

**DESIGNING A COMPLAINT INVESTIGATION PROCEDURE FOR
THE SAN FRANCISCO FIRE DEPARTMENT**

**EXECUTIVE ANALYSIS OF FIRE DEPARTMENT OPERATIONS
IN EMERGENCY MANAGEMENT**

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ABSTRACT

The problem was that the San Francisco Fire Department did not have standardized policies and procedures for investigating complaints of poor service or employee misconduct initiated by the public, other emergency service providers, or its employees. The purpose of this research was to create a manual that standardized the guidelines for investigating complaints. A literature review was the primary procedure utilized in the study that employed evaluative and action research methodology to answer the following questions:

- 1) What procedures should be followed when investigating complaints?
- 2) What legal issues need to be considered when investigating complaints?
- 3) How should interviews be conducted when investigating complaints?
- 4) How should information discovered during the investigation be analyzed and reported?

The results of this study produced a policies and procedures manual for investigating complaints of poor service and/or employee misconduct received by the San Francisco Fire Department.

Recommendations for the use of this research included a) submission of the manual for approval by the City Attorney's Office and the San Francisco Department of Human resources b) incorporation of the guidelines into the department's human resources policies and procedures manuals c) incorporation into the EMS Incident Management System procedures d) selection of a limited number of members to be trained as investigators and e) evaluation of the program after six months.

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INTRODUCTION

The following mission and value statements are posted on the San Francisco Fire Department (SFFD) web site (San Francisco Fire Department, 2003):

i) Mission Statement

The mission of the Fire Department is to protect the lives and property of the people of San Francisco from fires, natural disasters, and hazardous materials incidents; to save lives by providing emergency medical services; to prevent fires through prevention and education programs; and to provide a work environment that values cultural diversity and is free of harassment and discrimination.

ii) Value Statements

The San Francisco Fire Department Values:

- The public's trust and opportunity to serve;
- A work environment that promotes harmony, respect for each person, and is free from harassment, discrimination, and retaliation;
- A diverse work force which reflects the community it serves;
- A highly trained professional work force;
- Teamwork to effectively achieve the Department's mission.

It is clear from these mission and value statements that the SFFD is committed to maintaining public trust by delivering quality emergency services and creating a respectful, professional work environment for its employees. When service related complaints from the public, our customers, are addressed and solved, an opportunity exists to improve the SFFD's performance by correcting problems so they will not reoccur in the future (Buckingham, 2001). The SFFD interacts with many agencies that

provide emergency services such as the Police Department, hospital emergency departments, the Emergency Communications Department, etc. Although these third party organizations are not our direct customers, when complaints are received from them, the SFFD has the same opportunity to improve service by correcting problems.

Complaints about employee misconduct in the workplace may be received from the public or other third parties, managers and supervisors, or directly from employees (Delpo and Guerin, 2001). When employees are accused of violating organizational rules and policies or of committing illegal acts, such incidents must be fairly investigated and addressed to maintain employee trust and organizational control (Edwards, 2000).

The problem addressed in this research project is that the SFFD did not have a standard procedure for investigating complaints initiated by the public, its employees, or other emergency service agencies. Whiteley (1991) states that “Smart companies make it easy to complain” (p. 50). The complaints are then utilized to solve the underlying problems that led to the complaint. Delpo and Guerin (2001) recommend developing a written procedure for handling complaints to encourage victims and witnesses to come forward thus giving the organization and opportunity to resolve problems as soon as possible. They further state that “The very existence of an investigation procedure will underline the importance of following workplace rules and even provides a valuable defense to a harassment, discrimination or wrongful termination lawsuit (p.5/3).”

The purpose of this research was to develop a process for investigating complaints initiated by the public, other emergency service agencies such as the Police or Health Department, or San Francisco Fire Department employees. The procedure will be used to ensure that investigations are handled efficiently, fairly, and consistent with the legal

rights of complainants, witnesses, and the accused. A literature review was the primary procedure utilized in the study that employed evaluative and action research to answer the following questions:

- 1) What procedures should be followed when investigating complaints?
- 2) What legal issues need to be considered when investigating complaints?
- 3) How should interviews be conducted when investigating complaints?
- 4) How should information discovered during the investigation be analyzed and documented?

BACKGROUND AND SIGNIFICANCE

The City of San Francisco, California is a 46.7 square mile peninsula surrounded on three sides by the Pacific Ocean and San Francisco Bay. The City's resident population is 801,377 (San Francisco Government, 2002). The daytime population is considerably greater due to the impact of an estimated 250,000 workers who commute to San Francisco each day (Metropolitan Transportation Commission, 1990) and an estimated 16 million people who visit "The City" each year (San Francisco Convention and Visitors Bureau, 1995).

The San Francisco Fire Department employs approximately 1800 sworn firefighters and 100 civilian support staff. The firefighter ranks include approximately 350 paramedic firefighters, 1200 firefighter EMTs, and 250 firefighter first responders. The SFFD daily field staffing includes 2 assistant chiefs, 10 battalion chiefs, 13 chief's aides, 42 engine companies, 19 truck companies, 2 heavy rescue squads, and 21 Advanced Life Support (ALS) ambulances, four paramedic captains, and 3 companies at the airport.

In calendar year 2002, the SFFD responded to approximately 103,000 emergency incidents. There were 71,000 EMS incidents, although many of the remaining incidents such as fires and rescues required dispatch of EMS units and the assessment and treatment of patients. SFFD personnel treated 66,000 patients and 47,000 patients were transported to local hospitals.

In 1999, the SFFD Emergency Medical Services (EMS) Division created a procedure to investigate complaints related to the provision of emergency medical services called the Incident Management System (IMS) as part of its Continuous Quality Improvement (CQI) plan. The IMS provides for logging and tracking complaints, planning investigations, the development of action plans to address problems, and has comprehensive policies for reporting and documentation. The IMS does not have a specific procedure for conducting interviews or analyzing testimony and evidence, but overall the system serves as a useful model for developing a more global template for investigating all complaints received by the Department. There is no similar system in place for investigating complaints related to the provision of fire suppression and technical rescue services.

The Department has a formal policy for filing complaints of harassment, discrimination, and other violations of Equal Employment Opportunity (EEO) regulations and guidelines. Until recently, all EEO related complaints were investigated by members of the SFFD, but there was not a specified procedure for conducting interviews, analyzing testimony and evidence, nor a standardized documentation procedure. The Department does not have a formal procedure for investigating non-EEO related rule violations. In both instances, the absence of a comprehensive investigation policy has led

some employees to question the fairness of the investigation process. The responsibility for investigating EEO related complaints was given to the San Francisco Department of Human Resources in June, 2003. The Department maintains responsibility for investigating non-EEO-related complaints of employee misconduct.

The Department needs to improve and standardize its policies and procedures for investigating complaints to improve the trust and confidence of both its employees and the public. According to Edwards (2000), established work rules help fulfill “human needs for security, order, predictability, and avoidance of physical harm” (p. 173). According to Lloyd (1999), “most employees are not pleased about individuals who flaunt the rules” (p. 116). Employees become dissatisfied when they believe there is not a fair and serious investigation into violations of the organization’s policies and procedures (National Fire Protection Association, 1977). An article by a group called the Speaking Connection (2000) reminds us that the customer who bothers to complain is actually giving you the opportunity to address his problem which can prevent the complaint from ending up as a law suit or negative publicity.

Conducting a research project to improve the service and performance of fire departments by developing solid procedures for the investigation of complaints is consistent with the goal of the United States Fire Administration to promote within communities a comprehensive, multi-hazard risk-reduction plan led by the fire service organization. Timely and comprehensive complaint investigation programs reduce risk and liability by identifying performance problems (Buckingham, 2001). The topic of contemporary legal issues was covered in Unit 10 of the Executive Analysis of Fire Service Operations in Emergency Management course. This unit included discussion of

some of the legal rights of firefighters to safe working conditions as well as the rights and expectations of the public relative to the provision of emergency services. A good complaint investigation policy creates the opportunity for fire departments to take preventive action to reduce their legal liability (Berlin, 2003).

