

WRITING THE INVESTIGATION REPORT

TRAINING FOR HIGHER EDUCATION PROFESSIONALS

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WHERE TO START

- Review the evidence and track down anything that was promised but not delivered by a party or witness.
- Make sure you know whether there is a mandatory or recommended template for the report and whether the applicable policy requires that the report contain certain sections.
- Block out time for yourself to focus on writing the report.

ALSO CONSIDER

- Do you have documents that need to be redacted?
- Will you need any IT assistance with any evidence?
- Are there any materials that require translation?

REMIND YOURSELF OF THE OBJECTIVE

The investigation report, along with its exhibits, must enable the decision-maker(s) to decide:

- whether it is more likely than not that the alleged conduct occurred; and
- if it did – whether it amounts to a violation of one or more of the institution's policies.
- ***Ask yourself what format or presentation of the evidence would be most useful to you if you were making the decision.***

INITIAL SECTION (PROCEDURAL BACKGROUND, SCOPE) I

- Identify the parties and the date of the complaint, as well as the essential allegations. State when and how notice was provided to the Respondent. (The Complaint and the Notice of Complaint should be exhibits to the report; you may want to include some of their content in the report such as the presumption of innocence.)
- Identify the policies that are implicated; these should appear in the Notice of Complaint but reiterate them in the report, along with a cite to where the decision-maker can find the applicable policies (**or** include the policies as an exhibit to the report **or** set them out in the report in a separate section after procedural background/scope).
- State that the parties were informed of their right to select advisors and whether they have advisors.

INITIAL SECTION (PROCEDURAL BACKGROUND, SCOPE) 2

- Identify yourself as the investigator and specify the date of your appointment (then refer to yourself as the “Investigator” throughout the report).
- State the scope of the investigation (e.g., “The scope of this investigation consists of the allegations set forth in the Complaint, as elaborated upon by the Complainant in his interviews.”)

POLICY SECTION MAY FOLLOW INITIAL SECTION

If your institution wants you to include the applicable policies in the body of the investigation report, rather than as an exhibit or by citation, this is a good place to do so.

PROCESS SECTION – INTERVIEWS

- **Interviews of parties** (interview dates, method of documentation or recording)
- **Interviews of witnesses** (interview dates, method of documentation or recording)
- Note any reach outs to non-responsive parties or witnesses in this section.
- Do not identify individuals whom you considered interviewing and decided not to interview unless there is a need to do so.

Note: Summaries of interviews (parties, witnesses) constitute Directly Related Evidence (“DRE”)

PROCESS SECTION – COMMUNICATIONS, DOCUMENTS, ETC.

- List the documents, electronic communications, photos, etc. that you reviewed as part of the investigation. Typically, all of this will constitute DRE. (You may or may not submit all the DRE as exhibits to the report, which must contain all the “relevant” evidence.)
- Be sure to reference any items that parties or witnesses may have produced (e.g., a drawing of a dorm room, a ripped article of clothing).
- ***Note: err on the side of inclusivity in deciding what is DRE but do not include “per se irrelevant” evidence such as documents subject to a legal privilege or privacy law, or that concern the Complainant’s sexual history or experience (unless an exception applies).***

A NOTE ON DRE VS. RELEVANCE

- Evidence is “directly related” to the allegations in the complaint if it has anything to do with any aspect of them.
- Evidence is relevant if it tends to prove or disprove the allegations in the complaint. It is also relevant if it provides useful context for the decision-maker.

For example: The fact that Witness A sent multiple sympathetic texts to the Complainant after the Complainant told Witness A she had decided to move forward with a formal complaint is “directly related” to the allegations in the complaint but not likely relevant.

WHAT IS THE RELEVANT EVIDENCE?

The **Relevant Evidence** (which you will summarize in narrative form, in a section following the process section) will typically include:

- most of the information you obtained from each party, and likely from each witness (taken from your interview summaries)
- most, and perhaps all, of the DRE that the parties and witnesses provided to you (submitted as exhibits to the report)
- whatever information you may have gathered from the institution – card swipes, surveillance video, etc. (submitted as exhibits to the report)

LAST PART OF PROCESS SECTION: PARTIES' REVIEW OF AND COMMENTS ON THE DRE

- State that the DRE was made available to the parties for their review and comment for ten days (specify how it was made available, and whether any extensions of time were requested and given). The Directly Related Evidence should include all interview summaries, as well as documents, photos, etc. gathered during the investigation.
- Note whether and when the parties provided written comments. If they did produce comments, state that you reviewed their comments and incorporated them into the Summary of Relevant Evidence where relevant. Submit these comments as exhibits to the report.

THE “HEART” OF THE INVESTIGATION REPORT: THE SUMMARY OF RELEVANT EVIDENCE

Consider what will be the clearest way in which to present the evidence. This will be influenced by the nature of the allegations and the volume of the evidence.

- Are there many disputed facts or only a handful?
- Are there several witnesses or none?
- What is the relevant time period – several years? One night?

Note: *A template for this section is fine but there is no “one size fits all.”*



SO – HOW DO YOU SUMMARIZE ALL OF THIS?

- Consider including a sentence at the start of this section that says something along the lines of:

The relevant evidence is taken from the interviews of the Complainant, Respondent and witnesses, as well as the documents submitted herewith as exhibits.

- Then think about how you want to organize the information so that you present a clear picture to the decision-maker(s) of the relevant facts, from each party's perspective and with whatever relevant witness observations and documentation you have that corroborates or contradicts the parties' accounts.

