

## 9 The final report

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### Analysis of the evidence

After you have compiled all the evidence, you must analyse it to determine whether, in your opinion, it is capable of substantiating the allegations.

The depth of your analysis — and the content of your final report — will depend on whether you have only been tasked with collecting the evidence, or whether you are expected to make findings and recommendations. If you are conducting the investigation under a statutory power, it is important to determine the extent of your power to draw conclusions, and to be clear about the nature of the conclusions that you are entitled to draw.

Facts not in dispute can be accepted at face value (e.g. at 9 am, it is daylight). Facts in dispute (e.g. whether the subject officer was in the office at the time of the alleged corrupt conduct) should be subject to a constant process of checking, challenging and analysing. Be careful to distinguish between findings of fact and expressions of opinion, based on the evidence. Your findings of fact must be based on the evidence you have collected, and each piece of evidence must be considered in terms of its relevance and reliability. Weigh any evidence that dismisses the charge against any evidence that supports the charge.

If there is more than one allegation, a conclusion should be reached for each allegation.

In some cases, it will ultimately be an issue of one person's word against another's. In deciding which witness is the more credible, you should consider a range of factors, including the demeanour of the witnesses, their possible motives and any inconsistencies. In some circumstances, you might take the past behaviour of a party into account. Evidence of past behaviour is only likely to be relevant if the behaviour is markedly similar, recent or serious. For example, if a person has had allegations of dishonesty proved against them in the past, this may be taken into account in assessing credibility.

Remember, in disciplinary investigations, allegations must be proved on the **balance of probabilities**, but criminal proceedings will require that the allegations are proved **beyond reasonable doubt** (see chapter 7).

### The investigation report

Once you have finished your analysis of the evidence, you must prepare a report, and then complete and file all the paperwork. Your investigation report may well be subject to outside scrutiny by, for example, the CCC or the Queensland Ombudsman, so you need to ensure it is well structured and supports any findings or recommendations you have made.

There is no single correct format for a report. Your agency may have its own templates; otherwise, you can create your own format — you may choose to use your investigation plan as a starting point — as long as it contains all the necessary elements:

- Authorisation
- Scope and purpose
- The complaint
- Précis of allegations
- The evidence
- Conclusions and recommendations
- Attachments.

A good investigation report will use headings to help the reader identify the evidence relating to each issue. The evidence should be appended, tabbed and referenced in the report.

### Investigation report template (see sample report at the end of the chapter)

<p><b>File no:</b> This should be an internally generated number</p>																				
<p><b>Investigator and authorisation:</b> Your name and position, and the name and position of the officer who authorised you to conduct the investigation</p>																				
<p><b>Scope of investigation:</b> Include the scope and purpose approved at the start of the investigation, and note any changes that may have been necessitated as the investigation progressed (these changes would have required further approval).</p>																				
<p><b>The complaint:</b> Include the following details:</p> <ul style="list-style-type: none"> <li>• how the complaint was received — if in written form, attach this document</li> <li>• the name and occupation/position of the complainant, including any background information that may be relevant to the investigation of this complaint</li> <li>• the name and position of the person about whom the complaint has been made. Provide a summary of the subject officer's employment history with the agency, and any background information that may be relevant to the investigation of this complaint.</li> </ul>																				
<p><b>Précis of allegations:</b> Set out a brief summary of the nature of the complaint as expressed by the complainant, including the date and place the incident occurred.</p> <p>Specify and number each allegation distilled from the complaint, having regard to any possible relevant criminal offence or disciplinary breach, or any specific section or clause of any relevant policy, procedure or code of conduct. Use corresponding numbers throughout the succeeding sections. Identify any potential systemic issues.</p> <p>If other concerns not raised by the complainant have come to light during the investigation, these should be listed under the subheading "Further allegations", and numbered sequentially following on from the original allegations.</p>																				
<p><b>Summary of the investigation:</b></p> <p>Interviews conducted:</p> <table border="0"> <tr> <td>• name of interviewee</td> <td>• date of interview</td> </tr> <tr> <td>•</td> <td>•</td> </tr> <tr> <td>•</td> <td>•</td> </tr> </table> <p>People not interviewed:</p> <table border="0"> <tr> <td>• name of person</td> <td>• reason not interviewed</td> </tr> <tr> <td>•</td> <td>•</td> </tr> <tr> <td>•</td> <td>•</td> </tr> </table> <table border="0"> <tr> <td>Documents examined:</td> <td>Limitations to investigation:</td> </tr> <tr> <td>• title/description of document</td> <td>• if applicable</td> </tr> <tr> <td>•</td> <td>•</td> </tr> <tr> <td>•</td> <td>•</td> </tr> </table>	• name of interviewee	• date of interview	•	•	•	•	• name of person	• reason not interviewed	•	•	•	•	Documents examined:	Limitations to investigation:	• title/description of document	• if applicable	•	•	•	•
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**Matters for consideration:**

