

6 Planning an investigation

Scope and purpose

You have been tasked with carrying out an investigation on behalf of your UPA, which means that you are responsible for gathering all the relevant evidence or information and using this to find the facts.

In many cases, your CEO (or someone assigned the responsibility) will have developed the scope and purpose (terms of reference) for this investigation. In other cases, you may be asked to do it and have it endorsed by the CEO. If so, you should consult the guidelines set down in chapter 3.

Regardless of who develops the scope and purpose, you need to be clear on the boundaries of the investigation:

- what it is you have to investigate
- what authority you have to conduct the investigation
- what period of time your investigation should cover (i.e. are you looking at a specific incident, or events leading up to, or after, the incident)
- who you must report to
- when the investigation should be completed and the final report be submitted.

If at any stage during the investigation you think that the scope and purpose need to be changed, seek prior approval from the CEO. If you don't, you may find yourself investigating complaints without proper authorisation, and the CEO may disagree with the actions you have taken as a result.

A common pitfall of investigations is to lose focus by enquiring into interesting but irrelevant issues. If something does not fit within your scope and purpose, you should either seek approval to change your scope and purpose or omit it from your investigation.

Authority and investigation powers

Gaining authorisation

You should make sure that you have a written authority from your CEO to conduct the investigation, including any powers that are available for you to adequately enquire into the allegations.

You could also check with your legal unit for any additional authority that may be contained in:

- your UPA's legislation and regulations
- employment agreements or awards
- contracts
- codes of conduct
- employment law and common law.

If an investigation arises out of a PID, check with your UPA's internal procedures for dealing with PIDs to ensure that they have been complied with (see also "Public interest disclosures" in chapter 5).

Section 219A of the *Public Service Act 2008* requires departments to establish and implement a system for dealing with customer complaints, and the process of authorisation should be dealt with in your UPA's complaints system.

Authority to collect evidence

Your three most likely sources of information will be:

- witnesses
- experts or other people with relevant knowledge or information
- electronic and hard copy records from your UPA or external sources.

At the outset, you will need to ask yourself what authority you have and, in particular, whether you have the necessary authority to:

- get witnesses to talk to you about relevant events
- obtain information from people about policies, procedures and practices
- access relevant records.

Preserving evidence

As soon as you are sure of your investigation powers, you should consider whether any potential evidence is at risk, and if so, take discreet steps to ensure that it is preserved and made secure. You might seek advice from the relevant experts, such as your IT section.

Potential risks to the security of evidence include where:

- documents may be destroyed
- records may be modified
- postdated records may be produced
- collusion may take place, particularly where more than one person is involved
- a vital witness is in a position to be pressured or influenced (e.g. a subordinate of the person under investigation).

Accessing documents

You need to determine what authority you have to get access to relevant documents. If these documents belong to the department and are stored in areas where employees normally have access, you should have no trouble getting them. It would be preferable if your CEO makes reference to the seizure of documents and the like in your scope and purpose or authority.

You need to be more cautious if the documents are stored in an employee's personal work area. This may include a personal locker, locked drawer or filing cabinet. If your authority does not specifically cover these areas, you should seek guidance from your investigation manager (or equivalent) or your UPA's legal unit.

Specific authority may also be required for evidence contained on computers and other electronic media, including mobile devices (see "Digital evidence" in chapter 7).

Questioning witnesses

You also need to determine what authority you have to question witnesses, both internal and external (e.g. contractors, customers). In this context, it is important to distinguish between the right to ask and the power to demand. You may have the right to request people to answer questions and provide relevant documents, but if witnesses refuse to be interviewed, or access to documents is refused, you may not have the legal power to compel witnesses to provide information.

There will be strong pressure on any employee of the UPA to cooperate with the investigation. You may have the power to request that any employee answer a reasonable question or provide a document that relates to the work of the UPA. Contractors can also be asked about the performance of a contract.

If employees wilfully refuse to answer or hand over documents, it may be grounds for disciplinary action (see “Difficult or uncooperative people” in chapter 7). However, refusal to answer or provide documents does not help you gather evidence. If a person fails to answer a reasonable question, take that into account when assessing their credibility.

Sources external to the UPA

Where people outside your UPA appear to be key witnesses or hold relevant records, they may be reluctant to cooperate, and the absence of the necessary legal authority may stall the investigation. You may like to contact the CCC to discuss whether a cooperative investigation is warranted.