LITERATURE REVIEW

The Need for a Complaint Policy

This research project is primarily focused only on developing guidelines for conducting investigations of complaints, but it is valuable to note that organizations should have in place a formalized complaint policy so that individuals know how to file a complaint and how the organization handles complaints after they are received.

Buckingham (2001) and Whiteley (1991) advise that encouraging customers to come forward with their complaints create an opportunity to improve performance and maintain customer trust and loyalty. According to Delpo and Guerin (2001), development of a written procedure for handling employee complaints encourages employees to come forward with their complaints thus allowing management a chance to solve problems quickly. They recommend that the complaint policy include directions for filing complaints, a description of what type of activities will be investigated, which protections are in place to prevent retaliation and to preserve confidentiality, as well as assurance that management accepts responsibility for reporting inappropriate actions and taking corrective action. Waag (2003) states that all employers should have policies to solicit complaints related to workplace safety, harassment in the workplace, and customer service. Hogge (2001) explains that such written policies help support the credibility of

investigations, express a commitment to the policies of the company and “will contribute significantly to supporting a workplace investigation against legal challenge” (p. 1).

Interestingly, both Hogge (2001) and Delpo and Guerin (2001) state that the details of how a company actually conducts its investigations are more appropriately contained in an investigator’s manual, not directly available to employees, than in the complaint policy itself.

When to Investigate

Tyska & Fennelly (1999) state that “An investigation is the examination, study, search for, tracking, and gathering of factual information that answers questions or solves problems” (p. 111). Texas Workforce Commission (2003) points out that most workplace investigations don’t fit the “popular profile of interrogations, witnesses under harsh lights, and long, drawn-out detective work” (p. 1). Hogge (2001) maintains that all workplace investigations are “conducted for one overriding purpose: to enforce company policy” (p. 1). Not all complaints require a formal investigation. If the facts related to an incident are already known and there is not a dispute amongst complainants, witnesses, or the accused about what happened, and investigation is not necessary (Delpo and Guerin, 2001). For example, if an individual readily admits to some type of misconduct as described by the complainant, the factual information is established and the issue for management becomes how to correct the problem. Delpo and Guerin (2001) further point out that minor conduct violations are usually easily handled with simple coaching and counseling and a formal investigation is not necessary. Berlin (2003) states that when complaints involving serious issues, such as sexual harassment, are promptly and fully investigated, legal liability is reduced and damages can be mitigated.

Curiale, et.al. (2002) recommend conducting investigations when simple answers can't solve the issues, if multiple employees are involved, when more facts are needed than can be provided by the employee, and when multiple resources are necessary to reach a conclusion. Ultimately, investigations are a tool used by management to analyze problems and to collect data to make decisions (Texas Workforce Commission, 2003). The Texas Workforce Commission (2003) emphasizes that the purpose of the investigation is to identify whether misconduct has occurred, identify or exonerate the accused, and ultimately to prevent further wrong actions.

Planning the Investigation

Curiale, et.al. (2002) state that the first step in the investigation process is to determine the specific issues being raised by the complainant. Once the exact nature of the complaint is understood, they recommend addressing the following issues during the investigation planning phase:

1. Determine what policies, guidelines, or practices apply
2. Obtain all relevant documents
3. Determine who is best suited to conduct the investigation
4. Decide who should be interviewed
5. Determine the interview questions (p. 221-222)

Determination of Applicable Policies

Delpo and Guerin (2001) assert that all policies and guidelines pertinent to the situation should be reviewed at the outset of the investigation. Curiale et.al. (2002) state that this is the time to begin to determine "what the organization's obligations are with respect to solving the issues" (p. 221). Nelson (1996) emphasizes that a determination of

unacceptable behavior or performance must be relevant to the organization's specific policies and performance standards. Benson (2000) asserts that witnesses should not be interviewed until all of the underlying issues and policies of the case are thoroughly understood.

Reviewing the Relevant Documents

Delpo and Guerin (2001) advise conducting a thorough review of the actual complaint and other related correspondence prior to the start of the interview process. Edwards (2000) and Berlin (2003) declare that personnel files including attendance records, performance reviews, or documentation of previous misconduct should be reviewed in this preliminary phase. Tyska and Fennelly (1999) remind that preliminary reports that may have been submitted by first level supervisors may contain valuable information on potential witnesses and pertinent statements from the personnel involved at the time of the incident. The Texas Workplace Commission (2003) recommends review of all journals, logs, and memos that may be related to the case.

Choosing the Investigator

Delpo and Guerin (2001) emphasize that investigators must have some experience in investigating complaints or at a minimum some training in investigative techniques. They, along with the Texas Workplace Commission (2003), recommend large companies train staff from their human resources division to conduct investigations rather than direct supervisors and managers. They recommend against using the immediate supervisor or manager of either the accused or the complainant because it may be difficult for them to maintain an impartial and objective viewpoint. Delpo and Guerin (2001) counsel that the investigator chosen must have an open mind. They warn that against using investigators

who may not take a complaint seriously because they don't want to believe that misconduct is taking place in their own organization or who conversely assume that no employee would complain without merit. The Texas Workforce Commission (2003) recommends selection of investigators who are knowledgeable about applicable company policies and employment law issues, sensitive to the rights of employees, recognized as credible and impartial, and thorough investigators who do not unnecessarily drag out the process. Curiale, et.al. (2002) contend that it is critical for the complainant to have trust and confidence in the integrity and competence of the individual handling the investigation. Edwards (2000) states that "the employer and supervisors have the clear obligation to be factual in all cases and to be objective, consistent, and impartial" (p. 175). Benson (2000) alleges that a critical skill for investigators is the ability to listen critically to "exactly what people are saying" (p. 21). Tyska and Fennelly (1999) state that "the investigator can have a tremendous impact on the process of the eventual outcome if his work is accurate or inaccurate, truthful or untruthful" (p.122)

The Texas Workforce Commission (2003), Delpo and Guerin (2001), and Curiale et.al. (2002) all recommended using outside investigators in special situations such as where special confidentiality may be required, when legal issues are especially sensitive, when high ranking officials are involved, or when special technical expertise is required. However, a specific recommendation on the use of outside investigators is beyond the scope of this research project.

Planning the Interviews

The Texas Workforce Commission (2003) recommends moving quickly to determine who may have knowledge about the incident because potential witnesses may

“leave the company, become intimidated or otherwise influenced, forget important details, or go on vacation and thus are unavailable when needed” (p. 4). Interviews should be started within two days of receiving the complaint and completed within a week or two (Delpo and Guerin, 2001). They also point out that the complainant and the accused must always be interviewed and that the complainant should be interviewed first followed by the accused and then the witnesses because the order of scheduling witnesses can impact the development of facts. Tyska and Fennelly (1999) state that investigators should anticipate that the initial list of witnesses to be interviewed may be expanded based on information gathered during the initial interviews.

Developing Questions

Curiale, et.al. (2002), Delpo and Guerin (2001), and the Texas Workforce Commission (2003) advise that investigators must first determine what issues and facts need to be explored and then develop a written list of questions that cover each of these areas. However, these authors further recognize that investigators need to be flexible and go beyond the scripted questions as the interview progresses. The authors Tyska and Fennelly (1999), Curiale, et.al. (2002), and Benson (2000) all stress that the key to a successful investigation is getting answers to the following six elements: who was involved, what happened, where did it happen, when did it happen, why did it happen, and how did it happen.

