



THE SECRETARY
OF THE AIR FORCE
OFFICE OF THE
INSPECTOR GENERAL

**INVESTIGATING
OFFICER'S GUIDE**

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Table of Contents

PREFACE.....	2
CHAPTER 1: GETTING STARTED.....	3
Investigating Officer Responsibilities.....	5
Beginning the Investigation.....	6
Nature of the Report and Timing.....	7
Framing Allegations.....	8
Investigation Plan.....	9
Proof Analysis Matrix.....	10
CHAPTER 2: THE INVESTIGATION.....	13
Section A: Evidence.....	15
Physical Evidence.....	17
Testimonial Evidence.....	18
Section B: Interviews.....	19
Starting the Interview Process.....	21
The Interview Format.....	23
Privacy Act Statement.....	24
Rights Advisement.....	25
Other Persons Present in the Interview.....	26
CSAF “Hand-Off” Policy.....	27
CHAPTER 3: REVIEW AND ANALYSIS.....	28
Standard of Proof.....	29
Two Types of Findings.....	30
Analysis of Evidence.....	31
CHAPTER 4: THE REPORT OF INVESTIGATION (ROI).....	32
IG Case File Format.....	33
Report of Investigation Format.....	35
Report Writing Guide.....	38
Summary Report of Investigation Format.....	39
CHAPTER 5: REPRISAL INVESTIGATIONS.....	41
Investigating Reprisal Complaints.....	43
The Acid Test for Reprisal.....	44
ATTACHMENTS:.....	46
Sample Report of Investigation (ROI).....	47
Witness Interview Format.....	55
Subject Interview Format.....	59
Suspect Interview Format.....	63
Privacy Act Statement for Personal Information.....	68
Standardized Format for Summarized Sworn Testimony.....	69

Preface

Scope This guide is for **inspector general investigations only!** However, the principles herein are applicable to other administrative-type investigations (i.e., report of survey, line of duty determination, etc.).

Policy All investigations into matters affecting the integrity, efficiency, discipline and readiness of the Air Force shall be conducted in an independent and professional manner, without command influence, pressure, or fear of reprisal from any level. All non-frivolous allegations of misconduct shall be thoroughly and impartially investigated and reported to command.

Doctrine The IG principles of *independence, timeliness, and thoroughness* will guide IG actions and influence the conduct of the IO.

Independence In all matters relating to an IG investigation, the individual or the organization performing the investigation must be free in fact and appearance from all impairments to independence. The responsibility for maintaining independence rests with the chain of command, so that judgments used in obtaining evidence, conducting interviews, or making recommendations will in fact be impartial, as well as viewed as impartial.

Timeliness IG investigations are to be conducted and reported in a timely manner. The objective is to be responsive to all parties thereby enhancing Air Force credibility. IG investigations are to be conducted and completed within a timeframe that facilitates efficient and effective mission accomplishment while protecting the public's safety and security. The IG and IO are responsible for ensuring that the investigation is completed by the suspense date.

Thoroughness IG investigations must be conducted in a diligent manner. The investigation must examine all issues and the Report of Investigation (ROI) must thoroughly address all relevant aspects of the issues clearly and concisely. The ROI must not raise unanswered questions, nor leave matters open to question or misinterpretation.

Chapter 1

Getting Started

Overview

Purpose This guide is designed to assist individuals appointed to investigate IG complaints.

It is not intended to create any right, privilege, or benefit not otherwise established in law or regulation.

When this guide is in conflict with statutory, regulatory, or other guidance, the latter will prevail.

Background The Air Force IG system is an extension of the eyes, ears, voice, and conscience of command.

The primary charge of the IG is to sustain a credible Air Force IG system by ensuring the existence of responsive complaint investigations and FWA programs characterized by objectivity, integrity, and impartiality.

Authority Authority is extended to the IO through a written appointment letter signed by the Appointing Authority. AFI 90-301, para 2.25 outlines the policy for appointing an IO.

This letter of appointment provides the IO the authority to interview personnel, take sworn statements, and examine and copy any and all relevant Air Force records.

Appointing Authority Appointing Authorities have the authority to direct investigations, appoint investigating officers, approve investigations, and make final determinations on the findings of IG investigations directed under their authority.

Designated Air Force IG personnel derive their authority from 10 U.S.C. 8014 and 8020, AFD 90-3, *Inspector General -- Complaints Program*, and AFI 90-301, *Inspector General Complaints*.

The authority to direct an investigation is vested only in individuals holding the following positions: SECAF; SAF/IG (and designees); AF/CC; Chief, National Guard Bureau and State Adjutant Generals; MAJCOM, FOA, DRU, NAF, Center, and installation commanders; and, *if designated in writing by their respective commander*, IGs in authorized positions at State level, MAJCOM, FOA, DRU, NAF, and at installations.

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Overview, Continued

Standard of Proof IG investigations are administrative in nature -- they are fact-finding investigations designed to assist commanders in making decisions concerning issues under their purview. IG investigations are not “criminal proceedings” in which “proof beyond a reasonable doubt” is required.

The standard of proof that applies to an IG investigation is proof by a *preponderance of the evidence*.

The preponderance standard means that the IO is satisfied that the greater weight of the credible evidence supports the findings and conclusions--it is more likely than not that the alleged events either occurred or did not occur.

In This Chapter This chapter contains the following topics

Investigating Officer Responsibilities.....	5
Beginning the Investigation	6
Nature of the Report and Timing.....	7
Framing Allegations.....	8
Investigation Plan.....	9
Proof Analysis Matrix.....	10

Investigating Officer Responsibilities

Responsibilities The authority of an IO to investigate, swear witnesses, and examine/copy documents, files and other data relevant to the investigation comes from the appointment letter.

The IO is an extension of The Inspector General (TIG) as well as the commander or the Appointing Authority.

- The IO's responsibility is **neither** to the complainant **nor** to the subject of the investigation but to the **truth** of the matter under investigation
- AFI 90-301, paragraph 2.25.9, directs that the investigation be the IO's **ONLY** duty until completion of the investigation. The IO will advise the Appointing Authority if he/she is retiring, separating, or expects reassignment within 180 days
- The IO will advise the Appointing Authority of any personal relationships or other factors that may affect his/her impartiality
- The IO will read all applicable instructions and directives, and consult with the Appointing Authority, supporting IG, and SJA before beginning an investigation. Additionally, throughout the investigation, the IO will consult in advance with the SJA concerning all legal issues
- The IO will maintain confidentiality

Ethical Principles The following are ethical principles for IOs:

- IO will allow no other interest to compromise the zealous pursuit of the truth in an investigation
 - IO will fully, fairly and promptly investigate any matter assigned by The Inspector General
 - IO will not engage in any activity that has an adverse impact on the inherent trust the public has in the USAF Inspector General system
 - IO will not use trickery during an investigation
 - IO will adhere to all laws, regulations and ethical principles applicable to military members and federal employees
 - IO will be impartial, unbiased and objective
-

Beginning the Investigation

Reference Documents

The IO will review all applicable instructions, directives, and other relevant documents before beginning the interview process. As a minimum, the IO will obtain/review the following:

- Appointment Letter
- Copy of the complaint, including all documents and attachments
- AFI 90-301, *Inspector General Complaints*
- *The Inspector General Investigating Officer's Guide*
- The IO Toolkit (available online at www.ig.hq.af.mil/igq/)
- DODD 7050.6, *Military Whistleblower Protection*, and IGDG 7050.6, *Guide to Investigating Reprisal and Improper Referrals for Mental Health Evaluations* (if conducting a reprisal investigation)
- DODI 6490.4, *Requirements for Mental Health Evaluations of Members of the Armed Forces* (if conducting an investigation of an improper mental health evaluation referral)
- Any other relevant directives or documents

Appointment Letter

The appointment letter is an IO's authority to conduct an investigation, swear witnesses, and examine/copy documents, files and other data relevant to the investigation.

It is a directive to the IO, which specifically states the scope of the matter to be investigated and lists the allegations relevant to the case. The complaint and other documents that form the subject matter of the investigation will be attached.

The appointment letter will also include the name and telephone number of the legal advisor and, if required, the technical advisor(s).

See AFI 90-301, Figure 2.1, for a sample *Appointment Letter*

Notification

Notification requirements are set forth in AFI 90-301, Tables 2.12 and 3.2

Throughout the investigation the IG and IO will ensure that proper notification is made to command and other relevant officials/offices.

The IO should seek the assistance of the local IG to arrange witness interviews, provide administrative support, and/or make facilities available.

Nature of the Report and Timing

- Objective** The report of investigation (ROI) is a stand-alone document with three objectives:
- Document a complete and thorough evaluation and analysis of the events and circumstances
 - Document an impartial, unbiased assessment arriving at analytical conclusions as to the root causes of the issues
 - Document findings as to whether the allegations are substantiated or not substantiated
-

Suspense The appointment letter designates a suspense date for the ROI and/or progress reports (AFI 90-301, Figure 2.1).
Specifically, the IO is given 45 days to complete the investigation *and* prepare the ROI for submission to the supporting IG office.
Suspense dates are established to meet time-sensitive reporting requirements to higher headquarters.

Sample Report of Investigation [See Attachment, Sample ROI](#)

See also the IO Toolkit at <http://www.ig.hq.af.mil/igq/>

Framing Allegations

Definition

An allegation is a declaration or assertion of fact that if proven, constitutes adverse information.

The **single most important factor** in determining the success of an investigation is how clearly and concisely the allegations are framed.

NOTE: The IO's appointment letter will outline the scope of the matter to be investigated and specifically state the allegations that are relevant to the case.

Framing Allegations

Properly framed allegations must contain the following four parts:

- Who committed the violation?
- What violation was committed?
- What standard (i.e., law, directive, instruction, or policy) was violated?
- When the violation occurred?

EXAMPLE: Lt Col XYZ improperly accepted a gift from Q corporation in violation of DoDD 5500.7-R (Joint Ethics Regulation) on 21 Dec 02.

Multiple Subjects/Allegations

Each allegation must be framed separately:

- Do not combine allegations to simplify the process
 - If the complainant alleges multiple violations on different occasions, make each a separately framed allegation
 - Each allegation must include a single subject, linked to a single alleged wrong, in violation of a clearly stated standard, and a date when the violation occurred
-

Investigation Plan (IP)

Purpose The investigation plan (IP) is simply the strategy that the IO will employ in order to obtain the facts necessary to enable responsible authorities to make appropriate decisions. In other words, the IP is the IO's roadmap!

Requirement IAW AFI 90-301, the IO prepares an IP, which will be approved by the IG. Further, as the investigation proceeds, the IO should regularly review the IP and the progress of the investigation with the IG.

Each IP is fashioned to reflect the intricacies/subtleties of a case.

At a minimum, the IP should include the following information:

1. BACKGROUND INFORMATION

- Allegations
- Chronology of events
- List of the applicable regulations, directives, instructions, etc.

2. EVIDENCE REQUIRED

- Witness list
- Document list
- Interview sequence
- Preliminary questions to ask key witnesses

3. ADMINISTRATIVE MATTERS

- Brief outline of any support/logistics requirements associated with conducting the investigation
 - List of any notifications that may be required
-

Proof Analysis Matrix

Definition

The proof analysis matrix is a tool that assists the IO in efficiently conducting a fair and accurate investigation.