ORGANIZATION OF THE RELEVANT EVIDENCE

- Go in chronological order.
- Think about dividing information into “pre-incident,” “incident” (or each incident, separately, if more than one), and “post-incident(s).” This can be easier to understand than a format that consists of Complainant’s entire account followed by Respondent’s entire account followed by each witness’s entire account.
- Within each of these time periods (“pre-incident,” “incident,” “post-incident”), consider identifying whatever facts are undisputed.

SUMMARY OF RELEVANT EVIDENCE EXAMPLE I

Prior to December 15, 2024

- 1. Undisputed Facts** (parties are students in Class of 2026 and took two classes together)
- 2. Complainant's Account** (Respondent paid Complainant unwanted attention of a sexual nature)
- 3. Respondent's Account** (Complainant flirted with Respondent and Respondent "flirted back")
- 4. Witness Accounts**

SUMMARY OF RELEVANT EVIDENCE EXAMPLE 2

Alleged Incident on December 15, 2024

- 1. Undisputed Facts** (parties attended an event together at which they drank alcohol)
- 2. Complainant's Account** (Respondent touched the Complainant in a sexual manner while Complainant was incapacitated)
- 3. Respondent's Account** (Complainant was never incapacitated; sexual interaction was consensual)
- 4. Witness Accounts**

SUMMARY OF RELEVANT EVIDENCE EXAMPLE 3

After Alleged Incident on December 15, 2024

- 1. Undisputed Facts** (parties did not see each other)
- 2. Complainant's Account** (Complainant believed Respondent was “stalking” her by asking their mutual friends about her)
- 3. Respondent's Account** (Respondent asked mutual friends about Complainant because he was concerned and confused about her refusal to communicate with him)
- 4. Witness Accounts**

USING THE EVIDENCE IN THE RELEVANT EVIDENCE SUMMARY

- Cut and paste from your interview summaries to present the relevant portions of each party or witness account at the right points in your chronological presentation.
- Reference any document, texts, photos, etc. as part of the account of the person who produced that evidence – these will all be exhibits to the report.

For example:

Witness Z stated that the Complainant phoned and texted her at 1:00 a.m. on December 16th, asking Witness Z to come to Complainant's room because "something terrible had happened." Insert footnote in which you state that Witness Z produced the phone log and texts, and that they are submitted with the report as Exhibit 5.



REPORT LANGUAGE

- Focus on clarity not creativity.
- Err on the side of using “Complainant” and “Respondent” rather than risking any confusion due to multiple pronouns in a sentence.
- Ask the party or witness what pronouns they use and take care to use them.
- Do not insert your own adjectives anywhere in the report. Stick to the facts.
- Embed significant quotes from interview summaries, texts or other messages in the report.

CREDIBILITY ASSESSMENTS – I

- If you are required to make these, do not conflate them with expressing an opinion on whether a policy violation occurred (unless the investigation is not subject to the TIX regulations or a similar restriction under your policy).
- Address credibility of an **account** rather than credibility of a **party**.
- Factors that bear on credibility should be addressed as objectively as possible. Do not draw conclusions from anyone's demeanor during the interview or from their reluctance to participate in the investigation.

CREDIBILITY ASSESSMENTS – 2

Ask:

What evidence corroborates or contradicts each party's account?

If a party has provided more than one account, do the accounts reflect inconsistencies?
Too much consistency?

Is there something implausible about either party's account? Can you articulate it in an objective manner?

Is there evidence indicating that either party has a motive to be dishonest (but be very careful – this conclusion **may not be drawn** from the Respondent's status as a respondent, or any party or witness's decision not to participate in the process).

POLICY VIOLATION RECOMMENDATIONS

- If you are making a recommendation as to whether a policy has been violated, that recommendation must be made using the applicable standard of proof and you need to state what that is. Typically, it will be the “preponderance of the evidence;” or what is “more likely than not,” or what the “weight of the evidence” supports.
- Any recommendation must state the evidence upon which it is based, including any credibility assessment.

EXAMPLE OF POLICY VIOLATION FINDING

The Investigator recommends a determination that the Respondent violated ABC University's Anti-Discrimination Policy on April 3, 2024, by making racist remarks to the Complainant, as alleged in the Complaint. This recommendation is based on the Investigator's finding that it is more likely than not that the Respondent made offensive comments based on the Complainant's race and that he did so on multiple occasions. This finding is based on the following subsidiary findings:

- the Complainant spoke in a persuasive manner about the Respondent telling him, on three occasions, that he should "go back to Africa;"*
- The Complainant gave consistent, detailed accounts in contemporaneous texts to his roommate and his childhood friend (Witnesses A and B) of the Respondent making these comments to him and of the impact the comments had on him (see Exhibit 4);*
- Witness C stated that he overheard the Respondent tell the Complainant to "go back to Africa if he wanted more interesting food" on one occasion when the parties and Witness C were in line at the cafeteria;*
- The Complaint produced his personal journal in which he had written about how the Respondent's remarks made him feel, at the time the Respondent made them (see Exhibit 6).*
- Although the Respondent denied making the alleged comments he admitted that he made "edgy remarks" and "sometimes forgot what he said."*

FINAL THOUGHTS

- If you are asked to recommend a sanction for a policy violation, make sure you understand how to approach this under your institution's policy and practice, with information about precedent.
- If you have the time, put the report down for a couple of days after you think it is done and then review it. Make sure it is complete and clear.
- Proof your report more than once. Better yet, have someone else proof it.

Q&A – COMMENTS

THANK YOU FOR ATTENDING