Relevant criminal offences:

- Outline the legislation allegedly breached (if criminal charges have not already been laid).

Relevant policies and procedures for disciplinary breaches:

- Outline the UPA policies and procedures allegedly breached.

**Discussion of evidence:**

Summarise the evidence obtained:

- the circumstances and particulars of the complaint that the complainant made, with regard to the specific allegations distilled from the complaint
- the salient points of the interview of the subject officer, including the person's responses to each of the allegations
- the versions given by each of the witnesses interviewed, and whether they corroborate or contradict the version of the complainant or the subject officer
- the documentary evidence relied on in the investigation and its effect.

Repeat the process under a new heading for each separate allegation.

**Conclusions and recommendations:**

Set out a clear and positive analysis of the evidence and your opinion as to whether the evidence gathered, if accepted by the decision-maker, substantiates or disproves the allegations, and the reasons for these conclusions. Include relevant policies and procedures.

If there is more than one allegation, you should deal with them separately under headings that correspond with those used in the preceding section, "Discussion of the evidence".

It may be necessary to explain inconsistencies between the versions of witnesses and the reliability of the people interviewed.

If you are required to make recommendations, you should outline possible alternative courses of action to your CEO. Recommendations do not need to be specific about actions to resolve the complaint, and can be made regardless of whether the evidence is capable of substantiating the specific complaint, for example:

- If the evidence is capable of substantiating the specific complaint, your recommendation may state: "My view is that there is evidence which, if accepted by a tribunal of fact, is sufficient to find that the subject failed to comply with the code of conduct and support disciplinary action. I recommend that consideration be given to commencing show cause proceedings".
- If the evidence is insufficient to establish the allegations, or the allegations are not capable of substantiation, your recommendation may state: "I am of the view that there is insufficient evidence to support any criminal or disciplinary action and therefore no further action is warranted".
- If the investigation has identified any systemic issues or management failures that may have contributed to the alleged conduct, you might recommend that action be taken to address these.
- If the investigation has identified systemic issues or deficiencies, you might recommend that action be taken to improve the systems or undertake other corruption prevention actions.

**Attachments:**

Attachments, including all documents relied on by you and any relevant policies and procedures, should be indexed and numbered in the order they are referred to in the investigation report (e.g. "Attachment 1"), and attached.

If making findings and recommendations was not part of your original scope and purpose, then these should not be included in the final report. You need only present the facts and the evidence that supports those facts.

If the investigation report comments on a manager's responsibilities or systemic issues, these portions of the report can be issued separately and do not have to be provided to the subject officer. Once you have completed your investigation report, you should sign it and mark it "confidential", and deliver it to the officer who authorised you to conduct the investigation.

The final decision-maker will undertake their own analysis, based on your report. They must be able to rely on the facts as detailed in your report, and the evidence collected by you, to arrive at an impartial decision about whether the alleged corrupt conduct has been proven or not. While they may take your recommendations and conclusions into consideration, they will make their decision based on their own assessment.