Tyska and Fennelly (1999) describe the two basic types of questions as open and closed. They maintain that closed questions, requiring a simple yes or no answer or undeniable fact (name, address, etc.) should be used at the beginning of the interview to help put the interviewee at ease. Most of the information in the interview will come from

open questions that require the interviewee to reflect on real events that answer the elements of who, what, when, where, why, and how. Delpo and Guerin (2001) and Tyska and Fennelly (1999) both remark that open-ended questions tend to help build rapport and keep witnesses talking.

When asking open-ended questions, it is best to start with broad-based questions and then to use follow-up questions to elicit specific facts (Curiale, et.al., 2002). Delpo and Guerin (2001) encourage investigators to ask questions that keep interviewees focused on what they saw and heard, the facts of the case, as opposed to expressing their opinion about why someone may have done something. Hogge (2001) states that the investigator should pin down the facts with follow up questions that separate what witnesses know from their opinions. Tyska and Fennelly (1999) recommend the use of so called pointed questions that contains language stating the goal of the question to keep interviewees focused on the facts. They generally recommend against using leading questions that involve assumptions or knowledge on the part of investigators due to the likelihood of eliciting unreliable responses, but they maintain that leading questions are sometimes used effectively to build rapport when used to express an understanding of the feelings of the interviewee. In contrast, Hogge (2001) advises against any use of leading questions that suggest the answer because they undermine the reliability of the information. Curiale, et.al. (2002) advises that unfriendly and embarrassing questions should be saved until a rapport has been established. The Texas Workforce Commission (2003) cautions that confrontational or accusatory questions should never be used.

Delpo and Guerin (2001) place great emphasis on the importance of asking follow up questions when interviewees contradict each other. They recommend asking

witnesses why their statements are not in agreement when there is a major contradiction in testimony. These authors further state that every person interviewed should be asked whether they are aware of additional witnesses or evidence that is pertinent to the case. Hogge (2001) recommends asking for the names of potential witnesses and a description of the information they possess.

Legal Rights

Representation

“If you are a union member, you have a right to have a union representative present at any meeting with management that may result in a disciplinary action being taken against you for any reason” (Joel (1996), p. 340). In 2000, the National Labor Relations Board ruled that non-unionized employees are also entitled to representation, including attorneys, coworkers, or friends (Delpo and Guerin, 2001). However, it is the responsibility of the employee to request a representative and the employer has no obligation to inform the employee of this right (Tyska and Fennelly, 1999).

Witnesses are not entitled to bring a representative to interviews unless they can demonstrate that the interview could lead to disciplinary action being taken against them. Employers are not required to allow representation for complainants (Delpo and Guerin, 2001).

Retaliation

“Complaining about safety issues, illegalities, or discrimination in the workplace is a protected activity. If you are retaliated against because of your complaint, you will have a valid complaint against your employer” (Sessions, 2003, p.203). Title VII of the Civil Rights Act of 1964 provides protection against retaliation for filing complaints of

discrimination related race, skin color, gender, religion, or national origin in the workplace (Outten, et.al., 1994). So-called whistleblower protection laws prohibit retaliation against individuals who report “violations of laws or dangers to public health or safety” (p. 29). According to Delpo and Guerin (2001), employers are prohibited from retaliating against employees for filing claims or complaints related to: workers compensation claims, the family medical leave act, health and safety complaints, discrimination and related retaliation, disabilities, pregnancy, and age. This same protection is extended to “employees who cooperate in the investigation of discrimination complaints” (Delpo and Guerin, 2001, p. 2/66).

Release of Information and Documents

Generally speaking, “any information your employer collects about you should be strictly job-related and based on business necessity” (Joel, 1996, p. 172). Joel (1996) asserts that to ensure that employee’s rights to confidentiality and privacy are protected, employers should restrict access to employee information strictly to those with a need to know for the purposes of the business. Repa (2000) points out that employers may be subject to defamation lawsuits for releasing false, damaging, or unsubstantiated information that a worker either “committed a crime, performed job duties incompetently, improperly used drugs or alcohol, or acted in some other way that clearly implied unfitness for a particular job” (p. 6/14). Delpo and Guerin (2001) advise that investigations should not be discussed at staff meetings and open areas like lunchrooms because “if too many damaging details about the complaint get out, you may be accused of damaging the reputation of the alleged victim or the alleged wrongdoer – and get slapped with a defamation lawsuit” (p. 5/26).

Searches

Although the workplace is not legally considered to be as private as a household or physician's office, workplace investigations that involve searches, lie detector and drug testing, and/or monitoring and surveillance may infringe upon a worker's legitimate expectation of privacy (Delpo and Guerin, 2001). A legitimate expectation of privacy is the reasonable belief by an employee that a particular space is private and not subject to search (Joel, 1996). Outten, et.al. (1994) maintain that employees cannot reasonably make a claim of privacy rights when personal effects or workspaces are routinely inspected or prior notice of inspections is given. Delpo and Guerin (2001) state that areas such as computer work stations, lockers, desks, etc. may be searched if you can demonstrate a compelling need, follow written company policies, and are operating from a common sense rationale that a reasonable person would understand.

Lie Detector and Drug/Alcohol Testing

“Unless you are a government employee, work around something really valuable (like drugs or money), or are reasonably suspected of swiping something of your employers that you had access to, you can't even be asked to take a lie detector test and can refuse without penalty if you are” (Joel, 1996, p.183). Stricter state and local laws further limit the use of lie detector tests (Outten, et.al., 1994). CCH Incorporated (2003) states that “No employer in California may demand or require any applicant for employment or prospective employment or any employee to submit to or take a polygraph, lie detector or similar test or examination as a condition of employment or continued employment. No employer may ask a person to take a polygraph test, or

administer such a test, without first advising the person in writing, at the time the test is to be administered, of the rights guaranteed by law” (p. 1).

Delpo and Guerin (2001) recommend that drug testing normally withstands legal challenge only if there is a very good reason for the test or if the employee’s job contains a high risk of injury. Federal law actually requires random drug testing of employees in safety sensitive jobs regulated by the Department of Transportation and the Nuclear Regulatory Commission (Outten, et.al., 1994). Joel (1996) suggests that employers meet the following standards to test for drug use:

1. Have a written policy in place
2. Have an appropriate grievance policy for employees who refuse testing
3. Demonstrate that an employee’s insobriety could be a harm to self or others
4. Reasonable suspicion that the drug use is affecting employee performance
5. Follow strict rules of sample collection and evidence
6. Maintain strict confidentiality of test results
7. Allow the employee an opportunity for rehabilitation (p. 189)

The San Francisco Fire Department has already has a drug and alcohol testing policy in place that is similar to that recommended by Joel (1996).

Surveillance and Monitoring

Joel (1996) reports that federal law allows employers to monitor employee phone calls and computer communications, including email, in the course of business; but are required to cease the monitoring as soon as the call is determined to be personal.

Electronic surveillance and wiretapping of personal calls requires a warrant from a legal authority (Tyska and Fennelly, 1999). Outten, et.al. (1994) assert that surveillance and

monitoring of activities at workplace computers by employers is legal. This includes the right to monitor email. Finally, “Employers can observe employees off the premises as long as the intrusion on the solitude or seclusion of the employee would not be considered highly offensive to the reasonable person” (Outten, et.al., 1994, p. 504).