Most UPAs do not have extensive or coercive powers to gather information, but the CCC has the power to conduct coercive hearings, including the legal authority to compel witnesses to attend and give evidence under oath and to produce documents (see ss. 75 and 82 of the CC Act). The CCC also has the power to require a person to answer self-incriminating questions.

Planning an investigation

More investigations suffer because of poor planning than for any other single reason. A good investigation starts with careful planning and preparation, with a clear understanding of the parameters of the investigation.

Planning is essential to ensure that:

- the investigation is carried out methodically and in a professional manner
- resources are used to best effect
- additional resources can be made available if required
- sources of evidence are not overlooked
- opportunities for people to remove, destroy or alter evidence are minimised.

You should complete your investigation plan before you conduct any enquiries to clarify the approach you will take. The plan will allow you to stay focused on the job and alert you to any potential problems before you encounter them.

An investigation plan also facilitates effective supervision by informing investigation managers of proposed investigative strategies and timelines in advance, and during the course of an investigation.

The investigation plan

There are a number of ways in which you may draw up your investigation plan. Some UPAs may already have a template, but an example of how you may present your plan is set out below.

An investigation plan will define what you do, why you do it and when you do it. For best results, the plan should work from the general to the specific and be updated regularly. Before you do any task, see where it fits within the plan.

It may be useful to develop your investigation plan in consultation with whoever authorised you to conduct the investigation, to ensure that it reflects accurately the brief you have been given.

While it is important that you start with a plan, investigations rarely proceed as originally predicted. You should therefore be ready to revise your plan, perhaps drastically, as new information emerges during the course of an investigation. Always follow the facts, rather than trying to make the facts fit into your plan.

Investigation plan template (see sample plan at the end of the chapter)

| <p>File no: This should be an internally generated number</p> | | | | | |
|--|---|---|--|---|--|
| <p>Investigator: Your name and position, and the name and position of the officer authorising you to conduct the investigation</p> | | | | | |
| <p>Overview/background: You should state how the information came to your UPA's attention, the general ambit of the investigation, the general details given by the source of the initial information, and any other relevant information. If initial enquiries have been conducted by you or someone else, detail them here.</p> | | | | | |
| <p>Scope of investigation: Include the statement of scope and purpose as approved by your CEO, as this should clarify exactly what was alleged in the complaint.</p> | | | | | |
| <p>Allegation/s: A single complaint may contain a number of separate allegations, and these need to be dealt with individually. The CCC will usually have listed the separate allegations in its referral to your agency. The investigation plan should include only those allegations that are to be investigated.</p> | | | | | |
| <p>Risks to investigation: Mention any issues up front in the plan. For example:</p> <ul style="list-style-type: none"> • "The source is a public official who has made a public interest disclosure." • "Fears exist that documents might be destroyed." • "Certain people might release information to others." • "The media may take an interest if the case becomes public." • "A conflict of interest may be involved." <p>In respect of public interest disclosures, the investigation plan should incorporate strategies to protect the identity of the person making the disclosure.</p> | | | | | |
| Actions to be taken | | | | | |
| Facts at issue | Action | Resources needed | Responsible person | Completion date | Outcome |
| What facts need to be established to prove or disprove the allegation (see below)? | Identify the potential sources of information that will help you establish the facts at issue by means of interviewing specific witnesses, examining documents and so on (see below). | What resources do you need, for example: <ul style="list-style-type: none"> • people required • computer facilities • electronic or video recording equipment • stationery • storage facilities • vehicles. | Who will perform the specific actions based on the avenues of enquiry? This will usually be you, but you may need to delegate a task to another officer. | Estimate the completion date for each task. It can never be set in concrete, but you need to ensure a timely conclusion to your enquiry, while at the same time making sure that the process is fair. | Does the evidence obtained through each action confirm or refute the facts at issue? |

The facts at issue

In cases involving a complaint about the conduct of an individual, the facts at issue will usually include:

- the identity of the person alleged to have engaged in the conduct
- the place and the date that the alleged conduct occurred
- whether the alleged conduct actually occurred
- if the alleged conduct did not occur, what conduct did actually occur
- whether the actual conduct itself is wrong
- whether the person did the thing alleged
- whether the person had authority to engage in the conduct.