If the investigation is to be reviewed by the CCC, your CEO should provide a covering letter, including the actions proposed or taken and reasons, and a copy of the full report along with all attachments (either in hard copy or electronic format).

## Closing the investigation

At the end of your investigation you must complete and file all the paperwork.

As you finish your investigation, consider the following points:

- Is the file ready to be sent to storage? Will someone retrieving it in two years time be able to understand the process and the paperwork?
- Have all the appropriate notifications been made? It is easy to forget to let relevant people know the result of an investigation if they are not the central players. So make a list of all those parties who should be informed and ensure that they are.
- Are there any other actions arising out of the investigation? Is the documentation organised accordingly? Quite often one investigation can trigger another one. So, as the first one ends, it may be necessary for there to be some coordination with the new file.
- Finally, the most searching question: "Is my file good enough for an outside or management review as it stands?" You should not part with your investigation file until you are entirely satisfied that all aspects are fully completed and the file is presentable. As noted in Module 1, even if the CCC does not require any outcome advice in the first instance, your investigation may still become the subject of an audit by the CCC.

You must retain all evidence until the case is fully closed, and any criminal charges or disciplinary action arising from your investigation has been finalised. Retention or disposal is then done in accordance with your UPA's policies in this regard.

At the end of your investigation you must complete and file all the paperwork.

### Checklist for investigations manager

For the assistance of the investigations manager at the conclusion of the investigation:

- Have all relevant witnesses been interviewed?
- Have all interviews been electronically recorded?
- Have all exhibits been obtained, labelled and safely secured?
- Have receipts been issued for property/documents seized?
- Have all exhibits been shown to the relevant witnesses?
- Has the subject officer been interviewed or given the opportunity for an interview?
- If interviewed, has the subject officer been provided with a copy of the interview tape?
- Have all electronically recorded interviews been securely stored?
- Has the subject officer had the opportunity to comment on any adverse findings made against him/her?
- Was the investigation impartial, and would it stand scrutiny from an outside agency?
- Has an investigation report been completed in the required format?
- Has all relevant information been included in the report, including any exculpatory evidence (i.e. evidence of clearing/lifting of blame) or other information favourable to the subject officer?
- Have all interviews been summarised in the report?
- Are copies of all relevant documents (e.g. Authority to Investigate, computer printouts, photographs) attached to the report and listed as attachments?
- Have any systemic or procedural issues been addressed?
- Is the investigation report sufficiently comprehensive to provide the basis for an informed decision by the organisation (e.g. disciplinary proceedings or procedural changes)?
- Are the conclusions justified and supported by the evidence?
- Has a firm recommendation been made as to how the case should be finalised?
- Have steps been taken to mitigate any possible adverse impacts on the workplace?
- Does the case need to be referred to another agency or board (e.g. professional registration board)?