Conducting the Interview

Interview Basics

Delpo and Guerin (2001) list the following tips for conducting effective interviews:

- | | |
|-----------------------------------|---------------------------------------|
| 1. Keep an open mind | 7. Ask open-ended questions |
| 2. Keep opinions to yourself | 8. Focus on what the witness knows |
| 3. Ask about witnesses & evidence | 9. Follow up on contradictions |
| 4. Keep it confidential | 10. Don't retaliate |
| 5. Respect worker's privacy | 11. Ask to be contacted with new info |

1. Write it all down

Berlin (2003) recommends that investigators reassure interviewees that the goal of the investigation is to find out the facts, take appropriate action to resolve any problems that are discovered, and that no conclusions have yet been reached. Edwards (2000) stresses the need to encourage the interviewee to explain the situation and listen closely to the explanation without prejudice. Benson (2000) stresses that investigators should not interrupt and should let the interviewee do most of the talking. He cautions the interviewer “Your job is to find out what the subjects know, not lead them into believing what you know” (p. 10).

When witnesses appear to be evasive or not forthcoming, Hogge (2001) recommends utilization of a long pause of silence while maintaining eye contact as a technique to elicit a more detailed response. The Texas Workforce Commission (2003) explains that many people feel a compelling need to fill in these silent gaps. The Texas Workforce Commission (2003) further recommends repeating important questions with different wording to determine if answers are consistent as a way to measure truthfulness.

The Texas Workforce Commission (2003) recommends paying close attention to body language, a practice also known as kinesics. CCH Incorporated (2003) state that individuals who are not telling the truth may “fold their arms across their chests, avoid eye contact, scratch their noses, or move their body away...” (p. 1). Tyska and Fennelly (1999) list thirty different body motions and their possible meaning. For example, a male running fingers through hair represents uncertainty, a hand over the middle of the chest signals honesty, etc. On the other hand, Benson (2000) states that “Most investigators who use kinesics maintain that it is not a hard science because it cannot be tested and replicated” (p. 26). He states that for kinesics to be a useful tool in the interview process, a lengthy period of evaluation is necessary to establish a baseline for each individual.

According to the Texas Workforce Commission (2003) and Edwards (2000), all interviews should be held individually in a private, quiet location to maintain confidentiality and reduce peer pressure. At no time should an interviewee be physically restrained or prevented from leaving contingent on cooperation with the interview process (Hogge, 2001).

Questioning the Complainant

CCH Incorporated (2003) provides the following guidelines for interviewing employees or customers who have filed a complaint:

1. Thank them for coming forward and encourage them to speak up and be open
2. Determine exactly what happened (who, what, when, where, why, how)
3. Ask for a written statement if possible
4. Assure them that you will treat the complaint with seriousness and confidentiality

Delpo and Guerin (2001) explain that it is often difficult for employees to come forward with complaints and this may produce feelings of “embarrassment, anger, sadness, and fear” (p. 5/34). Hogge (2001) and Repa (2000) state that when an employee is reluctant or embarrassed to reveal details or wants to retract the complaint, the interviewer should firmly emphasize that the organization is legally obligated to investigate, and that employees are expected to cooperate. If an employee complains of serious misconduct such as harassment or discrimination but asks that the matter be kept confidential and not investigated, the employer still must investigate (Delpo and Guerin, 2001). If the interviewee states they are afraid of retaliation by the accused employee, ask what steps can be taken to alleviate their fear and consider separating the employees if so requested by the complainant (Delpo and Guerin, 2001). If the complainant refuses to cooperate or disavows the claim, an attempt should be made to require the complainant to sign a written document so stating (Hogge, 2001). Finally, although the complainant has no legal right to bring a representative to the interview, the presence of a supportive

person can increase the comfort level and confidence of the complainant and increase the likelihood that they will be totally forthcoming with the facts (Delpo and Guerin, 2001).

In addition to the standard who, what, when, where, why, and how approach to determining exactly what happened, Delpo and Guerin (2001) recommend including the following questions when interviewing the complainant: What was your response or reaction to the incident? Did you tell anyone about the incident? How have you been affected by the incident? Do you know of any similar incidents involving other people? (p. 5/33). Berlin (2003) includes adds these questions: “What is your relationship with the accused? How long has this been going on?” (p. 1).

The Speaking Connection (2000) advises that showing courtesy and respect to customers and not trivializing their problem can defuse even the angriest customer. Good behavior in response to criticism requires distancing yourself personally from the problem in order to develop an objective analysis of what needs to be fixed.

Questioning the Accused

Hogge (2001) offers the following good advice “treat the suspected or accused individual the way you would want to be treated if you were in his/her shoes” (p. 3). Berlin (2003) advises that it is important to give the accused an opportunity to respond fully to each allegation in the complaint. Delpo and Guerin (2001) and Curiale, et.al. (2002) believe that the best way to get the accused employee’s side of the story is to be forthright and provide a detailed accounting of the allegations of misconduct. They recommend making it clear to the employee that no conclusions will be reached until all of the evidence has been evaluated. The accused should be assured that they will have every opportunity to tell their side of the story. Some of the additional questions for the

accused provided by Delpo and Guerin (2001) include: What is your response to the complaint or allegation? Why might the complainant lie? Could the complainant have misunderstood your actions? (5/38)

Delpo and Guerin (2001) believe it makes good sense for the employee to exercise their legal right to bring a representative to the interview. Not only can the representative help ensure that the accused does not leave out any important facts, but the accused is more likely to feel that they are receiving fair treatment. They add that “If the representative is unnecessarily disruptive...you can ask to hear only from the accused employee” (Delpo and Guerin, 2001, p. 5/37).

Questioning Witnesses

When questioning witnesses, the goal is to “find out what they know without unnecessarily revealing information” (Delpo and Guerin, 2001, p. 5/38). They go on to state that such third party witnesses are not entitled to the facts of the allegation in the interest of protecting the confidentiality of the complainant and the accused. Berlin (2003) recommends confining witness interviews to basic open-ended questions about what they saw or heard. Some witnesses can be expected to know a great deal more about the event in question than others. Therefore, a good investigator must customize the questions for each witness based on their involvement and any information developed during the interview (Texas Workforce Commission, 2003). Delpo and Guerin (2001) and Repa (2000) advise preparing questions for witnesses based on who suggested the witness and why. Delpo and Guerin (2001) recommend asking the following special questions when interviewing third party witnesses: Did the complaining/accused tell you anything about the incident? Have you witnessed any other incidents between the

complainant and the accused? Have you heard these issues discussed in the workplace?

Have you ever had any problems working with the complainant or the accused?

Concluding the Interview

Curiale, et.al. (2002) recommend the following steps be used when concluding all interviews:

2. Relate the seriousness of the investigation
3. Remind the interviewee of the confidentiality of the investigation and stress that the incident should not be discussed with anyone.
4. Ask if there is anyone else that you should talk to
5. Review the interviewee's answers to critical questions
6. Encourage the interviewee to come back with additional information
7. Take steps to protect against retaliation

The Texas Workforce Commission (2003) cautions that employees should be advised that absolute confidentiality may not be possible if a legal authority such as a court forces the organization to provide names and documents, but that the employer will do their utmost to maintain confidentiality. Hogge (2001) states that some information must be shared in order to conduct an adequate investigation. Hogge (2001) asserts that the main critical issue related to confidentiality is that the interviewees should not discuss the case with anyone else.

Delpo and Guerin (2001) recommend asking the complainant and witnesses to immediately report any retaliatory conduct. Hogge (2001) states emphatically that "the accused should be advised not to retaliate against the reporting employee or any of the

witnesses, and that any such retaliation would be grounds for discipline up to and including discharge” (p. 4).

Delpo and Guerin (2001) state that the interview should be terminated with a brief description of what to expect during the next steps in the investigative process.

Written and Physical Evidence

Documents and other types of physical evidence can sometimes play an important role in investigations by providing written evidence to support or refute statements made during investigations. In addition to written complaints and witness statements, important documents may include: personnel files, previous complaints of misconduct, emails, journals and logs, telephone records, 911 call tapes, expense records, attendance records, performance reviews, and computer files including Computer Aided Dispatch (CAD) records, (Delpo and Guerin, 2001 and Hogge, 2001). Hogge (2001) recommends maintaining all records in confidential investigation files that are maintained in a secure site.