The proof analysis matrix is a framework that helps the IO organize the case. Specifically, it provides a construct for identifying the evidence needed to prove or disprove an allegation. Additionally, the proof analysis matrix provides a reference outline for the analysis section of the IO's ROI.

Building the Proof Analysis Matrix

A proof analysis matrix is built on a clear, concise, properly framed allegation. A proof analysis matrix is constructed for each allegation in an investigation.

With the allegation as the foundation, the proof analysis matrix provides the framework that shows where the evidence fits. It is simply a table with specific columns and rows where the IO will insert the applicable pieces of evidence as they are gathered.

Steps to building the proof analysis matrix:

1. Separate the allegation into its four essential elements
(WHO / DID WHAT / IN VIOLATION OF WHAT STANDARD / WHEN)
2. Construct a table that lists the four elements of the allegation as well as the types of evidence to be used (testimony, documents and objects).
The number of rows correlates to the essential elements of the allegation and the number of columns correlates with the type of evidence used to prove/disprove each element.
3. Fill in the table--the IO will get started by filling in the table with information from the complaint and by anticipating the sources of evidence necessary to prove each element of the allegation.
Additionally, using the ROI tab format found in AFI 90-301 (and in this guide in Ch 4), the IO will give each item of evidence a preliminary exhibit number.

NOTE: The proof analysis matrix is an evolving document. The IO will add to the table as the investigation uncovers more evidence.

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Proof Analysis Matrix, continued

Using the Proof Analysis Matrix

The proof analysis matrix will help outline specifically *who* the IO needs to talk to and *what physical evidence* the IO needs to gather to prove/disprove the elements of the allegation.

The IO should review the proof analysis matrix before each interview to help determine what key questions need to be asked and which documents and objects need to be obtained/discussed.



U.S. AIR FORCE

Proof Analysis Matrix

ESSENTIAL ELEMENTS	TESTIMONY	DOCUMENTS	OBJECTS
In Violation Of What**	Who do you need to talk to	What do you need to get	
Who			
Did What			
When			

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****NOTE:** The *standard* is the first essential element of the allegation listed in the table, as this order of the elements will help the IO outline the *analysis* section of the ROI (see Report Writing Guide in Ch 4)

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Proof Analysis Matrix, continued

Example Allegation:
Lt Col Goodtime, FS/CC, improperly allowed the consumption of alcoholic beverages on government property while on official time, during the squadron Funday, in violation of AFI 34-119, on 6 Jun 02.



Proof Analysis Matrix

U.S. AIR FORCE

ESSENTIAL ELEMENTS	TESTIMONY	DOCUMENTS	OBJECTS
In Violation Of What** AFI 34-119 prohibits on-duty consumption of alcohol	OPR of AFI (D3)	AFI 34-119 (E1)	
Who Lt Col Goodtime	OPR of AFI (D3) Subject (D2)	AFI 34-119 (E1)	
Did What improperly allowed consumption of alcohol on gov't property on official time, during Funday	Complainant (D1) Subject (D2) Sanders (D4) Mr Yeats (D5)	Duty Hrs (E6)	Sq Roster (E3) Base Map (E4) Funday Pict (E5)
When On 6 Jun 02	Class Six Mgr (D6) Subject (D2) Ms Sanders (D4) Mr Yeats (D5)		Pict of Bottle (E7) Bottle Label (E8)

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****NOTE:** The *standard* is the first essential element of the allegation listed in the table, as this order of the elements will help the IO outline the analysis section of the ROI (see Report Writing Guide in Ch 4)

Chapter 2

The Investigation

Overview

IO Role The IO must be courteous and professional in his/her approach to all parties.

Neutrality and Confidentiality

Do **not** take sides. Impartiality and confidentiality are the hallmark of objectivity.

Regardless of personal feelings, keep an open mind until all evidence is analyzed.

Interview Sequence

The complainant is a key witness who must be interviewed *first*. This may seem obvious, but many times the written complaint may be so straightforward that one may feel an interview would be a waste of time.

The IO **must** interview the complainant first to clarify the allegations. The complainant may give more specific details and help further frame the complaint.

The subject is normally interviewed *last* and given an opportunity to respond to the specific allegations against him/her.

Investigation Investigate the complaint, *not* the complainant.

No matter how outlandish the accusations may seem and regardless of any personal belief in the complainant's motivation or attitude, do not allow emotions to control efforts.

Focus on the truth buried beneath the surface of the complaint.

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Overview, Continued

Administrative or Criminal?

IG investigations are administrative in nature. If at any point during the investigation the IO uncovers evidence of misconduct not addressed in the allegation, contact the IG, the Appointing Authority and/or the legal office for further guidance.

In This Chapter This chapter contains the following sections

Section A: Evidence.....	16
Physical Evidence.....	18
Testimonial Evidence.....	19
Section B: Interviews.....	20
Starting the Interview Process.....	22
The Interview Format.....	24
Privacy Act Statement.....	25
Rights Advisement.....	26
Other Persons Present in the Interview.....	27
CSAF “Hand-Off” Policy.....	28

Section A

Evidence

Overview

Definition

Evidence is simply information that tends to prove or disprove the existence of a fact. It is information or data upon which a conclusion or judgment may be based. An investigation is an evidence-gathering exercise to substantiate or not substantiate an allegation.

Evidence may be written or verbal, direct or circumstantial, relevant or irrelevant, first person or hearsay, etc.

The “best evidence” is that which is most credible.

Evidence

All evidence is either direct or circumstantial

- Direct evidence is that which proves the existence of a fact.

EXAMPLE: You witness A shoot B

- Circumstantial evidence is that which indirectly proves the existence of a fact.

EXAMPLE: If you witness A shoot B, that is direct evidence of that event. On the other hand, if you hear a loud noise from around a corner and then observe A with a smoking gun in his hand standing over B, that is circumstantial evidence of the event.

While circumstantial evidence is perceived as less reliable than direct evidence, it can be very persuasive, as in the example above. On the other hand, using the same example, it does not rule out the possibility that B committed suicide and A rushed over to render first aid and thoughtlessly picked up the gun.

Thus, the IO will look for additional evidence to corroborate or support circumstantial evidence.

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Overview, Continued

Evidence

Hearsay

Hearsay is a prior statement made by someone other than a witness during his/her testimony before the IO that is offered by that witness to prove the truth of the matter asserted in the statement. In other words, someone else said something happened and the witness relays that statement to the IO as proof that it did happen.

EXAMPLE: A tells B that she saw C use his government computer for personal business. B then testifies during the IG investigation that he knows C used the government computer improperly because A told him she saw C do it. B's testimony is 'hearsay' evidence.

Hearsay evidence can be considered as part of an IG investigation. However, because someone other than the original speaker offers such testimony, it is generally considered less reliable than first hand testimony. For that reason, the IO should always attempt to identify who made the statement in question and, if that person is reasonably available and the statement is important, obtain his/her testimony.

Seizing Evidence IG investigating officers do not seize evidence nor do they use "evidence tags" or other materials to establish a chain of custody for evidence. The IG and IO may have access to and may copy any material/documents relevant to the allegations in the complaint.

In This Section This section covers two areas related to evidence considerations

Physical Evidence	17
Testimonial Evidence.....	18

Physical Evidence

Documents

Documentary evidence does not forget and will not change its mind. However, remember all documents are prepared by human beings and are, therefore, subject to error. There is a presumption, however, that the more official the document, the less likely it will contain errors.

One way to further enhance the credibility of a document is to have it identified by its author, especially in the case of correspondence, personal notes, and computer records. This process is known as **authentication** and should be mentioned in the final report if the document has been so authenticated.

Computer Files

Data contained on computer hard drives, local area networks, e-mail systems, disks, etc., are considered documentary in nature but pose special problems. Obtaining access to this information can be difficult, and the local JA should always be consulted.

Testimonial Evidence

Testimonial Evidence

The bulk of the evidence an IO will collect during an investigation will be in the form of sworn testimony. Such information can be very powerful, as in the case of a confession, or ambiguous, as in the case of an anonymous complaint (calling on the telephone, for example).

Since testimonial evidence is based upon the recollection of human beings, it may be incorrect or biased. The IO must exercise caution and look for evidence to corroborate important statements.

Witness Types

There are six witness types:

- The complainant is a key witness who must be interviewed **first** to clarify allegations and focus the investigation.
 - The subject is equally important since he/she is the one against whom the allegation has been made. This person is normally interviewed **last** and given an opportunity to respond to the specific allegation(s) against him/her. The subject is often the only witness who can supply critical information such as motive or intent. For example, the subject may provide a logical and/or legitimate reason for his/her action(s).
 - A suspect is identified when the facts and circumstances known at the time of the interview are sufficient to support a reasonable belief that the person to be interviewed may have committed a crime.
 - Character witness is someone who can verify the reputation of a particular person for certain conduct or personality traits, i.e., honesty, violence, etc. A character witness may be a commander, first sergeant, co-worker, etc.
 - An expert witness is someone with special knowledge about a particular topic. An expert witness may be used as a consultant for background and technical information only.
 - Informational witness is someone who has direct or indirect knowledge of fact(s) relevant to matters under investigation and whose knowledge tends to prove/disprove the allegations. This type of witness may also be known as a “material witness.”
-

Section B

Interviews

Overview

Policy IOs appointed to conduct an IG investigation must swear witnesses in prior to beginning interview questioning. This puts witnesses on notice that the investigation is a serious matter and they are expected to testify truthfully.

IOs must use the mandatory “read-in” procedures as outlined in the *Witness/Subject Interview Format* attached.

Recording The IO must:

- Tape-record all witness testimony to accurately capture what was said during the interview. Do not allow witnesses to tape-record the interview. All tapes must be turned in to the IG together with the completed ROI.
- Transcribe verbatim (word-by-word) key witness testimony. It is highly recommended that *all* witness testimony be transcribed verbatim. However, at a minimum, the complainant’s testimony and the subject’s testimony **MUST** be transcribed verbatim. The IO should coordinate with the IG to arrange transcription support.
- At the discretion of the Appointing Authority, witness testimony (other than the complainant’s testimony and the subject’s testimony) *may* be summarized. (See Attachment, *Standardized Format for Summarized Sworn Testimony*)
- Review all recorded interview tapes and transcripts to ensure accuracy
- Sign all testimony to certify its validity. Additionally, include the following statement to the end of transcribed and summarized testimony: “I certify the above to be a true summary of sworn (or affirmed) testimony given to me on (date) at (place).”

NOTE: There is no requirement for any witnesses to sign their testimony; the IO’s signature is sufficient. The IO will **not** provide witness(es) copies of any statements.

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Overview, Continued

New Allegations During the conduct of any investigation, additional information might come to the attention of the IO that could indicate additional areas for review.

The IO must immediately consult with the Appointing Authority and JA to determine whether the scope of the investigation should be expanded.

If the issue is closely related to the investigation, the Appointing Authority may ask the IO to consider it as part of the ongoing investigation.

If the issue is not closely related to the ongoing investigation, the Appointing Authority may initiate a separate investigation or have the IO mention the issue as an observation in the final report.

Focus IOs should always avoid becoming sidetracked by collateral issues, and must remain responsive to the focus of the investigation.

