking or withholding the PA?
 - Did you do those things?
 - Why do you believe the PA was taken in reprisal and not for the reasons given?
 - Did anyone tell you they believed the PA was reprisal?
 - Who else can corroborate the information that you have provided?
 - Do you believe that you were treated differently than others were treated in similar situations?
 - What examples can you give?
 - Do you have any documents that relate to the PA?
- Ask witnesses:
 - Have you ever talked to the RMO about the PA being taken against the Complainant? When?
 - If so, what did the RMO say regarding the reasons for taking the PA?
 - Did the RMO mention the Complainant's PC? When? To whom?
 - Did you ever discuss the Complainant's PC with the RMO? When?

- What did the RMO say about the PC?
- Did the RMO say anything that indicated that there was any bias or animosity toward the Complainant for making the PC? Describe.
- Do you believe that the RMO took the PA in reprisal for the Complainant making the PC? Why.
- Do you believe the Complainant making the PC was a factor in the RMO taking the PA? Why?
- Do you have any documents that relate to the PA? Provide.
- Ask individuals who recommended or influenced the PA:
 - What action did you recommend?
 - Why did you recommend the action?
 - Was the action you recommended the same as you have recommended in similar situations?
 - If no, why was it different?
 - Do you have any documents that relate to the PA? Provide.
- Ask the RMO:
 - Explain the circumstances that led you to take the PA involving the Complainant.
 - Why did you take the PA?
 - Who did you consult with in taking the PA?
 - Did anyone recommend or influence the PA?
 - If so, who, and what were the reasons they provided for recommending the PA?
 - Have you taken the same action against others who did the same thing as the complainant?
 - What was your reaction when you learned that the Complainant made the PC?

- Did the Complainant's PC influence your decision to take the PA?

5. Conducting Interviews. Ask open-ended questions. Avoid putting words in witnesses' mouths by asking questions like, "You really didn't reprimand against CDR Smith, did you?" While leading a witness is inappropriate, summarizing a witness' testimony as you understand it is acceptable. An interviewer might ask, "Was it your testimony that MAJ Smith's change of assignment was initiated by HRC?" This question clarifies previous testimony and is not a solicitation of new information.

a. Beginning the Interview. Investigators should use a standard read-in to begin an interview. Use a read-in provided by Service regulation or see sample read-in at Appendix D.

b. Closing the Interview. Investigators should use a standard read-out to conclude the interview. Either use a read-out provided under Service regulations, or see sample read-out at Appendix D.

6. Quality Assurance Review of Investigation. Upon completion of the fieldwork, investigators should perform a quality assurance review of their investigation using the checklist at Appendix E. The checklist is modeled after the oversight review worksheet used by the DoD OIG to review investigations. This affords the investigator an opportunity to perform a self-assessment of their investigation prior to submitting to the DoD OIG for approval. The investigator should also go through the checklist after writing the report of investigation to double-check their work and to ensure that the quality standards for reports and supporting documentation are met.