Tyska and Fennelly (1999) provide a detailed list of the various types of physical evidence including fingerprints, hairs & fibers, weapons, garments, food, etc. which are gathered in criminal investigations. Delpo and Guerin (2001) and Hogge (2001) describe weapons, illegal drugs, computer disks, and stolen documents as physical evidence that may be pertinent to a workplace investigation.

Assessing Credibility and Evaluating the Evidence

If new allegations, evidence, or information is developed during the course of the investigation, Delpo and Guerin (2001) recommend re-interviewing the main players,

particularly the accused, to ensure that there has been an opportunity to respond to all of the allegations before making a final analysis of the incident.

To make a final determination about what actually happened given conflicting testimony, Curiale, et.al. (2002) advises the investigator to first determine those facts upon which everyone agrees. They next recommend making a list of the points of dispute and any testimony from witnesses or documentary evidence that supports a particular version of events.

Delpo and Guerin (2001) suggest evaluating the following factors to determine the credibility of the witnesses and evidence:

1. Plausibility: Whose story makes the most sense?
2. Source of information: Did the witness have firsthand knowledge?
3. Corroboration and conflicting testimony: Do witness and evidence support one particular version of the story?
4. Contradiction: Did any witnesses contradict themselves during the interview?
5. Demeanor: Did the witness appear to be telling the truth or lying? Did the accused have a strong reaction to the complaint? Did the complainant seem genuinely upset?
6. Omissions: Did anyone leave out important information?
7. Prior incidents: Does the accused have a history of related misconduct?
8. Motive: Does the complainant or accused have a motive to lie about or exaggerate the incident? Is there a history between accused and complainant that affects their credibility? (p. 5/48)

The Investigative Report

A well-written investigative report should allow the reader to be sufficiently convinced of the thoroughness of the investigative actions taken to be willing to act based on the data presented (Tyska and Fennelly, 1999). They go on to state that the report should be unemotional and impartial and that the conclusions should be clearly based on the facts developed in the case. Benson (2000) believes that long, highly detailed reports wear the reader down and tend to destroy the credibility of the investigator.

Delpo and Guerin (2001) state that the investigative report should contain a “summary of the complaint, a list of witnesses contacted, a summary of each witness’ statement, a list of documents and policies consulted, the investigator’s conclusions, and the reasons for those conclusions” (p. 5/53). The Texas Workforce Commission (2003) similarly recommends that the final report should “contain a description of the situation at issue, list the witnesses and documents used as evidence, summarize the information from each document and witness, make an assessment of the credibility of each piece of evidence and describe how it relates to the elements of the alleged problem, and make findings of fact on each element of the alleged offense or violation” (p. 6). If it is not possible to make a definitive determination of what actually happened, as sometimes occurs in investigations, the reasons for this must be clearly explained in the report (Delpo and Guerin, 2001).

The investigator may be required to prepare a report that simply states the facts of the case and the investigators conclusions about what actually happened. At other times, the investigator will be directed to recommend an action for management (Texas

Workforce Commission, 2003). Curiale, et.al. (2002) advise that when a recommendation for action is required, it should contain the following criteria:

- 1) Were any of the organization's policies, procedures, guidelines violated?
- 2) Is the violation serious or minor?
- 3) Do any laws require you to take certain actions?
- 4) What is the employee's history at your organization including prior complaints, problems, performance, etc.
- 5) What factors would mitigate against discipline in this case? (p. 223-4)

Hogge (2001) advises that a detailed written record should be maintained that describes each step in the investigation. All records should be stored in a secure area to maintain confidentiality. It is important to remember that in some instances, "investigative records may be subject to discovery in litigation" (Hogge, 2001, p. 5). The Texas Workforce Commission (2003) states that "done properly, investigations will either keep an employer out of court, or else enable the employer to worry a little bit less about the outcome" (p. 6).

PROCEDURES

The procedures employed in this study included problem identification, literature review, and development of a complaint investigation procedure.

Definition of Terms

Accused An individual charged with a crime, offense, or fault.

Allegation A statement made without proof.

Closed question An inquiry that requires a simple yes or no answer or undeniable fact.

Complainant A person who makes an accusation of dissatisfaction or wrongdoing.

Confidentiality A trust that something will be kept secure or secret.

Corroboration To confirm or support a statement.

Credibility Truthfulness and trustworthiness.

Defamation To injure or destroy a reputation by libel or slander.

Demeanor Conduct or bearing.

Family Medical Leave Act Legislation that allows employees to take time off from work to care for a family member who is sick or recuperating.

Harassment To attack repeatedly, to worry, to trouble.

Human Resources Section A unit in an organization that is responsible for the policies, procedures, and practices related to the management of people.

Investigation The examination, study, search for, tracking, and gathering of factual information that answers questions or solves problems.

Investigator A person who studies a problem by close examination and systematic inquiry.

Kinesics The study of body language.

Lie Detector Tests A test that measures signs of physical stress on the principle that lying creates stress associated with psychological conflict.

Monitoring To watch, check, or observe.

Motive Something that causes a person to act.

Open-ended question A question that begins with a stated or implied who, what, when, where, why, or how requiring the interviewee to reveal substantial details.

Plausibility Seemingly worthy of belief.

Pointed Question A question that contains language which states the goal of the question to keep interviewees focused on the facts.

Representative One that stands or acts in the interests of another.

Retaliation To seek revenge.

Surveillance To watch closely.

Whistleblower protection law A law that prohibits retaliation against individuals who report violations of laws or dangers to public health or safety.

Witness One who has personal knowledge or experience of something.

Research Methodology

The desired outcome of this research was to create a manual containing guidelines for investigating complaints.

The research was evaluative in that a literature review of various publications was conducted to compare the various methods that are commonly used to conduct investigations. Further evaluative research was conducted to determine the best procedures to follow in designing an easy to use procedures manual for investigating complaints. The literature review targeted business books and articles related to investigating complaints, conducting interviews, legal rights and responsibilities related to workplace investigations, analysis of evidence, and preparation of investigative reports.

The research was action research in that background information on (a) procedures for planning and conducting investigations (b) legal issues in workplace investigations (c) interview methods and (d) analysis of evidence were analyzed to create

a complaint investigation policy and procedure manual that addressed the unique needs and the available resources of the San Francisco Fire Department.

Assumptions and Limitations

Assumptions

It is assumed that the investigative procedure will work equally well for investigating complaints of poor service or employee misconduct initiated by the public, other emergency service providers, or employees. It is further assumed that the procedure will be easy to use and well accepted by the public, employees, and investigators. It is assumed that the San Francisco Fire Department will conduct a training program for members who will be assigned to conduct investigations. And finally it is assumed that the San Francisco Fire Department will adopt a comprehensive complaint policy that uses the results of investigations to provide feedback to complainants and to take action to address performance and workplace problems identified by the investigations.

Limitations

Clearly the literature review can only include a fairly representative sample of the material written on the issue of workplace related investigations. However, there is appears to be relatively little material published on the subject. While many published materials pertaining to management and human resource functions describe the various disciplinary processes and refer to investigations as a critical part of the process, they do not typically provide guidelines for conducting investigations. The best information on the subject is generally contained in manuals prepared by attorneys discuss ways to limit legal liability in cases related to workplace discrimination claims. Some of the texts by

professional investigators were helpful, but they tended to focus on non-workplace civil issues or criminal investigative techniques. There were some good texts that broadly described employee rights, but with little specifics on how those rights pertained to the investigative process. Virtually no material could be found that focused primarily on consumer complaints, but investigative techniques, methods of conducting interviews, and analysis and reporting of data is a fairly standardized process that should be equally valid when applied to investigations of employee misconduct or complaints of poor service.