In This Section This section covers the following areas

Starting the Interview Process	21
The Interview Format	23
Privacy Act Statement.....	24
Rights Advisement.....	25
Other Persons Present in the Interview.....	26
CSAF “Hand-Off” Policy	27

Starting the Interview Process

Location Ensure the location is quiet, free from distractions, and affords the witness(es) some privacy. In other words, the location should not allow observers to determine who testified, when, and how long.

Use the Plan The investigation plan (and the proof analysis matrix) are tools that are designed to help the IO throughout the investigative process; from planning the investigation, to gathering evidence, to writing the report.

Long Distance Interviews

For witnesses **outside** the local area, an IO can either travel to interview the witness, or interview the witness telephonically.

In the case of a telephonic interview, the IO may ask the *local* IG to conduct the read-in procedures with the witness and verify his/her identity.

The IO will advise the witness that the telephonic interview is being recorded in accordance with AFI 90-301.

NOTE: To the greatest extent possible, all subjects or suspects should be interviewed in person. Remember to consult with the IG and JA before conducting telephonically recorded interviews.

Best Evidence An IO should always strive to obtain both testimony and copies of documents from witnesses with direct knowledge of the issue being investigated.

Subject v. Witness If a witness' status changes during the course of an investigation to that of subject, or if the IO thinks it may change, then he/she should take no further action until consulting with the Appointing Authority and JA.

NOTE: See also, *Rights Advisement* in this chapter of the guide

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Starting the Interview Process, Continued

Find Corroboration

The IO should always look for more information to support witness testimony. This can be done through the testimony of other witnesses, documentary evidence, and the natural inferences to be drawn.

If testimony is corroborated, then the witness' credibility will be enhanced.

If contradictions arise, then the IO must clarify them before finalizing the investigation. The IO may need to re-interview complainant(s), witness(es) or subject(s).

Find the Facts

The IO's primary function is to find the facts, *i.e.*, gather evidence to determine what events or circumstances actually occurred or existed.

The IO's judicious review and analysis of the evidence relevant to the investigation will "tell" him/her the facts, which are the events as they actually occurred according to a preponderance of the evidence.

Create a Chronology of Events

A chronology is one of the most useful documents an IO can create to assist him/her and those reviewing the report of investigation.

This single document can provide an instant overview of the sequence of events, allowing the reader to evaluate the recollection of witnesses and put their testimony in context.

Technical Assistance

Sometimes the IO must evaluate information or interpret guidance in a technical field that is beyond one's normal range of expertise. When this happens, the Appointing Authority should appoint a technical advisor to assist in the investigation--this should be annotated in the appointment letter.

NOTE: The Technical Advisor should only review the portion of the complaint required to provide the technical assistance. The IO will advise the Technical Advisor of the need to maintain confidentiality.

The Interview Format

Policy IOs must conduct the proper read-in procedures for all witnesses in an IG investigation. Specifically, the IO (at the beginning of the interview process) **must** read the scripted read-in narrative verbatim to the witness. See Attachment, “*Witness Interview Format*,” “*Subject Interview Format*,” and “*Suspect Interview Format*”

Criminal Activity If, during an interview, the IO discovers information leading him/her to believe that an interviewee has committed some criminal offense(s); that interviewee has become a *suspect*. In this instance the IO must:

- Stop the interview and inform the witness he or she will be recalled
- Immediately consult with the Appointing Authority and JA regarding whether the witness should be read his/her Article 31 rights (military right against self incrimination).
- If allowed to proceed, recall the individual. If it was decided not to advise the witness of his/her Article 31 rights at this time, recall the witness and inform him/her they are still sworn in and continue the interview. If the Appointing Authority and JA advise the IO to read the witness his/her Article 31 Rights, the IO **must** use the “*Suspect Interview Format*” attached.

Investigation Plan and the Proof Analysis Matrix

Use the IP and proof analysis matrix to help formulate questions for key witnesses in the investigation.

It is important to pose questions that are open-ended and require more than a “yes” or “no” answer (i.e., why, how, explain, describe, etc.)

“Off the Record” Be especially careful not to receive information “off the record” or “in confidence” or “just between you and me.” Nothing is ever “off the record.” Sometimes subjects, witnesses and/or suspects will “open up” after the conclusion of your formal interview portion. Remember, these discussions are also on the record and may be used in the course of the investigation.

Privacy Act Statement

Policy The IO is required to have each witness read the Privacy Act Statement at the beginning of the interview process. This requirement is included in the read-in procedures outlined in this guide.

See Attachment, “*Witness Interview Format*,” “*Subject Interview Format*,” and “*Suspect Interview Format*”

Authority Title 10, United States Code, Sections 8013 and 8020, and Executive Order 9397.

The Privacy Act Statement

See Attachment, *Privacy Act Statement for Personal Information Taken During Witness Testimony*

Rights Advisement

Rights Advisement

If, during the course of an investigation, the IO discovers information leading them to believe matters of a criminal nature have occurred and a witness or subject becomes a *suspect*, the IO *must* stop the interview, immediately consult with the Appointing Authority and the legal advisor, and **(if allowed to proceed)** advise the suspect(s) of his/her Article 31 rights (military right against self incrimination).

If, after rights advisement, the witness refuses to testify based upon their right against self-incrimination; or, if they express a desire to speak to an attorney, then the interview **must stop immediately**.

Military Suspects

For active duty military suspects, advise them of their rights as specified under Article 31, UCMJ. Use the “*Suspect Interview Format*” attached.

NOTE: Always consult with the JA on what, if any, rights advisement is required

Civilian Suspects

Civilian witnesses, even if suspected of a criminal offense, need not be advised of their Fifth Amendment rights when interviewed as part of an IG investigation.

Under the law, such rights are only required in conjunction with custodial interrogations (i.e., interrogations in which the interviewee is not free to leave at will). Interviews by an IG or IO, under authority of AFI 90-301, do not meet this threshold requirement.

However, the lack of a requirement to advise civilian witnesses of their Fifth Amendment rights does not preclude them from invoking such rights if circumstances warrant.

NOTE: Always consult with the JA on what, if any, rights advisement is required

Reserve Component Personnel

For Air Force Reserve and Air National Guard personnel, the IO needs to first determine the status of the suspect at the time of the occurrence and at the time of the scheduled interview, and then consult with the JA on what, if any, rights advisement is required.

Other Persons Present in the Interview

Other Persons Present in the Interview

A typical interview will involve the IO, any technical advisor (if necessary), and the witness. The introduction of any other “third party” into the process is a technical breach of IG confidentiality.

Only a *suspect* has the right to have an attorney present during an interview however, the attorney must not be allowed to answer any question for the interviewee.

Subjects may consult with an attorney before answering questions, but may not have an attorney present during the interview.

Union Representative Present

- **Union officials may have the right to be present during interviews of civilian employees.** Civilian employees (including non-appropriated fund employees) who are members of a collective bargaining unit (i.e., a union) may have a right to union representation when interviewed as a suspect, subject, or witness. This right applies if the *employee's position* meets the local definition for inclusion in the bargaining unit. The employee's individual status as a union member has no bearing on the right to representation.

- The Civil Service Reform Act of 1978 created a right to union representation for federal civilian employees whose term of employment is governed by a union contract. This right arises during interviews with a federal employee in connection with investigations if: (a) the employee **reasonably believes** that disciplinary action will be taken against him or her as a result of the interview, and (b) the employee requests union representation.

- The Civil Service Reform Act does not require an IO to advise an employee of the right to union representation before an interview. The act merely requires that management inform its employees annually of this right. This is frequently done in an installation's daily bulletin.

- The basic rules that apply to legal counsel in an interview apply to union representatives. The representative may advise the employee but may not generally ask or answer questions. An individual may have both a union representative and legal counsel present in an interview.

NOTE: IOs should contact the Civilian Personnel Flight Labor Relations Specialist to clarify the specifications of the respective local bargaining agreement(s) that may apply to each given investigation

CSAF “Hand Off” Policy

Policy Air Force experience discloses that subjects of an investigation are at a greater risk of committing suicide. AFI 90-301, para 2.41, outlines the Air Force policy regarding subject/witness “hand-offs” following investigative interviews.

Suicide Prevention The safety and well being of Air Force personnel is of utmost importance. A primary concern is that being a subject or suspect of an investigation may cause severe stress and turmoil in an individual’s life.

This policy is intended to act as a safety net for those individuals who might be so emotionally distraught as to pose a danger to themselves or others.

Procedures Following initial interviews with Air Force personnel who are the subject/suspect of an investigation, IOs **must** refer such individuals to their commander, first sergeant, supervisor or designee.

Additionally, if ANY witness appears to be emotional, distraught, or stunned during the process of any interview, they **must** be released to the commander, first sergeant, supervisor, or designee.

- These referrals require a person-to-person contact between the IO and the interviewee’s commander, first sergeant, supervisor or designee
- The IO **must** document the hand-off within the report of investigation

Maintaining Confidentiality

When providing the personal “hand-off,” the IO should indicate the individual is part of an IG investigation. The IO should also explain the reason for any concern he/she has about the individual’s personal safety.

However, the IO may not disclose the identity of the complainant or the substance of testimony or other evidence obtained during the investigation.

Additionally, if the interviewee invoked their Article 31 rights, the IO must inform the person receiving the hand-off not to violate this right by discussing any aspect of the investigation with the interviewee.

Chapter 3

Review and Analysis

Overview

Background Once the IO has gathered the evidence in the case, the next step is to determine what it all means. The IO must adopt a framework for analysis that forces him/her to consider the possibilities. Moreover, the IO must be familiar with the standard of proof that will govern the findings and conclusions.

In This Chapter This chapter contains the following topics

Standard of Proof	29
Two Types of Findings	30
Analysis of Evidence	31

Standard of Proof

Standard of Proof The standard of proof applicable to IG investigations is proof by a *Preponderance of the Evidence*. The preponderance standard means:

- The IO is satisfied that the *greater weight of the credible evidence* supports the findings and conclusions
- The IO determined that the evidence supporting one side in the case is more convincing than that supporting the other
- The IO determined that it is *more likely than not* that the events have occurred

The weight of the evidence supporting a conclusion is not determined by the sheer number of witnesses or the volume of evidentiary matter presented, but rather by the evidence which best accords with reason and probability.

Flexibility IOs must be careful not to apply this standard too mechanically.

Quality counts as much as quantity and an IO may choose to believe one witness rather than five, if the one is sufficiently credible and the five are not.

In addition, there is no way to measure the weight of a document against the testimony of a witness other than by applying the rules concerning credibility.

Two Types of Findings

Categories of Findings

There are only two possible categories of findings for an IG investigation:

- **SUBSTANTIATED**: A *substantiated* finding results when the *preponderance of the evidence* supports the conclusion that the alleged wrongdoing **did** occur. The facts (as supported by the evidence) indicate a violation occurred.
- **NOT SUBSTANTIATED**: A *not substantiated* finding results when the preponderance of the evidence supports the conclusion that the alleged wrongdoing **did not** occur. The facts (as supported by the evidence) indicate no violation occurred.

When there is not enough evidence to support a finding of “substantiated,” then the finding must be “not substantiated” with an explanation as to why the evidence was not available.

NOTE: “Inconclusive” and “partially substantiated” are *not* acceptable findings.

Analysis of Evidence

Introduction Keeping in mind the standard being sought (preponderance of the evidence), IOs should follow a simple 5-step process when analyzing the evidence they collected. *Reference AFI 90-301*

Step 1 What is/are the allegation(s)/complaint?
Framed allegation(s) must be addressed in the report.