## Sample investigation report

<b>File no:</b> 132/07/123
<b>Investigator and authorisation:</b> Michael Good, Area Manager (Authorised by Director, ESU)
<b>Scope of investigation:</b> An investigation was commenced to establish if Ms Andrews failed to follow the agency's procurement policy in awarding a supply contract to her husband's business.
<b>The complaint:</b> 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.
<b>Précis of allegations:</b> That on or about 20 December 2013 Ms Andrews had acted corruptly in awarding a supply contract to her husband's business.
<b>Summary of the investigation:</b> Interviews conducted: <ul style="list-style-type: none"><li>• Angela Andrews (subject officer) • 17 January 2014</li><li>• Bruce Robinson (subject officer's husband) • 16 January 2014</li><li>• John Raines (IT Manager) • 9 January 2014</li></ul> Documents examined: <ul style="list-style-type: none"><li>• Supply contract in name of Robinson Tech</li><li>• Previous contract in name of Johnson IT (finished on 31 December 2013)</li><li>• Tender documents</li><li>• Procurement policy and procedure</li><li>• Emails from Angela Andrews to Robinson Tech, Cronin Digital Services and Braden Computing (22 November 2013)</li></ul>
<b>Matters for consideration:</b> <b>Relevant criminal offences</b> <ul style="list-style-type: none"><li>• Section 89 of the <i>Criminal Code</i> (Public officers interested in contracts)</li><li>• Section 92A of the <i>Criminal Code</i> (Misconduct in relation to public office)</li></ul> <b>Relevant policies and procedures for disciplinary breach</b> <ul style="list-style-type: none"><li>• <i>Procurement policy and procedure</i></li><li>• <i>Code of conduct</i></li></ul>
<b>Discussion of evidence:</b> <ul style="list-style-type: none"><li>• The department's IT servicing contract with Johnson IT expired on 31 December 2013.</li><li>• A new limited tender (open only to selected suppliers) was called on 22 November 2013, closing at 5 pm on 13 December 2013.</li><li>• The tender was managed by Ms Angela Andrews, Procurement Manager.</li><li>• Robinson Tech lodged its bid at 4.50 pm on 13 December 2013. No bids were received from Cronin Digital Services or Braden Computing.</li></ul>

- As Robinson Tech was the only tenderer, it was awarded the contract, worth \$525 000, on 20 December 2013.
- An anonymous complaint was received by telephone, alleging that Ms Andrews had acted corruptly in awarding the contract to a company run by her husband, Bruce Robinson.
- Investigation showed that the email addresses used for Cronin Digital Services and Braden Computing were found to be false, and no companies could be located under those names through either an internet search, or a business name search with the Office of Fair Trading.
- In interview, John Raines agreed that a new contract for IT services was required, but that he had taken no part in the procurement process other than to provide the specifications for the tender.
- In interview, Mr Robinson stated that he had responded to the invitation to offer from the agency, and was unaware of any other companies invited to tender.
- In interview, Ms Andrews originally stated that she had conducted a limited tender in accordance with the agency's policies, inviting three suppliers to tender. When asked about the false email addresses for Cronin Digital Services and Braden Computing, she was unable to provide an explanation, or to provide any valid contact details for these companies.
- The agency's procurement procedures clearly show that an open tender process is required for all procurement over \$500 000.
- The agency's *Code of conduct* provides that employees should not let personal and financial interests influence the performance of their duties.

**Conclusions and recommendations:**

**Conclusions**

- Ms Andrews ran a limited tender process in direct breach of the agency's *Procurement policy and procedure*, which requires an open tender for all procurement over \$500 000.
- Only three companies were invited to offer for the contract by Ms Andrews.
- One of those companies was Robinson Tech, owned by Ms Andrews' husband, Bruce Robinson.
- Ms Andrews' interest in this company was not divulged at the time of the tender.
- The other two companies listed as being invited to offer could not be located, and the email addresses used in the tender process turned out to be false.
- My conclusion is that there is sufficient evidence to find that Ms Andrews:
  - breached section 89 of the *Criminal Code* (Public officers interested in contracts) by not divulging her interest in Robinson Tech
  - breached section 92A of the *Criminal Code* (Misconduct in relation to public office) by subverting the procurement process for the benefit of her husband's company
  - failed to comply with the *Procurement policy and procedure*
  - failed to comply with the conflict of interest provisions of the *Code of conduct*.

**Recommendation**

- I recommend that consideration be given to referring the criminal matters involving Ms Andrews and Mr Robinson to the QPS, and commencing show cause proceedings against Ms Andrews for the breach of agency policies and procedures.

**Attachments:**

1. Record of original anonymous telephone call
2. Records of interview with John Raines, Bruce Robinson and Angela Andrews
3. Copy of tender documents
4. Copy of *Procurement policy and procedure*
5. Copy of *Code of conduct*
6. Copy of emails from Angela Andrews to Robinson Tech, Cronin Digital Services and Braden Computing dated 22 November 2013
7. Copy of contract awarded to Robinson Tech