No professional workplace investigators were consulted as part of this research project due to financial constraints. Professional investigators and attorneys who are hired to investigate problems in the workplace are very proprietary and charge for their time. This was partially offset by my attendance at a conference workshop conducted by the law firm of Curiale, Dellaverson, Hirschfeld, Kraemer, & Sloan that covered the topic of conducting an effective internal investigation. This workshop provided information that was consistent with the literature consulted in the study.

Finally, the ultimate value of the new investigative procedure for improving service to the public and reducing workplace problems will not be known unless it is formally adopted by the SFFD. This will likely require approval of the Chief of Department, a City Attorney, the San Francisco Department of Human Resources, and some buy in from the various employee groups.

RESULTS

The results of the study produced a policy and procedure manual for investigating complaints received by the San Francisco Fire Department (See Appendix A).

Answers to Research Questions

Research Question 1

What procedures should be followed when investigating complaints?

The San Francisco Fire Department should adopt a complaint policy so that the public, other emergency service providers, and its employees know how to file a complaint, what type of activities will be investigated, which protections prevent retaliation and preserve confidentiality, and management's responsibility to take corrective action (Delpo and Guerin, 2001). However, development of a comprehensive complaint policy is beyond the scope of this research project. The guidelines for conducting investigations, the development of which is the focus of this research, should be maintained in a separate manual that is distributed to a small group of trained investigators (Hogge, 2001).

The first step in the investigation procedure is to determine when to investigate. Investigations should be conducted for all complaints filed by third parties, for allegations of legally prohibited action such as discrimination and harassment, and for serious violations of department rules, particularly when facts are in dispute (Berlin, 2003 and Curiale, et.al., 2002). The purpose of the investigation should be to analyze problems and collect data that will enable decisions to be made to prevent further wrong actions (Texas Workforce Commission, 2003).

Planning for the investigation should include: a) determination of which of the organization's policies, guidelines, or practices apply, b) collecting and reviewing all relevant documents, c) selection of an investigator, d) development of a list of persons to be interviewed, and e) development of a list of interview questions (Curiale, et.al, 2002).

Relevant documents may include: the complaint itself, preliminary reports, personnel files, previous complaints of misconduct, attendance records, performance reviews, journals, logs, memos, telephone records, expense accounts, emails, 911 call tapes, and CAD records (Edwards, 2000 and Tyska and Fennelly, 1999). The investigator, the choice of which often has a major impact on the outcome of the investigation, should be an impartial member of the human resources section who has both training and experience in conducting investigations rather than a direct supervisor who may be unconsciously biased (Delpo and Guerin, 2001 and Texas Workforce Commission, 2003). Above all, the investigator must have the confidence of the accused and be recognized as credible and impartial by members of the organization (Curiale, et.al., 2002). When high-ranking officials are involved, if the issues are especially sensitive, or if the circumstances require special technical skills, an outside investigator should be considered (Delpo and Guerin, 2001 and Curiale, et.al., 2002).

Interviews should be held as quickly as possible beginning with the complainant, followed by the accused and then the witnesses (Texas Workforce Commission, 2003). The investigator should develop a written list of issues and facts that need to be determined and then prepare questions based on this list (Curiale, et.al, 2002). The questions must include the following six elements: who was involved, what happened, where did it happen, when did it happen, why did it happen, and how did it happen (Tyska and Fennelly, 1999). Open-ended questions should be used to elicit the most information from the interviewee (Delpo and Guerin, 2002). Leading or accusatory questions should be avoided (Hogge, 2001 and Texas Workforce Commission, 2003).

Research Question 2

What legal issues need to be considered when investigating complaints?

All employees are entitled to have a representative present at any meeting that may result in disciplinary action and it is the responsibility of the employee to request representation (Joel, 1996). The complainant and witnesses are not legally entitled to representation (Delpo and Guerin, 2001).

It is illegal to retaliate against employees who have filed complaints related to health and safety issues, illegal activities, or discrimination (Sessions, 2003).

Discrimination complaints may be related to race, skin color, gender, religion, national origin, age, pregnancy, workers compensation claims, the family medical leave act, and physical disabilities (Outten, et.al., 1994). The protection against retaliation extends to individuals who cooperate in the investigation of discrimination complaints (Delpo and Guerin, 2001).

Employees have a reasonable expectation that employers should only collect personal information that is job related and that this information will only be shared with those who have a need to know (Joel, 1996). For this reason, information that is part of an investigation should not be discussed in public areas or general staff meetings (Delpo and Guerin, 2001). Employers who release damaging or untruthful information about an employee can be sued for defamation (Repa, 2000).

Even in the workplace, there are some privacy laws that protect against unreasonable searches and invasive testing (Delpo and Guerin, 2001). Generally, employers should follow a written policy and have a compelling reason to inspect computer stations, lockers, desks, etc. (Outten, et.al., 1994). Mandatory lie detector tests

are generally prohibited except under very specific conditions. In California, employees cannot be required to submit to a lie detector test (CCH Incorporated, 2003). Drug testing is allowed in specialized circumstances such as safety sensitive jobs or when the following standards are met: existence of a written testing policy, access to a grievance procedure, evidence that insobriety has created the potential for harm to self or others, evidence that insobriety is affecting performance, adherence to rules of evidence, confidentiality protections, and access to rehabilitation (Joel, 1996).

Employers may monitor work related employee phone calls, emails, and computer use with few restrictions (Joel, 1996). Employees can even be subject to surveillance off duty if there is no intrusion on seclusion and solitude (Outten, et.al., 1994).

Research Question 3

How should interviews be conducted when investigating complaints?

Investigators must approach each interview with an open mind and keep personal opinions to themselves (Delpo and Guerin, 2002). They should keep in mind that their duty is to find out what the witness knows and not to influence the interviewer's opinions or knowledge (Benson, 2000). Interviews should be held individually in a private location (Edwards, 2000). However, the accused is entitled to bring a representative and, if the complainant insists, they may be allowed to bring a supportive friend (Delpo and Guerin, 2001).

The interview with the complainant should begin by thanking the person for coming forward and assurance that the complaint will be treated with seriousness and confidentiality (CCH Incorporated, 2003). Begin by asking them to simply explain what happened. Answers should be provided for each of the six elements (who, what, when,

where, why, how) (Benson, 2000). Follow up questions that have not been pre-scripted should be used to explore new evidence and to clarify responses. Determine how the complainant has been affected by the incident and their response or reaction. Ask about their relationship with the accused and their knowledge of similar incidents (Delpo and Guerin, 2001). If possible, get a written statement or prepare one for their signature (Berlin, 2003). If the complainant wishes to retract the complaint, explain the organization's obligation to complete the investigation and reassure them of the organization's commitment to prevent retaliation (Hogge, 2001).

The accused must be treated respectfully and given every opportunity to fully address each of the allegations (Hogge, 2001). The interview should begin by reassuring the accused that no conclusions will be reached until all of the evidence has been evaluated. The accused should be provided with a detailed description of each of the allegations (Curiale, et.al, 2002). In addition to the standard who, what, when, where, why, and how questions, the accused who denies the allegations should be asked for their reaction to the allegation, why the complainant might lie, and whether the complainant could have misunderstood their actions (Delpo and Guerin, 2001). Follow up questions should be used to ensure that all information has been completely and accurately developed. Representatives may help the accused to remember important facts and reassure them that they are being treated fairly; but if the representative becomes disruptive, you may ask to hear only from the employee (Delpo and Guerin, 2001).