Step 2 What are the facts (what happened)? WHO / DID WHAT / WHEN
Facts *are not* conclusions but information from which the IO must draw logical conclusions. The IO must analyze the evidence and use the preponderance of the evidence standard to arrive at logical conclusions.

Step 3 What standards apply (what are the rules)? Applicable standards should have been identified at the beginning when properly framing the allegations.

Step 4 Were the standards violated? (compare what happened with the applicable standards)
The IO must determine whether the facts, taken as a whole, would lead a reasonable person to conclude the standards were violated. Keep in mind the standard of proof by a preponderance of the evidence.
NOTE: IOs should consult their legal advisors when in doubt about whether a particular action violated Air Force standards.

Step 5 Who violated the standards and do any aggravating or mitigating factors exist?

Chapter 4

The Report of Investigation (ROI)

Overview

Introduction All IG investigations (and their findings) must be documented in an accurate and impartial manner. The ROI **must be a stand-alone document**. This means that all the essential facts, documents, portions of regulations, interviews, etc., must be included in the report so that a reviewer can arrive at a determination without reference to information outside the report.

Rules for a Good Report

Following are some rules for a good report:

- All statements, references and/or exhibits must be accurate and cross-referenced in the report
 - Subject matter must be systematically arranged and the report must be logically written
 - Conclusions to each allegation must be factual, short, and clearly stated. Generalities and gratuitous information must be avoided -- the IO must stick with the facts
-

In This Chapter This chapter contains the following topics

IG Case File Format.....	33
Report of Investigation Format.....	35
Report Writing Guide	38
Summary Report of Investigation Format	39

IG Case File Format

Policy	A case file is a compilation of documents relevant to an investigation. IG case files must be standardized. <i>See also AFI 90-301</i>
Format	The figure below shows the standard case file format for IG investigations conducted by an IO. Specifically, the IO's ROI is at Section II and the IO's supporting documentation is included in Section III of the IG case file.

<p><u>Section I. Administrative File</u> <i>(Note 7)</i></p> <p>Tab A: Summary Report of Investigation/Hotline Completion Report <i>(Note 1)</i></p> <p>Tab B: Legal Reviews</p> <p>Tab C: Technical Reviews (if applicable)</p> <p>Tab D: Recommendations (if requested by Appointing Authority) <i>(Note 2)</i></p> <p>Tab E: Command Actions (if applicable)</p> <p>Tab F: Letter of Notification to Subject's Commander</p> <p>Tab G: Complainant Notification Letter</p> <p>Tab H: Privacy Act Statement (if applicable; required for 3rd party complaints)</p> <p>Tab I: Reprisal Rights Advisement Form (if used)</p> <p>Tab J: Redacted ROI for 10 USC, 1034 Reprisal Cases</p> <p>Tab K: Administrative Documents: Memos, Progress Reports, Acknowledgment and Interim Letters (not forwarded to higher headquarters for review)</p> <p><u>Section II. Report of Investigation (ROI)</u></p> <p>Tab A: Authority and Scope</p> <p>Tab B: Introduction: Background and Allegations</p> <p>Tab C: Findings, Analysis and Conclusions</p> <p>Tab D: Appointing Authority Approval and Command Position</p> <p>Tab E: ROI Addendum (when accomplished)</p> <p><u>Section III. Support Documentation</u></p> <p>Tab A: Appointment and Tasking Letters <i>(Note 3)</i></p> <p>Tab B: Complaint with Attachments (May be an AF Form 102) <i>(Note 4)</i></p> <p>Tab C: Chronology of Events</p> <p>Tab D: Index of Witnesses <i>(Note 5)</i></p> <p style="padding-left: 20px;">D(1) Complainant's Testimony</p> <p style="padding-left: 20px;">D(2) Subject's Testimony</p> <p style="padding-left: 20px;">D(3) - D(#) Other Subject(s) Testimony</p> <p style="padding-left: 20px;">D(#) - D(#) All Other Witness Testimony</p> <p>Tab E: Index of Exhibits <i>(Note 5)</i></p> <p style="padding-left: 20px;">E(1) - E(#) All Exhibits</p> <p>Tab F: Index of Forms and Checklists <i>(Note 6)</i></p>

IG Case File Format, Continued

Note 1 The SROI is a stand-alone document used for reply to the complainant. A SROI is not required for “reprisal cases” under Title 10 USC, Section 1034, Defense Hotlines, or Fraud, Waste, and Abuse (FWA) cases, or anonymous personal complaint cases.

However, SROIs are required when the complainant is anonymous and the subject is a colonel (or equivalent).

Note 2 Recommendations are optional and at the discretion of the Appointing Authority. Recommendations, if requested, are included in Section I of the IG case file (i.e., they are *not* part of the ROI (Section II of the IG case file)

Note 3 Include all tasking letters -- from the level initiated to the IO’s appointment letter.

Note 4 Attach the complaint and any documentation provided by the complainant. Stamp or mark "Complainant Provided" in the lower right hand corner of each page.

Note 5 Type an index of all the witness statements (complainant, subject(s), and witnesses) and an index of all exhibits.

Note 6 For reprisal cases and/or investigations of an improper referral for a mental health evaluation; include the appropriate checklist/form shown in AFI 90-301

Note 7 When the IG or IO doesn’t use a specific “Tab” or “Section,” the IG or IO should annotate this on the tab or table of contents.

Report of Investigation (ROI) Format

ROI Format

The figure below shows the standard format for the IO's report of investigation (included at Section II of the IG case file). *See also AFI 90-301*

<p style="text-align: center;">FOR OFFICIAL USE ONLY</p> <p style="text-align: center;">REPORT OF INVESTIGATION PREPARED BY COLONEL JOHN A. SMITH AIR COMBAT COMMAND CONCERNING ALLEGATIONS OF REPRISAL WITHIN THE 3005TH COMMUNICATION SQUADRON JANUARY 1, 2001</p> <p style="text-align: center;">This is a privileged document. It will not be released (in whole or in part), reproduced, or given additional dissemination (in whole or in part) outside of Inspector General channels without prior approval of The Inspector General (SAF/IG) or designee.</p> <p style="text-align: center;">FOR OFFICIAL USE ONLY</p>
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ROI Format, Continued

Example:
Section II, Tab A - Tab E

[Section II is divided into five tabs (Tab A - Tab D)]

Section II, Tab A -- Authority and Scope. [Include the following statement verbatim under this heading:]

“The Secretary of the Air Force has sole responsibility for the function of The Inspector General of the Air Force (Title 10, Section 8014). When directed by the Secretary of the Air Force or the Chief of Staff, The Inspector General of the Air Force (SAF/IG) has the authority to inquire into and report upon the discipline, efficiency, and economy of the Air Force and performs any other duties prescribed by the Secretary or the Chief of Staff. (Title 10, Section 8020). Pursuant to AFI 90-301, *Inspector General Complaints*, authority to investigate IG complaints within the Air Force flows from SAF/IG to IG offices at all organizational levels.”

[In a second, consecutive paragraph include the following information:]

“(Appointing Authority’s rank, name, and duty title) appointed (Investigating Officer’s rank and name) on (date of the appointment letter) to conduct the Investigation into (complainant’s rank and name)’s allegations. (Complainant’s rank and name) filed (his or her) complaint with (name of IG or Representative) on (date). The Investigation was conducted from (date) to (date) at (location).”

Section II, Tab B -- Introduction: Background and Allegations.

[Include a brief background leading to the alleged violations. The IO must list and number all allegations examined during the course of the case. If the investigation is a continuation of a former case, include a short summary of the former effort including the results.]

Section II, Tab C -- Findings, Analysis, and Conclusions. [List each allegation, the findings, their analysis, and conclusions in the same order as the allegations in "Section II, Tab B."]

Continued on next page

ROI Format, Continued

Example: Section II, Tab A - Tab D (continued)

The findings and conclusions for each allegation should build on the factual summary and discussion in this section. Findings must be supported by the facts addressed in the analysis (testimony and documentation). Findings must address all allegations.

Each allegation must be addressed separately. If the evidence is in conflict and cannot be reconciled, that means that the facts did not satisfy the proof by a preponderance of the evidence standard and that, therefore, the allegations could not be substantiated. The IO must sign the report at the end of Tab D.

***NOTE:** Recommendations are optional at the discretion of the Appointing Authority. If an IO is tasked to make recommendations, the recommendations are not binding. If requested, recommendations will be provided **under separate cover** and will be filed at Section I, Tab D (not as part of the ROI). In all cases, an IO **will not** recommend specific punishments or administrative actions.*

Section II, Tab D -- Appointing Authority Approval and Command Position. [The Appointing Authority has the final say concerning the findings of an investigation. Appointing Authorities must sign Tab D and state if they approve/accept the findings or not. For specific guidance see Section 2L (Step 11, *Closing the Case*, of the Complaint Resolution Process).]

Report Writing Guide

The Proof Analysis Matrix as a *Report Writing Guide*

When properly constructed, the proof analysis matrix will not only provide an evidentiary framework for the investigation, but it will also provide a comprehensive outline for the analysis section of the ROI (IG case file, Section II, Tab C, *Findings, Analysis and Conclusion*)

HOW?

- **Part 1:** Outline the standard. The IO will also include excerpts from the applicable rule, regulation, policy, procedure, AFI, etc., as well as testimony from one or more experts on the standard.
 - **Part 2:** Discuss the event in question, “what happened.” In this portion of the analysis, there will likely be a great deal of testimony from the witnesses to the events and circumstances surrounding the allegation. In addition, if there is physical evidence, the IO will refer to it in this part of the analysis.
 - **Part 3:** Compare what happened (who / did what / when) to the standard to arrive at a logical conclusion See Attachment, *Sample ROI*
-



U.S. AIR FORCE

Report Writing Guide

	ESSENTIAL ELEMENTS	TESTIMONY	DOCUMENTS	OBJECTS
Part 1	In Violation Of What	Establish “The Standard”		
Part 2	Who	Establish		
	Did What	What Happened		
	When	“Who, Did What, When”		
Part 3	Conclusion “Compare Parts 1 and 2”			

Integrity - Service - Excellence

Summary Report of Investigation Format

Purpose The purpose of the SROI is to summarize the ROI for use as a response to the complainant or any other party. The SROI is a sanitized, *publicly releasable*, version of the basic ROI, omitting *names and personal and private* identifying information pertaining to individuals. Therefore, the SROI must be written with the Freedom of Information Act (FOIA) in mind.

Requirement An SROI is required for all IG investigations (non-Senior Official) conducted by an IO, with the following exceptions:

- An SROI is **not** required for “reprisal cases” under Title 10 USC, Section 1034, Defense Hotlines or Air Force Fraud, Waste, and Abuse cases, or anonymous personal complaint cases
- However, SROIs *are* required for anonymous complaints **if** the subject is a colonel (or equivalent) or when responding to a congressional or White House tasking

Format The SROI is organized into sections titled Background and Allegations, Findings and Analysis, and Conclusion. SROIs may NOT include:

- Classified material
- Information received from agencies outside the Air Force
- Testimony or statements obtained under an express promise of confidentiality; information revealing investigative techniques; identity of sources of information; the name of the IO; recommendations; or other information that, if disclosed, would compromise complainant or witness confidentiality or result in harassment or unwarranted invasion of privacy
- Any attachments
- Third party personal information

NOTE: The SROI is a **stand-alone** document.