As well, the relevant legislation or procedures alleged to have been breached may contain specific requirements or elements that must all be satisfied in order for a breach to be made out. All of these elements or requirements comprise the facts at issue or proofs.

Sources of information

It is useful to break down the sources into:

- documents (both hard copy and electronic) that should exist or that might be obtained
- things that might have been used or created
- people who might have witnessed events, created documents or handled things (see “Deciding who should be interviewed” below).

Your focus should not be on trying to prove or disprove something, but on thinking broadly about all possible sources of information about a case. The sources may come from within your agency or from outside it.

Deciding who should be interviewed

People are a valuable source of information during an enquiry because:

- they may have directly perceived something with their senses (e.g. “I saw”, “I heard”, “I touched”, “I smelt”, “I tasted”)
- they may have created a document (either electronic or hard copy)
- they may have used something
- they may have left a trace (e.g. a computer audit trail) when using something.

All witnesses who are relevant to the investigation should be interviewed. As part of the process of preparing the investigation plan, you should identify those people who can assist in the enquiry by asking yourself: “What people may have information or have created documents or used things relating to the subject of my enquiry?” If other witnesses become apparent during the investigation, revise your investigation plan accordingly.

Deciding the order of interviews

The first interview in an investigation usually occurs with the complainant as part of the initial enquiries and planning. The order in which the remaining witnesses are interviewed will depend on:

- the importance of their evidence
- their degree of association with the person who is the subject of the complaint
- their availability.

As a general rule, the subject officer should be interviewed last. This will allow you to collect as much information as possible from other sources first, putting you in a good position to determine the appropriate questions to ask. It also minimises the risk of evidence being tampered with or witnesses being intimidated. (See also “If and when to tell the subject officer” in chapter 5 and “Interviewing the subject officer” in chapter 8 for more information.)

Arranging for an interpreter to be present

Where you identify a potential witness who does not have a working command of English, or is deaf or has a speech disorder, you should also make allowances in your plan for the use of an accredited interpreter (see chapter 8 for advice on how to use interpreters when conducting interviews).

Seeking help

Although you have been tasked with carrying out the investigation, there are many people within your UPA who can help you or offer advice, including:

- audit staff
- human resources staff
- legal staff
- information technology staff.

Sample investigation plan

| File no: 132/07/123 | | | | | |
|--|--|--|--------------------------------------|-----------------|--|
| Investigator: Michael Good, Area Manager (Authorised by Director ESU) | | | | | |
| Overview/background: At 10.00 am on 5 January 2014 an anonymous telephone call was received at the Ethical Standards Unit advising that on 20 December 2013 Ms Andrews, the agency's procurement manager, had awarded a three year contract to provide the agency's information technology support services to a business that is owned and operated by her husband. Additional information is that a proper tender process was not undertaken and that there are similar businesses in the marketplace. | | | | | |
| Scope of investigation: An investigation is to be commenced to establish if Ms Andrews failed to follow the agency's procurement policy in awarding a supply contract to her husband's business. | | | | | |
| Allegation/s: That on or about 20 December 2013 Ms Andrews had acted corruptly in awarding a supply contract to her husband's business. | | | | | |
| Risks to investigation: It is necessary to keep this information confidential and to act promptly in order to minimise loss of material from the subject officer's workplace. | | | | | |
| Actions to be taken | | | | | |
| Facts at issue | Action | Resources needed | Responsible person | Completion date | Outcome |
| Was a new contract required | Check contracts held by agency | Enquiries with relevant IT manager | Investigator and Manager, IT Section | 6.1.2014 | Enquiries to show whether new contract was required |
| Was there a tender process followed | Check agency website and records to ascertain calling of tenders | Enquiries with relevant IT manager | Investigator | 7.1.14 | Enquiries to show any calling of tenders |
| Correspondence with selected tenderers | Check tender file and emails | Enquiries with relevant IT manager and records manager | Investigator and Manager, IT Section | 10.1.14 | Enquiries to show if tender process was appropriate |
| Available contract documents | Seize all relevant contract documents | Enquiries in workplace | Investigator | 10.1.14 | Documents to show any process followed to award contract |
| Version of subject officer | Interview | Electronic recording of interview | Investigator | 20.1.14 | Version of subject officer to be assessed |