Witnesses should not be provided with information about the investigation beyond what is necessary to determine what they know (Delpo and Guerin, 2001). Questions should be developed based on the witness' degree of involvement with the

incident (Texas Workforce Commission, 2003). The questions should determine what the witness saw or heard, not their opinions (Hogge, 2001) . As in the other interviews, follow up questions will be necessary to make a complete determination of the facts. All witnesses should additionally be questioned about whether they were told anything by the complainant or the accused, whether they know of other incidents involving these parties, whether they have heard the details of the incident discussed in the workplace, and if they had any prior problems with either of the protagonists (Delpo and Guerin, 2001).

When interviewees appear to be evasive or not forthcoming, the interviewer should initiate a long silent pause and maintain eye contact. It is human nature to want to fill in these silent moments by talking and this may prompt the witness to provide more details (Hogge, 2001). Important questions should be rephrased to evaluate the consistency of the response (Texas Workforce Commission, 2003). If statements are inconsistent or directly contradict statements made by other witnesses, the subject should be asked to explain the reason for the contradiction (Delpo and Guerin, 2001). At the end of each interview, it may be helpful to review the answers to critical questions for accuracy and consistency (Curiale, et.al., 2002). Evaluation of body language is considered to be a useful tool by some investigators, but should not be relied upon as solid evidence of truthfulness or deceit (Benson, 2002). Witnesses should never be coerced to cooperate by preventing them from leaving the interview (Hogge, 2001).

Consistent with the recommendations of Curiale, et.al., 2002, Texas Workforce Commission, 2003, and Delpo and Guerin, 2001, at the end of the interview, all interviewees should be asked about additional witnesses or evidence and asked to contact the investigator with any new information. It is important to remind the all parties that

the investigation, which is a serious matter, is confidential and should not be discussed with anyone. The complainant and witnesses should be directed to immediately report any retaliatory conduct. The accused should be told that retaliation is grounds for discipline including possible termination. Each person interviewed should be given a brief description of the next steps in the investigative process.

Research Question 4

How should information discovered during the investigation be analyzed and documented?

The investigation is not complete and a final analysis of the facts cannot be made until all interviews are completed, all of the relevant documents have been collected and reviewed, and any evidence collected has been evaluated. If new information was discovered during the investigation, it may be necessary to re-interview the main players. It is particularly important to ensure that the accused has had a chance to respond to all of the allegations (Delpo and Guerin, 2001). Physical evidence that may need to be considered includes: weapons, illegal drugs, computer disks, stolen documents, fingerprints, hairs & fibers, garments, food, etc. (Tyska and Fennelly, 1999) Each step of the investigation should be documented and all documents should be maintained in a secure place (Hogge, 2001).

Conflicting testimony should be evaluated by first determining the areas of agreement, then determining if documents and testimony strongly support a particular version of the events (Curiale, et.al., 2002). The credibility of witnesses and evidence should be evaluated using the following factors: plausibility, sources of information, corroboration, contradictory statements in testimony, demeanor, omissions, prior

incidents, and motive (Delpo and Guerin, 2001). If a conclusive determination of the truth cannot be made, the reasons for the inability to make the determination must be spelled out (Delpo and Guerin, 2001).

The investigative report should be an impartial, unemotional document that makes conclusions based on fact (Tyska and Fennelly, 1999). Its format should include a summary of the complaint, witnesses contacted, each witness' statement, documents and policies reviewed, and a reasoned conclusion (Delpo and Guerin, 2001 and Texas Workforce Commission, 2003). If required, a final recommendation for action should be based on: which policies were violated, the seriousness of the violation, legal responsibilities, the employee's past history, and factors which could mitigate against discipline (Curiale, et.al., 002). The recommendation, particularly when related to service to the public, may not require a disciplinary action and instead may recommend revisions to an organization's policies and procedures to prevent future problems (Buckingham, 2001). A properly done investigation should provide a solid base for an organization's actions and a defense against claims of inaction or unfair treatment (Texas Workforce Commission, 2003).

DISCUSSION

The new complaint policies and procedures manual, based on the results of this research, provides written guidelines for conducting investigations of complaints originating from the public, other emergency service providers, or department employees. This procedure is meant to satisfy the need to have an investigative process as part of a formal complaint policy that covers how to file a complaint, what type of activities will be investigated, protection against retaliation and preservation of confidentiality, and

management's responsibility to take corrective action. The manual is intended to be used by members of the department who are chosen to act as investigators and who have been provided with training in investigative techniques.

There is not a great deal of literature published that relates directly to the topic of how to conduct workplace investigations, particularly as it pertains to the fire service. There is even less material that directly describes procedures for investigating complaints from customers or other types of third parties. However, Tyska and Fennelly's (1999) definition of an investigation as "the examination, study, search for, tracking, and gathering of factual information that answers questions or solves problems" (p. 111) gives evidence that investigative principles and techniques can be applied to the determination of facts related to the problems and questions raised in any complaint. For example, if a member of the public complains that the San Francisco Fire Department was slow in arriving to a house fire, the complaint investigation procedures described in this report explain how to collect the information necessary to determine if there was in fact a delayed response. Similarly, if a hospital emergency nurse files a complaint related to the demeanor of a fire department paramedic, this procedure is designed to ensure that an impartial investigation that respects the rights of the accused is conducted.

Delpo and Guerin (2001) and Curiale et.al. (2002) are in agreement that investigations should begin with a determination of policies and guidelines that apply to the circumstances of the case and a review of relevant documents. The Texas Workforce Commission (2003) recommendation that human resources staff be trained as investigators is a good policy that should be employed by the San Francisco Fire Department to avoid claims of lack of objectivity or partisanship by direct line managers

and supervisors. The SFFD should strive to start all of its investigations within a few days of receiving the complaint and conclude them within a week or two as recommended by Delpo and Guerin (2001).

Delpo and Guerin (2001), Curiale et.al. (2002), the Texas Workforce Commission, and Benson (2000), and Tyska and Fennelly (1999) sensibly advise that interview questions should be pre-scripted, open-ended questions based on the six elements of who, what, when, where, why, and how. Delpo and Guerin's (2001) admonition encouraging investigators to keep witnesses focused on what they know and to ask follow up questions to clarify contradictions and explore new information is incorporated into the investigation policy. Tyska and Fennelly's (1999) statement that leading questions sometimes build rapport with witnesses is persuasively countered by Hogge's declaration that leading questions undermine the reliability of the information. The Texas Workforce Commission (2003) admonition to avoid confrontational or accusatory questions stands the test of common sense and is consistent with Hogge's (2001) advice to "treat the suspected or accused individual the way you would want to be treated if you were in his/her shoes" (p. 3).

It is routine in the SFFD for members to have union representation at meetings that could result in disciplinary action and this helps to reassure the accused that they are being treated fairly. Delpo and Guerin's (2001) recommendation to allow the accused to be accompanied by a supportive friend is a reasonable action that should improve the confidence of the complainant. In all investigations, especially those related to safety issues, illegal activities, or discrimination, it is critical to protect complainants and witnesses from retaliatory actions (Sessions, 2003). Repa's (2000) statement that

employer's may be subject to defamation lawsuits for releasing false or damaging information led to the caution against discussing the case with unauthorized personnel that is contained in the investigation policy.

Employee's privacy rights have already been addressed in the San Francisco Fire Department through existing policies that describe circumstances that would trigger a search of work areas or drug testing. The existing SFFD policies in this area are consistent with the recommendations of Joel (1996) and Outten et.al. (1994) on the subject and are not included in the investigations manual. Lie detector tests for employees are prohibited under California law (CCH Incorporated, 2003) and would not be made part of an SFFD investigation. Consistent with federal law (Joel, 1996), monitoring has been used by the City and County of San Francisco in various investigations, but is not usual for an internal SFFD investigation and should only be used with permission from a senior staff officer.