Continued on next page

Summary Report of Investigation Format, Continued

Format

The figure below shows the standard SROI format. *See also AFI 90-301*

<p style="text-align: center;">SUMMARY REPORT OF INVESTIGATION PREPARED BY 363d FIGHTER WING NORTON AFB CA CONCERNING <SUBJECT'S DUTY TITLE (SEE NOTE 1)> OR <TOPIC OF COMPLAINT (SEE NOTE 2)> <DATE></p> <p>BACKGROUND and ALLEGATIONS:</p> <p>FINDINGS and ANALYSIS:</p> <p>CONCLUSIONS:</p>

Note 1

Do not use names in the SROI. Use duty titles or terms such as complainant, supervisor, husband, son, etc.

Note 2

Example: Abuse of Authority in the 567th Transportation Squadron, Norton Air Force Base, California

Chapter 5

Reprisal Investigations

Overview

Public Law

Pursuant to Title 10, United States Code, Section 1034 (10 U.S.C. 1034), no person may prohibit or restrict a member of the armed forces from making (or preparing to make) a lawful communication (*protected communication*) to:

- A member of Congress or an IG
- Any member of a DoD audit, inspection, investigation, or law enforcement organization or any other person or organization designated pursuant to component regulations or other established administrative procedures to receive such communications **when** the member reasonably believes he/she has evidence of a violation of law or regulation (including laws or regulations prohibiting sexual harassment or unlawful discrimination), *gross mismanagement*, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
- This includes IG office investigative staff, Military Equal Opportunity personnel, Family Advocacy, and designated commanders in a member's *chain of command* (refer to AFI 90-301, Atch 1 for a definition).

NOTE: Communications made to a Command Chief Master Sergeant or First Sergeant **are not** protected under the statute or by Air Force policy.

Policy

No person may take (or threaten to take) an unfavorable personnel action; or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing to make a *protected communication*.

- Military members (including Air Force Reserve) who violate this prohibition are subject to prosecution under the UCMJ
 - ANG personnel not on federal status are subject to the applicable State military code or administrative action, as appropriate
 - Civilian employees who violate this prohibition are subject to administrative or disciplinary action under applicable directives or implementing instructions governing civilian disciplinary or administrative action
-

Continued on next page

Overview, Continued

In This Section This section contains the following topics

Investigating Reprisal Complaints.....	43
The Acid Test for Reprisal.....	44

Investigating Reprisal Complaints

Policy Reprisal investigations will be conducted IAW DoDD 7050.6, *Military Whistleblower Protection*, and AFI 90-301, *Inspector General Complaints*.

References In addition to reviewing DoDD 7050.6 and AFI 90-301, the IO should also review the following guide when investigating allegations of reprisal:
IGDG 7050.6, *Guide to Investigating Reprisal and Improper Referrals for Mental Health Evaluations*

Acid Test for Reprisal

The “Acid Test” for reprisal is a four-part process, which aids the IO and reviewing officials in determining if reprisal occurred. The acid test for reprisal must be included in the IO’s final report of investigation.

Reprisal Evaluation Form

A “Reprisal Evaluation Form” must be completed for all reprisal investigations. A copy of this form is included in AFI 90-301, *Inspector General Complaints*.

The Acid Test for Reprisal

Policy The four-part acid test for reprisal must be incorporated into the IO's report of investigation at Section II, Tab C of the IG case file format.

Format The figure below shows the format for the four-part acid test for reprisal. See also *AFI 90-301* and *IGDG 7050.6*

Q1. Did the military member make or prepare a disclosure protected by statute or DoD Directive (to an IG, Member of Congress, or a member of a DoD audit, inspection, investigation, or law enforcement organization) or by Air Force directives (disclosure to a member of an IG office investigative staff, Military Equal Opportunity personnel, Family Advocacy, or to designated individuals of a member's chain of command)?

A1. Answer Yes or No. *[Providing details including the dates of protected communication; who the member made the protected disclosure to; and what the protected disclosure concerned.]* SEE NOTE 1

Q2. Was an unfavorable personnel action taken or threatened; or was a favorable action withheld or threatened to be withheld following the protected disclosure?

A2. Answer Yes or No. *[Provide an explanation of what was the unfavorable or withheld favorable personnel action, or threat thereof, taken or withheld. Also detail which officials were responsible for which particular action.]* SEE NOTE 2

Q3. Did the official(s) responsible for taking, withholding, or threatening the personnel action know about the protected communication?

A3. Answer Yes or No. *[Briefly state supporting facts, evidence, and testimony. It is important to state when each official responsible for the adverse action became knowledgeable. Give specific dates whenever possible. If an exact date is unknown, state "on or about" what date or time frame. Do not make general statements such as "Everyone knew that the complainant talked with the IG."]* SEE NOTE 3

Q4. Does the preponderance of evidence establish that the personnel action would have been taken, withheld, or threatened if the protected disclosure had not been made?

A4. Answer Yes or No. *[Be specific and explain logic and rationale. Establish whether there is a genuine connection between the adverse personnel action and the protected communication.]* SEE NOTE 4.

Continued on next page

The Acid Test for Reprisal, Continued

Note 1 If there is no *protected communication*, then reprisal cannot be substantiated.

If there is a question about whether or not a confirmed communication is a “protected” disclosure, the IO should give the complainant the benefit of the doubt and proceed with the Acid Test.

In those cases where complainants allege an action was taken in “reprisal” for a communication not protected by statute, DoD or Air Force Directive, the investigation is not over. The IO should determine whether or not the adverse action was otherwise an “abuse of authority.”

Note 2 If the official responsible for taking, withholding, or threatening the personnel action *did not know about* the protected communication, then reprisal cannot be substantiated.

However, the IO should nonetheless proceed with the Acid Test to determine whether or not the adverse personnel action was otherwise an “abuse of authority.”

Note 3 If the answer to the first three questions is “yes” and the answer to the fourth question is “no,” then reprisal generally has occurred.

As with any investigation, especially those alleging reprisal, consult your Judge Advocate.

Note 4 When answering the fourth question, each of the following five items must be addressed: ***Reasons, Reasonableness, Consistency, Motive, and Procedural Correctness.***

This will allow the IO to determine *explicitly* whether or not the adverse action was: a) reprisal (in the case where answers to the first three questions are “yes”) **or** b) an “abuse of authority” (in the case where the answer to either the first or third question is “no”)

ATTACHMENTS

Table of Contents

Attachments

Sample Report of Investigation (ROI).....	47
Witness Interview Format.....	55
Subject Interview Format.....	59
Suspect Interview Format.....	63
Privacy Act Statement for Personal Information.....	68
Standardized Format for Summarized Sworn Testimony.....	69

FOR TRAINING USE ONLY!!

REPORT OF INVESTIGATION

PREPARED BY

LT COL RONALD R. MCDONALD

77TH AIRLIFT WING

AIR SUPERIORITY COMMAND

CONCERNING ALLEGATIONS OF REPRISAL

WITHIN THE 77TH AIRLIFT SQUADRON

XX SEPTEMBER XXXX

FOR TRAINING USE ONLY

Section II Tab A -- Authority and Scope

1. The Secretary of the Air Force has sole responsibility for the function of The Inspector General of the Air Force (Title 10, United States Code, Section 8014). When directed by the Secretary of the Air Force or the Chief of Staff, The Inspector General of the Air Force (SAF/IG) has the authority to inquire into and report upon the discipline, efficiency, and economy of the Air Force and performs any other duties prescribed by the Secretary or the Chief of Staff. (Title 10, United States Code, Section 8020). Pursuant to AFI 90-301, *Inspector General Complaints*, authority to investigate IG complaints within the Air Force flows from SAF/IG to IG offices at all organizational levels.
2. Col Rip Cord, Inspector General, Air Superiority Command, appointed Lt Col Ronald R. McDonald, on XX July XXXX to conduct the investigation into SSgt Maximillion O. Fright's allegations. The investigation was conducted from XX July XXXX to XX September XXXX, at Knute Rockne AFB (KRAFB), OH.

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Section II, Tab B -- Introduction: Background and Allegations

BACKGROUND:

1. The circumstances surrounding this allegation began on or about XX Feb XXXX, when the complainant, SSgt Maximillion O. Fright, Life Support Technician, 77th Airlift Squadron (77 ALS), KRAFB, OH, and another member of the 77 ALS reported to Lt Col Jack T. Boomer, commander, 77 ALS (77 ALS/CC), that MSgt Suzanne D. Wrong, Life Support Superintendent, 77 ALS, KRAFB, OH, had used her government computer in furtherance of a personal business. As a result of this allegation, and the resultant commander directed investigation (CDI), MSgt Wrong received a Letter of Reprimand (LOR).
2. SSgt Fright alleged that MSgt Wrong knew he was the person that tipped-off the 77 ALS/CC regarding MSgt Wrong's misuse of a government computer, which resulted in her LOR, and thereafter MSgt Wrong reprimed against him by issuing him a "4" Enlisted Performance Report (EPR) (E1) in retaliation for SSgt Fright turning her in to the commander.
3. This investigation was initiated as a result of a letter that was sent to Gen James K. Topgun, Chief of Staff, United States Air Force, wherein the complainant, SSgt Fright, alleged he was reprimed against by his second-level supervisor, MSgt Wrong (E3).
4. During the course of investigating the allegation listed above, information came to light that an individual other than the subject might have acted out of process in the handling of the complainant's EPR. This information was referred to command and was not pursued herein.

ALLEGATION:

The following allegation was framed for investigation from SSgt Fright's letter to General Topgun:

1. MSgt Wrong reprimed against SSgt Fright, in violation of 10 U.S.C. 1034, by downgrading his EPR to an overall rating of "4," as a result of his protected disclosure to the 77 ALS/CC, on or about XX June XXXX.

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Section II, Tab C: Findings, Analysis, and Conclusions

ALLEGATION #1:

MSgt Wrong reprised against SSgt Fright, in violation of 10 U.S.C. 1034, by downgrading his EPR to an overall rating of “4,” as a result of his protected disclosure to the 77 ALS/CC, on or about XX June XXXX.

FINDING: *NOT SUBSTANTIATED*

ANALYSIS:

AFI 90-301 defines reprisal as follows: “taking or threatening to take an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action on a military member for making or preparing a protected disclosure.” In addition, AFI 90-301 provides a four-question test for use in determining if reprisal has occurred called the “Acid Test.” Hereafter, the four-part “Acid Test” is applied for the purposes of analysis.

- I.** Did the military member make or prepare a disclosure protected by statute or DoD Directive (to an IG, Member of Congress, or a member of a DoD audit, inspection, investigation, or law enforcement organization) or by Air Force directives (disclosure to a member of an IG office investigative staff, Military Equal Opportunity personnel, Family Advocacy, or to designated individuals of a member's chain of command)? **Yes.**
Lt Col Boomer testified SSgt Fright and TSgt David L. Truthspeaker, Information Manager, 77 ALS, KRAFB, OH, made the protected disclosure together when they informed him of MSgt Wrong’s alleged misuse of a government computer (D10 pg 2). In addition, both SSgt Fright and TSgt Truthspeaker testified as to the protected disclosure (D1 pg 1, D13 pg 1).
- II.** Was an unfavorable personnel action taken or threatened; or was a favorable action withheld or threatened to be withheld following the protected disclosure? **Yes.**
SSgt Fright received an EPR rating of “4” for this reporting period from MSgt Wrong, the endorser, which contradicted the “5” rating given by MSgt Story, his rater (E1). This “4” rating was inconsistent with SSgt Fright’s record to date, which consisted of “5” EPRs (E9). SSgt Fright, SSgt Powers, and MSgt Wrong all testified to the fact that exhibit E1 was in fact the EPR most recently received by SSgt Fright (D1 pg 1, D5 pg 3, D2 pg 3).
- III.** Did the official(s) responsible for taking, withholding, or threatening the personnel action know about the protected disclosure? **Yes.**

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MSgt Wrong knew who made the protected disclosure as indicated by her own testimony that she understood SSgt Fright and TSgt Truthspeaker were the ones who turned her in to the commander (D2 pgs 4-5) and that of MSgt Story wherein he stated that he told MSgt Wrong that SSgt Fright and TSgt Truthspeaker were the ones who turned her in to the commander (D3 pg 4). MSgt Wrong also related that she knew that multiple members of her section provided statements regarding the incident reported in the protected disclosure at the request of the unit First Sergeant (D2 pg 5).

IV. Does the preponderance of evidence establish that the personnel action would have been taken, withheld, or threatened if the protected disclosure had not been made? **Yes.**

(a). *Reasons* stated by the responsible official for taking, withholding, or threatening the action: The basis for this complaint was the fact that MSgt Wrong gave SSgt Fright a “4” and thereby downgraded SSgt Fright’s EPR to a “4” from a “5” rating as given by MSgt Story. However, all indications were that SSgt Fright would have been rated a “4” regardless of any other events involving MSgt Wrong. MSgt Wrong’s reasons for giving a “4” EPR rating to SSgt Fright were that SSgt Fright’s duty performance warranted a “4” (see her explanation of the “4” rating attached talking paper (E5)). MSgt Wrong’s stated reasons regarding awarding the “4” were consistently supported by the testimony of MSgt Story (SSgt Fright’s rater) as well as TSgt Grazinni (SSgt Fright’s previous supervisor).

MSgt Story related that SSgt Fright had to be refocused in his work and his production and attention to detail were lacking (D3 pg 15). MSgt Story attributed this to burnout and his overall impression of SSgt Fright was that he was an “average worker” (D3 pg 15). MSgt Story stated he was not comfortable giving SSgt Fright a “5” and expressed doubts about his duty performance. MSgt Story made a telling comment regarding the EPR rating. He stated that the rating was “very borderline” and he was struggling with it internally. He waited until the last possible moment to rate SSgt Fright because he was kind of “in-between” on which rating he would give (D3 pg 16). His final assessment of the EPR was that “overall, he could have gone with a very strong “4” or a not so strong “5”” (D3 pg 16).

TSgt Grazinni corroborated the problems MSgt Story voiced regarding SSgt Fright’s performance during the reporting period (D9 pg 12). TSgt Grazinni was directly involved with an incident of possible verbal insubordination that was witnessed by MSgt Wrong and used as part of her reasoning for rating SSgt Fright a “4” (D9 pgs 7-9, D2 pgs 18-19). TSgt Grazinni did not consider SSgt Fright worthy of a “5” EPR during this period (D9 pg 12). He stated that he and MSgt Wrong had some of the same problems with SSgt Fright’s performance. He also stated that SSgt Fright got “out of line” a couple of times (D3 pg 13).

The preponderance of evidence showed that the EPR rating was based on an objective evaluation of SSgt Fright’s primary duty performance, with due consideration given to existing documentation in his Personal Information File (PIF) including an LOR issued during the reporting period (E2), numerous counseling sessions held with SSgt Fright (E7 - E12) on his attitude and lack of attention to

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detail, as well as the incident of verbal insubordination that occurred in the presence of MSgt Wrong (D9 pgs 7-9, D2 pgs 18-19).

(b). *Reasonableness* of the action taken, withheld, or threatened considering the complainant's performance and conduct: The following factors were the basis for determining that the preponderance of evidence indicated that the action taken was reasonable.

(1) The testimony of the complainant's rater, MSgt Story, stating the need to provide counseling on more than one occasion to correct poor duty performance (D3 pg 4)

(2) MSgt Story's statement that he was not confident a "5" rating was justified and he could have rated SSgt Fright a "4" or "5" (D3 pg 2)

(3) The testimony of SSgt Fright's previous supervisor, TSgt Grazinni, stating the need to administer an LOR for SSgt Fright's failing to properly perform his duties as training manager, as well as to SSgt Fright's involvement in an incident of possible insubordination, which MSgt Wrong witnessed (D9 pg 2)

(4) Testimony by TSgt Grazinni, who had intimate knowledge of SSgt Fright's performance during the rating period, stating he did not think SSgt Fright was deserving of a "5" for this rating period (D9 pg 3)

(5) Testimony by CMSgt Henry Gunter, Senior Enlisted Manager, 77 ALS, 77 ALS, KRAFB, OH, that he considered the EPR as written to be between a "4" and a "5" (D7 pg 9), with the concurrence of Maj James Kerlin, Deputy Commander, 77 ALS, 77 ALS, KRAFB, OH, (D7 pg 8, D8 pg 7)

(c). *Consistency* of the actions of responsible management officials with past practice: Testimonial evidence provided by MSgt Wrong, MSgt Story, and TSgt Grazinni, as well as documentary evidence in SSgt Fright's PIF, show that the adverse action was consistent with feedback and counseling, both verbal and written, given to SSgt Fright during the reporting period (D2 pg 10, D3 pg 2, D9 pg 3, E7-12). In addition, testimony by SSgt Powers and MSgt Sarah Fishburn, First Sergeant, 77 ALS, KRAFB, OH, showed that the action was consistent with ratings given by MSgt Wrong to other personnel with similar performance histories. SSgt Powers related that MSgt Wrong's rating history in the unit showed that she did not give "firewall 5s," and SSgt Fright was not the only person to whom MSgt Wrong gave a "4" rating (D5 pg 5).

(d). *Motive* of the responsible management official for deciding, taking, or withholding the personnel action: The issue of MSgt Wrong's possible motive for awarding the "4" EPR was complicated by an apparent mutual dislike between she and SSgt Fright. Both MSgt Story and TSgt Grazinni testified to an extremely derogatory comment made by MSgt Wrong against SSgt Fright (D3 pg 9, D9 pg 15). MSgt Story testified that SSgt Fright disliked MSgt Wrong and that SSgt Fright believed that MSgt Wrong disliked him (D3 pg 4). Conversely, MSgt Wrong stated that her relationship with SSgt Fright was strictly professional and that no animosity existed between them (D2 pgs 5-6). The evidence was unclear as to whether this apparent mutual dislike appeared only after the protected disclosure in February

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or was present through the reporting period. Finally, both TSgt Grazinni and MSgt Fishburn testified that MSgt Wrong displayed a consistently professional attitude toward subordinates (D9 pg 3, D12 pg 1). Given the lack of evidence regarding the genesis of this apparent mutual dislike, the personality conflict could not be directly linked to the protected disclosure.

While (1) the preponderance of evidence shows that MSgt Wrong knew that SSgt Fright and TSgt Truthspeaker made the protected disclosure that resulted in her receiving an LOR (D2 pgs 4-5) and (2) the testimony of witnesses indicated the subject disliked the complainant, both prior to and after the protected disclosure was made (D3 pg 9, D9 pg 15), there is no evidence indicating that the motive for taking the administrative action was related to the protected disclosure. It was unclear from the evidence gathered whether the subject's dislike for SSgt Fright was based on personal or professional reasons. Therefore, SSgt Fright's documented duty performance stands as the strongest motive for the "4" EPR rating.

(e). *Procedural correctness* of the action: MSgt Wrong, having performed duties as a first sergeant in previous assignments, and by her own testimony, was well aware of the entire process of writing and routing EPRs (D2 pg 2).

SSgt Fright testified that he was convinced that MSgt Wrong reprimed against him in part due to the interest she took in his EPR upon her return from leave in May XXXX. SSgt Peter Q. Powers, Orderly Room NCOIC, 77 ALS, KRAFB, OH, corroborated MSgt Wrong's interest in SSgt Fright's EPR (D5 pg 5), stating that he thought MSgt Wrong's interest was "unusual," and he did not know what spurred her immediate interest in the EPR. SSgt Powers explained that he thought MSgt Wrong's interest was unusual because information regarding due dates for performance reports was well posted within the unit and regularly discussed at staff meetings. SSgt Powers related that MSgt Wrong should not have been surprised at the information regarding SSgt Fright's EPR coming due, but when she came to him in the orderly room to discuss the matter she acted as if she was caught unaware and was "not happy" at seeing an EPR for which she was responsible coming due so quickly without her having seen it as of that time (D5 pg 6).

MSgt Wrong explained that the immediacy of her interest stemmed from a staff meeting where SSgt Fright's EPR close out date was shown on a briefing slide. She was uncertain as to whether the EPR had been written, and this concerned her since she was the rater's rater and had not seen the EPR (D2 pg 13).

MSgt Story explained that the reason MSgt Wrong had not seen the EPR was that he had tried to push the EPR through the system by making Maj John Smart, Operations Officer, 77 ALS, KRAFB, OH, the endorser (D2 pgs 13-14, D5 pg 6, D3 pg 10). MSgt Story stated he did this to avoid having MSgt Wrong endorse the EPR because it might look bad for her (D3 pg 10).

SSgt Powers explained that Maj Smart could not be the endorser on this EPR because he was not in the unit's personnel system at the time of the EPR close out, so MSgt Wrong was responsible for endorsing the EPR (D5 pg 6).

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Some of the controversy surrounding the EPR stemmed not from a perceived bias by MSgt Wrong against SSgt Fright, but rather that the tone of her original endorsement indicated a “3” EPR or even possibly a referral (D7 pg 8, D8 pg 7). While MSgt Wrong’s original comments in the endorser’s block of the EPR were not available to be entered as a part of this report, they were not in dispute. These original comments led Maj Kerlin to ask CMSgt Gunter to look at the EPR. Chief Gunter agreed with Maj Kerlin that the EPR was written with derogatory information that indicated a “3,” not the “4” that MSgt Wrong intended (D7 pg 2). At CMSgt Gunter’s and Maj Kerlin’s recommendation, MSgt Wrong adjusted her comments to more accurately reflect the “4” rating she intended to give (D2 pg 3). MSgt Wrong, in spite of her knowledge of the EPR process, did not believe her original comments constituted a referral; however, she provided no reasons why she believed this to be the case (D2 pg 2).

The evidence did not indicate the presence of any hidden agendas in MSgt Wrong’s interest in SSgt Fright’s EPR. The only procedural problem with this EPR was the fact that MSgt Wrong was not included as the endorser on MSgt Story’s original draft. According to SSgt Powers, MSgt Story tried to route the EPR through the system with Maj Smart as the endorser at a time when the Maj Smart was not in the rating chain or formally assigned to the unit (D5 pg 2). MSgt Story confirmed this testimony, acknowledging that SSgt Powers had informed him that the EPR could not be routed with Maj Smart included in the rating chain (D2 pg 4). Nonetheless, SSgt Powers advised that MSgt Wrong did comply with all established policies and procedures in her rating of SSgt Fright’s EPR (D5 pg 3).

In summary, an examination of documentary evidence, as well as testimony by SSgt Powers (D5 pg 2), showed that MSgt Wrong complied with all established policies and procedures in her rating of SSgt Fright’s EPR.

CONCLUSION:

The preponderance of evidence shows that MSgt Wrong did not reprise against SSgt Fright for making a protected disclosure to the 77 ALS/CC. The evidence demonstrates that SSgt Fright would have received a “4” EPR regardless of whether or not MSgt Wrong knew that SSgt Fright made a protected disclosure. Moreover, the evidence shows that SSgt Fright’s EPR was prepared and the rating was based upon an objective evaluation of his duty performance.

/// SIGNED///

RONALD R. MCDONALD, Lt Col, USAF
Investigating Officer

Witness Interview Format

PRELIMINARIES: ESTABLISH RAPPORT (Tape Recorder is OFF)

Establish Rapport Identify yourself (may want to show ID card and the IO Appointment Letter)

Set the stage: Briefly explain your role as the IO (consider using the following information):

- The IO for an IG investigation is a confidential investigator and fact finder
- The IO obtains information and prepares a report for use by the Appointing Authority or higher authority, as they deem appropriate
- The testimony of any witness may be used within the Department of Defense for official purposes
- It is Department of the Air Force policy to keep such information and reports closely held. Nonetheless, in some instances, there may be public disclosure of IG materials, as required by the Freedom of Information Act, Privacy Act, or as otherwise provided for by law and regulations
- However, any release outside the Department of the Air Force requires the approval of SAF/IG, and in such cases, release (when unavoidable) is kept to the minimum necessary to satisfy legal or Department of the Air Force requirements

Additionally, in setting the stage for the interview, the IO should consider briefly highlighting the following topics:

- Use of the tape recorder during the interview
- Requirement for the interviewee to read the Privacy Act statement
- Requirement to administer the oath (ask the witness if they prefer to *swear* or *affirm* when the oath is administered--if the witness prefers to affirm, the verbiage “so help you God” is not used)

NOTE: The IO should take some time to set up an environment that is non-adversarial and conducive to maximum information flow

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Witness Interview Format, Continued

RECORDED INTERVIEW FORMAT (READ VERBATIM)

PART 1 READ-IN PROCEDURES (Tape Recorder is ON)

My name is _____. I have been appointed by _____ to investigate allegations that _____ to which you may have been a witness.

During the course of this interview, I will ask you to furnish information about yourself. The Privacy Act of 1974 requires that I inform you of the authority for this requirement. The statement, which I am now handing you, serves this purpose (hand statement to witness). Please read the statement at this time.

Your testimony will be recorded and transcribed so that a written report can be made available to the Appointing Authority, _____ (name of Appointing Authority).

Please answer each question verbally, since the tape recorder cannot pick up any nods or gestures. Additionally, all of your statements will be on-the-record, whether the tape recorder is turned on or not.

Because this is simply a witness interview, you are not authorized to have legal counsel present, and AFI 90-301 mandates that you answer all questions except those that may incriminate you.

OATH (Tape recorder is ON)

Before we continue, I want to remind you how important it is to give truthful testimony. It is a violation of federal law to knowingly make a false statement under oath. Now, as part of our interview process, I will administer the oath.

Please raise your right hand.

Do you solemnly swear (or affirm) that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth so help you God? (Note: if the interviewee prefers to affirm, the verbiage “so help you God” is not used)

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Witness Interview Format, Continued

PART 2 QUESTIONING THE WITNESS (Tape recorder is ON)

The time is now _____ on _____ (day, month, year). Persons present are the witness _____, the investigating officer(s) _____ [recorder(s) (if present)] _____ [And (others) (if present)] _____*

*Note: Civilian employees who are members of a collective bargaining unit (i.e., a union) may have the right to union representation when interviewed during an investigation. Additionally, bargaining unit employees may seek counsel with a union representative after an IG investigation interview. **The IO should consult with the IG and JA to clarify the specifications of the respective local bargaining agreement that may apply to each given investigation.**

We are located at _____.

Please state for the record your:

Full name: (spell it out)

Rank: (Active, Reserve, Retired)

Position:

Organization:

Social security number: (voluntary)

Address: (home or office)

Proceed with questions necessary to obtain all direct knowledge of the matters under investigation

AT THE CONCLUSION OF THE QUESTIONING THE IO WILL ASK:

(Tape Recorder is ON)

Do you have any further information, statements, or evidence, which you wish to present concerning the matters we have discussed?

Do you know of anyone else who can provide further information concerning these issues?

Continued on next page

Witness Interview Format, Continued

PART 3 READ-OUT PROCEDURES (Tape recorder is ON)

This is an official investigation. It is privileged in the sense that my report will be made to the Appointing Authority or higher authority for such use as deemed appropriate.

You are ordered (or "directed" for USAFR/ANG persons and civilian employees not subject to the UCMJ) ***not to divulge the nature of this investigation or the questions, answers, or discussions included in this interview with anyone except a chaplain,*** (for civilian employees only, add: "a union representative"), ***or your counsel (if you have one) unless authorized to do so by the Appointing Authority, higher authority, or me.***

If anyone should approach you regarding your testimony or the matters discussed here, you are required to report it immediately to me or (state the name of the IG and the Appointing Authority)

If you are under stress related to this interview, you may seek assistance from your command chain, the mental health community, or you may contact either the IG or myself and arrangements will be made for you to receive assistance.

Do you have any questions?

The time is _____ . This interview is concluded.

Thank you.

NOTE: If ANY witness appears to be emotional, distraught, or stunned during the process of any interview, they must be released to the commander, first sergeant, supervisor, or designee. Reference: CSAF "Hand-off" Policy

- These referrals require a person-to-person contact between the IO and the subject's/witness' commander, first sergeant, supervisor or designee
- If a military interviewee invokes his/her right to remain silent, the IO must inform the person receiving the hand-off ***not*** to violate this right by discussing any aspect of the investigation with the interviewee
- The IO must document the hand-off within the report of investigation

Subject Interview Format

PRELIMINARIES: ESTABLISH RAPPORT (Tape Recorder is OFF)

Establish Rapport Identify yourself (may want to show ID card and the IO Appointment Letter)

Set the stage: Briefly explain your role as the IO (consider using the following information):

- The IO for an IG investigation is a confidential investigator and fact finder
- The IO obtains information and prepares a report for use by the Appointing Authority or higher authority, as they deem appropriate
- The testimony of any witness may be used within the Department of Defense for official purposes
- It is Department of the Air Force policy to keep such information and reports closely held. Nonetheless, in some instances, there may be public disclosure of IG materials, as required by the Freedom of Information Act, Privacy Act, or as otherwise provided for by law and regulations
- However, any release outside the Department of the Air Force requires the approval of SAF/IG, and in such cases, release (when unavoidable) is kept to the minimum necessary to satisfy legal or Department of the Air Force requirements

Additionally, in setting the stage for the interview, the IO should consider briefly highlighting the following topics:

- Use of the tape recorder during the interview
- Requirement for the interviewee to read the Privacy Act statement
- Requirement to administer the oath (ask the witness if they prefer to *swear* or *affirm* when the oath is administered--if the witness prefers to affirm, the verbiage “so help you God” is not used)
- CSAF mandatory “hand-off” policy

NOTE: The IO should take some time to set up an environment that is non-adversarial and conducive to maximum information flow

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Subject Interview Format, Continued

RECORDED INTERVIEW FORMAT (READ VERBATIM)

PART 1 READ-IN PROCEDURES (Tape Recorder is ON)

My name is _____. I have been appointed by _____ to investigate allegations that you may have _____ (read all allegations).

If you desire, during this interview, you may comment on this information to give your side of the story. You may also show me evidence to contradict or explain the allegations.

During the course of this interview, I will ask you to furnish information about yourself. The Privacy Act of 1974 requires that I inform you of the authority for this requirement. The statement, which I am now handing you, serves this purpose (hand statement to witness). Please read the statement at this time.

Your testimony will be recorded and transcribed so that a written report can be made available to the Appointing Authority, _____ (name of Appointing Authority).

Please answer each question verbally, since the tape recorder cannot pick up any nods or gestures. Additionally, all of your statements will be on-the-record, whether the tape recorder is turned on or not.

RIGHTS ADVISEMENT

At this time, you are NOT suspected of any offense under the Uniform Code of Military Justice (UCMJ), federal, or local law. Therefore, you are not authorized to have legal counsel present, and I am not advising you of your Article 31 rights. In addition, AFI 90-301 mandates that you answer all questions except those that may incriminate you.

OATH (Tape recorder is ON)

Before we continue, I want to remind you how important it is to give truthful testimony. It is a violation of federal law to knowingly make a false statement under oath. Now, as part of our interview process, I will administer the oath.

Please raise your right hand.

Do you solemnly swear (or affirm) that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth so help you God? (Note: if the interviewee prefers to affirm, the verbiage “so help you God” is not used)

Continued on next page

Subject Interview Format, Continued

PART 2 QUESTIONING THE WITNESS (Tape recorder is ON)

*The time is now _____ on _____ (day, month, year). Persons present are the witness _____, the investigating officer(s) _____ [recorder(s) (if present)]
_____ [And (others) (if present)*] _____*

*Note: Civilian employees who are members of a collective bargaining unit (i.e., a union) may have the right to union representation when interviewed during an investigation. Additionally, bargaining unit employees may seek counsel with a union representative after an IG investigation interview. The IO should consult with the IG and JA to clarify the specifications of the respective local bargaining agreement that may apply to each given investigation.

We are located at _____.

Please state for the record your:

Full name: (spell it out)

Rank: (Active, Reserve, Retired)

Position:

Organization:

Social security number: (voluntary)

Address: (home or office)

Proceed with questions necessary to obtain all direct knowledge of the matters under investigation

AT THE CONCLUSION OF THE QUESTIONING THE IO WILL ASK:

(Tape Recorder is ON)

Do you have any further information, statements, or evidence, which you wish to present concerning the matters we have discussed?

Do you know of anyone else who can provide further information concerning these issues?

Subject Interview Format, Continued

PART 3 READ-OUT PROCEDURES (Tape recorder is ON)

This is an official investigation. It is privileged in the sense that my report will be made to the Appointing Authority or higher authority for such use as deemed appropriate.

You are ordered (or "directed" for USAFR/ANG persons and civilian employees not subject to the UCMJ) *not to divulge the nature of this investigation or the questions, answers, or discussions included in this interview with anyone except a chaplain*, (for civilian employees only, add: "a union representative"), *or your counsel (if you have one) unless authorized to do so by the Appointing Authority, higher authority, or me.*

If anyone should approach you regarding your testimony or the matters discussed here, you are required to report it immediately to me or (state the name of the IG and the Appointing Authority)

*In accordance with the CSAF "Hand-off" policy, I must personally refer you to your commander, first sergeant, supervisor or designee at the conclusion of this interview. I have coordinated this requirement with your commander and _____ (state the name of the individual who will accomplish the person-to-person hand-off) will meet you here as we conclude the interview.**

Do you have any questions?

The time is _____. This interview is concluded. Thank you.

*NOTE: Following initial interviews with Air Force personnel who are the subject of an investigation, IOs must refer such individuals to their commander, first sergeant, supervisor or designee.

Additionally, if ANY witness appears to be emotional, distraught, or stunned during the process of any interview, they must be released to the commander, first sergeant, supervisor, or designee.

- These referrals require a person-to-person contact between the IO and the subject's/witness' commander, first sergeant, supervisor or designee
- If a military interviewee invokes his/her right to remain silent, the IO must inform the person receiving the hand-off *not* to violate this right by discussing any aspect of the investigation with the interviewee
- The IO must document the hand-off within the report of investigation

Suspect Interview Format

PRELIMINARIES: ESTABLISH RAPPORT (Tape Recorder is OFF)

Establish Rapport Identify yourself (may want to show ID card and the IO Appointment Letter)

Set the stage: Briefly explain your role as the IO (consider using the following information):

- The IO for an IG investigation is a confidential investigator and fact finder
- The IO obtains information and prepares a report for use by the Appointing Authority or higher authority, as they deem appropriate
- The testimony of any witness may be used within the Department of Defense for official purposes
- It is Department of the Air Force policy to keep such information and reports closely held. Nonetheless, in some instances, there may be public disclosure of IG materials, as required by the Freedom of Information Act, Privacy Act, or as otherwise provided for by law and regulations
- However, any release outside the Department of the Air Force requires the approval of SAF/IG, and in such cases, release (when unavoidable) is kept to the minimum necessary to satisfy legal or Department of the Air Force requirements

Additionally, in setting the stage for the interview, the IO should consider briefly highlighting the following topics:

- Use of the tape recorder during the interview
- Requirement for the interviewee to read the Privacy Act statement
- Requirement to administer the oath (ask the witness if they prefer to *swear* or *affirm* when the oath is administered--if the witness prefers to affirm, the verbiage “so help me God” is not used)
- CSAF mandatory “hand-off” policy

NOTE: The IO should take some time to set up an environment that is non-adversarial and conducive to maximum information flow

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Suspect Interview Format, Continued

RECORDED INTERVIEW FORMAT (READ VERBATIM)

PART 1 READ-IN PROCEDURES (Tape Recorder is ON)

My name is _____ . I have been appointed by _____ to investigate allegations that you may have _____ (read all allegations).

If you desire, during this interview, you may comment on this information to give your side of the story. You may also show me evidence to contradict or explain the allegations.

During the course of this interview, I will ask you to furnish information about yourself. The Privacy Act of 1974 requires that I inform you of the authority for this requirement. The statement, which I am now handing you, serves this purpose (hand statement to witness). Please read the statement at this time.

Your testimony will be recorded and transcribed so that a written report can be made available to the Appointing Authority, _____ (name of Appointing Authority).

Please answer each question verbally, since the tape recorder cannot pick up any nods or gestures. Additionally, all statements will be on-the-record, whether the tape recorder is turned on or not.

RIGHTS ADVISEMENT (Note: (2) categories of rights advisement for suspect interviews)

Before we begin our discussion, I want to make it clear that you have the following rights:

(1) For active duty personnel and USAFR/ANG personnel subject to the UCMJ:

Under Article 31 of the UCMJ: You may remain silent, that is say nothing at all; any statement you make, oral or written, may be used as evidence against you in a trial by court-martial or in other judicial or administrative proceedings; you have the right to consult a lawyer and to have a lawyer present during this interview; you have the right to military legal counsel free of charge; in addition to military counsel, you are entitled to civilian counsel of your own choosing, at your own expense; you may request a lawyer at any time during this interview; if you decide to answer questions without a lawyer present, you may stop the questioning at any time.

Do you understand your rights?

Do you want a lawyer?

Are you willing to answer questions?

IO PROCEEDS TO THE OATH

Continued on next page

Suspect Interview Format, Continued

RIGHTS ADVISEMENT, continued

(2) If the interviewee is NOT subject to the UCMJ at the time of the interview (i.e., Civilians, and USAFR/ANG personnel (depending on status), etc.)

No further action or advisement is required (see notes below). **The IO proceeds to the oath**

Note 1: Civilians, even if suspected of an offense, need not be advised of their Fifth Amendment rights when interviewed as part of an IG investigation. Under the law, such rights are only required in conjunction with custodial interrogations (i.e., interrogations in which interviewee is not free to leave at will). Interviews by an IG or IO under authority of AFI 90-301 do not meet that threshold requirement. However, the lack of a requirement to advise civilian witnesses of their Fifth Amendment rights does not preclude them from invoking such rights if circumstances warrant.

Note 2: For Reserve and Air National Guard personnel, the IO will need to determine the status of the suspect at the time of the occurrence and at the time of the scheduled interview. The IO must consult with the JA to determine what, if any, rights advisement is required.

OATH (Tape recorder is ON)

Before we continue, I want to remind you how important it is to give truthful testimony. It is a violation of federal law to knowingly make a false statement under oath. Now, as part of our interview process, I will administer the oath.

Please raise your right hand.

Do you solemnly swear (or affirm) that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth so help you God? (Note: if the interviewee prefers to affirm, the verbiage “so help you God” is not used)

Continued on next page

Suspect Interview Format, Continued

PART 2 QUESTIONING THE WITNESS (Tape recorder is ON)

*The time is now _____ on _____ (day, month, year). **Persons present are the witness** _____, **the investigating officer(s)** _____ [recorder(s) (if present)]
_____ [And (others) (if present)*] _____*

*Note: Civilian employees who are members of a collective bargaining unit (i.e., a union) may have the right to union representation when interviewed during an investigation. Additionally, bargaining unit employees may seek counsel with a union representative after an IG investigation interview. The IO should consult with the IG and JA to clarify the specifications of the respective local bargaining agreement that may apply to each given investigation.

We are located at _____.

Please state for the record your:

Full name: (spell it out)

Rank: (Active, Reserve, Retired)

Position:

Organization:

Social security number: (voluntary)

Address: (home or office)

Proceed with questions necessary to obtain all direct knowledge of the matters under investigation

AT THE CONCLUSION OF THE QUESTIONING THE IO WILL ASK:

(Tape recorder is ON)

Do you have any further information, statements, or evidence, which you wish to present concerning the matters we have discussed?

Do you know of anyone else who can provide further information concerning these issues?

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Suspect Interview Format, Continued

PART 3 READ-OUT PROCEDURES (Tape recorder is ON)

This is an official investigation. It is privileged in the sense that my report will be made to the Appointing Authority or higher authority for such use as deemed appropriate.

You are ordered (or "directed" for USAFR/ANG persons and civilian employees not subject to the UCMJ) *not to divulge the nature of this investigation or the questions, answers, or discussions included in this interview with anyone except a chaplain*, (for civilian employees only, add: "a union representative"), *or your counsel (if you have one) unless authorized to do so by the Appointing Authority, higher authority, or me.*

If anyone should approach you regarding your testimony or the matters discussed here, you are required to report it immediately to me or (state the name of the IG and the Appointing Authority)

In accordance with the CSAF "Hand-off" policy, I must personally refer you to your commander, first sergeant, supervisor or designee at the conclusion of this interview. I have coordinated this requirement with your commander and _____ (state the name of the individual who will accomplish the person-to-person hand-off) *will meet you here as we conclude the interview.**

Do you have any questions?

The time is _____. This interview is concluded. Thank you.

*NOTE: Following initial interviews with Air Force personnel who are the suspect of an investigation, IOs must refer such individuals to their commander, first sergeant, supervisor or designee.

Additionally, if ANY witness appears to be emotional, distraught, or stunned during the process of any interview, they must be released to the commander, first sergeant, supervisor, or designee.

- These referrals require a person-to-person contact between the IO and the suspect's commander, first sergeant, supervisor or designee
- If a military interviewee invokes his/her right to remain silent, the IO must inform the person receiving the hand-off *not* to violate this right by discussing any aspect of the investigation with the interviewee
- The IO must document the hand-off within the report of investigation

**PRIVACY ACT STATEMENT
FOR PERSONAL INFORMATION TAKEN DURING WITNESS TESTIMONY**

Policy The Privacy Act statement is required to be read and acknowledged by each witness at the beginning of the interview process.

Authority Title 10, United States Code, Sections 8013 and 8020, and Executive Order 9397.

Principal Purpose Information is collected during an inquiry or investigation to aid in determining facts and circumstances surrounding the allegations. The information is assembled in report format and presented to the Appointing Authority as a basis for DoD or Air Force decision-making.

The information may be used as evidence in judicial or administrative proceedings or for other official purposes within the DoD. Disclosure of Social Security number, if requested, is used to further identify the individual providing the testimony.

Routine Uses Routine uses include:

- Forwarded to federal, state, or military and local law enforcement agencies for law enforcement purposes
 - Used as a basis for summaries, briefings, or responses to members of Congress or other agencies in the Executive Branch of the Federal Government
 - Provided to Congress or other federal and state agencies when determined to be necessary by The Inspector General, USAF
 - For any of the blanket routine uses published by the Air Force (AFDIR 37-144, Privacy Act System of Records, formally AFP 4-36)
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Mandatory or Voluntary Disclosure

FOR MILITARY PERSONNEL: Disclosing your Social Security number is voluntary. Disclosing other personal information relating to your position responsibilities is mandatory and failure to do so may subject you to disciplinary action.

FOR DEPARTMENT OF THE AIR FORCE CIVILIANS: Disclosing your Social Security number is voluntary. However, failure to disclose other personal information in relation to your position responsibilities may subject you to adverse personnel action.

FOR ALL OTHER PERSONNEL: Disclosing your Social Security number and other personal information are voluntary. No adverse action can be taken against you for refusing to provide information about yourself.

Standardized Format for Summarized Sworn Testimony

SUMMARIZED SWORN TESTIMONY OF (RANK AND LAST NAME)

Summarized (sworn [and taped]) testimony of (Rank, Name of Witness), (Witness' Duty Position), (Location), obtained by interview at (Location), (Date), from (Time, to (Time) hours by (Rank, Name of Investigating Officer).

Full Name Of Witness:

Grade of Witness:

Organization:

Duty Assignment of Witness:

Write the following:

I interviewed (witness name) and advised (him or her) of the nature of the investigation. I informed (witness name) of the authority for the investigation and of (his or her) rights, as applicable.

The following is a summary of this witness' sworn testimony or statement: (Present a summary of the key points to questions asked. It is critical the testimony reflect all the facts pertinent to the allegations.)

Note: After the last line of summarized testimony, place the advisement and certification statements below (verbatim). Directly below the statements, type the Investigating Officer's (IO's) signature block. On the bottom right side of each summarized statement, place the witness' last name in all caps and put the tab number and letter as listed in the index of the IG case file. Do not place the signature elements alone on a separate page. At a minimum, ensure three lines of testimony are carried over with the signature elements.

I advised (witness name) that this is an official investigation, and ordered (or directed to USAFR/ANG persons not subject to the UCMJ) (him or her) not to divulge the nature of this investigation or the questions and answers, or discussions included in this interview with anyone except a chaplain, a union representative (if appropriate) or counsel unless otherwise authorized by the Appointing Authority, higher authority, or me.

NOTE: The IO must review the recorded interview tapes and transcript/summary to ensure accuracy. The IO must sign all testimony (summarized and transcribed verbatim).

I certify the above to be a true summary of sworn (or affirmed) testimony given to me on (date) at (place).

Signature of Investigating Officer.....(Date)

(Type IO's full name and rank)

Investigating Officer

(WITNESS' LAST NAME IN CAPS)

TAB (NUMBER AND LETTER)