The new investigation guidelines include in principle the eleven recommendations of Delpo and Guerin (2001) for how to conduct an interview including the need to keep an open mind, focus on what the witness knows, follow up on contradictions, etc. The new guidelines call for interviews to be based on a determination of what the subject knows and not to avoid influencing him/her with the knowledge and opinions of the investigator (Benson, 2000). The new guidelines recommend use of: a) the standard, open-ended who, what, when, where, why, and how questions, b) follow up questions and repeat questions to evaluate consistency of response, and c) questions tailored to the complainant, accused, and witnesses as recommended by the various authors cited in this report. The use of a silent pause to induce interviewees to talk as (Hogge, 2001) is

mentioned in the investigation guidelines; but reliance on evaluation of body language is cautioned against (Benson, 2000). The policy also reflects the need to provide the accused with a complete description of the allegations and to avoid sharing confidential details with witnesses (Delpo and Guerin, 2001).

The new policy is consistent with Curiale, et.al. (2002) in recommending that at the conclusion of the interview the investigator should inquire about additional witnesses, ask to be contacted with any new information, advise about the need for confidentiality, state the Department's absolute prohibition against retaliation and the need to report the same, and inform the interviewee of the next steps in the investigative process. Interviewees with knowledge of important facts will be encouraged to submit a written statement consistent with the advice of Berlin (2003).

All documents and evidence will be stored in a secure place under the new guidelines as recommended by Hogge (2001) and a complete written description of all steps in the investigation will be maintained. The guidelines recommend re-interviewing key witnesses as necessary if new information or allegations are developed (Delpo and Guerin, 2001). The new guidelines suggest utilization of Delpo and Guerin's (2001) eight factors to determine credibility including plausibility, corroboration, demeanor, motive, etc.

The final investigative report template includes the following items: a summary of the complaint, a list of witnesses contacted, witness statements and/or summaries, documents and policies consulted, assessment of the credibility of the information, findings of fact, and a recommendation for action to resolve the problem (Delpo and Guerin, 2001 and Texas Workforce Commission, 2003). The final recommendation

should be based on Curiale, et.al.'s (2003) criteria related to policy violations, applicable laws, and factors that mitigate for or against discipline including work history. Although no definitive source could be found on this issue, it is reasonable to expect that the final report might need to contain recommendations for changing the organization's policies and procedures to improve service rather than a simple disciplinary recommendation.

RECOMMENDATIONS

The following recommendations should be adopted by the San Francisco Fire Department:

1. The proposed investigation procedure will be sent to the Chief of Department for his review and approval of the basic concepts of the investigative process.
2. After approval by the Chief of Department, the investigative procedure will be sent to the city attorney assigned to the Fire Department and the San Francisco Department of Human Resources for their review and approval.
3. After final approval by all of the above, the policy and procedures manual will be issued to the Fire Department Division of Human Resources.
4. The investigative guidelines will also be incorporated into the Incident Management System of the Emergency Medical Services Division.
5. The SFFD Human Resources Division will work with the Deputy Chief's of Administration and Operations to determine which members should be assigned investigative duties and to provide them with training in investigative procedures.
6. The office of the City Attorney will be consulted to make a determination of the Department's obligation to meet with employee groups on this issue.

7. The methods and results of all complaint investigations will be audited after six months to determine compliance with the new protocols and to identify areas where improvement or revision is needed.

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APPENDIX A

San Francisco Fire Department

Complaint Investigations
Policies & Procedures Manual

Draft Proposal

July, 2003

Purpose

The Department will review its current policies and procedures related to receiving, tracking, and responding to complaints and develop a new comprehensive complaint management policy. This complaint investigation manual is intended to serve as a guideline for personnel who are assigned to investigate complaints of poor service or employee misconduct initiated by the public, other emergency service providers, or our employees as part of the complaint management process.

The purpose of investigating complaints is to gather and analyze factual information about problems so that future wrong actions can be prevented and service to the public and working conditions can be improved.

Selection of Investigators

As stated in the May 30, 2003 memo from the Chief of Department, the City's Department of Human Resources will investigate all Equal Employment Opportunity (EEO) complaints. Emergency Medical Service (EMS) Division personnel as assigned by the EMS Chief will investigate EMS related complaints. Personnel, normally from the SFFD Division of Human Resources, will be assigned by either the Deputy Chief of Operations or the Deputy Chief of Administration to investigate all other complaints received by the Department. All members assigned by the Department to conduct investigations will receive training in the application of the investigative procedures contained in this manual. Only experienced investigators will be assigned as lead investigators in cases. Newly trained investigators will be assigned to assist in investigations when necessary to gain experience.

When high-ranking officials are involved, if the issues are especially sensitive, or if the circumstances require special technical skills, selection of an outside investigator will be considered by the Administration.

Ethical Responsibilities

Investigators have a tremendous impact on the investigative process and the outcome of the investigation. Investigators are expected to conduct themselves in a manner that is factual, objective, consistent, and impartial. Investigators must gain the trust and confidence of both the complainant and the accused. It is important that they convey to the complainant that both the complaint and the investigation are being taken seriously. It is equally important

to convince the accused that they are being treated fairly and respectfully and that no decision will be made until all of the facts have been analyzed.

It is essential that investigators refrain from discussing the investigation with anyone other than the Deputy Chief who commissioned the investigation, personnel designated by the Deputy, or as necessary to determine the facts of the incident.

Planning the Investigation

Review all documents and evidence related to the investigation

- Thoroughly review the complaint to determine the exact nature of the problem
- Review any preliminary reports that may have been submitted
- Review journals, logs, emails, correspondence, and memos related to the case
- Review 911 call records or CAD reports as necessary
- Review related personnel information such as attendance records, performance reviews, or documentation of previous misconduct
- Physical evidence that may need to be evaluated could include illegal drugs, weapons, computer disks, stolen documents, garments, fingerprints, etc.

Determine which policies, procedures, or practices apply

- Review material from the SFFD Rules and Regulations and the Procedure Guide to determine applicable policies
- Review applicable general orders
- Review Department memos when related
- Review standard operating procedures and medical protocols that may apply

Determine who should be interviewed

- Interviews should be started within a few days of receiving the complaint
- Interviews should be completed within two weeks
- Schedule all personnel for interviews who may have witnessed the incident or have knowledge about the incident
- Interview the complainant first, followed by the accused and then the various witnesses

- Interview any additional personnel named as witnesses during interviews
- Conduct all interviews in a private office

Develop a list of questions for each interviewee

- Make a list of issues that need to be investigated and prepare questions based on those issues
- Most questions should be open ended based on the who, what, when, where, why, and how format
- Keep the interviewee focused on what they know, not what they think or feel
- Avoid leading questions that suggests answers based on what the investigator already knows or the investigator's opinions
- Avoid confrontational or argumentative questions
- Save embarrassing or unfriendly questions for later in the interview after a rapport has been established
- Sample questions are provided later in this manual for each type of interview
- Listen closely and let the interviewee do most of the talking

Documentation and Record Keeping

- A detailed record shall be maintained of each step of the investigation
- All records, documents, and evidence shall be kept locked in the investigator's office
- Records, documents, or evidence shall not be provided to persons who are not directly involved in the case without approval of the supervising Deputy Chief

Interviewing the Complainant

Starting the interview

- Thank the complainant for coming forward and encourage them to be completely forthcoming with any information they have related to the incident.
- Reassure the complainant that the Department considers their claim to be a serious matter and that it will be fully investigated.
- State that the goal of the investigation is to find out the facts, take appropriate action to resolve any problems that are discovered, and that no conclusions have yet been reached

- If the complainant is reluctant or embarrassed to reveal details, state that it is the duty and legal responsibility of the Department to investigate the incident and their cooperation is important
- If the complainant insists upon retracting the complaint, insist upon a written statement to that effect
- If the complainant expresses concerns about retaliation, reassure them that the Department is committed to taking action as necessary to prevent retaliation and ask them what steps can be taken to alleviate their fear
- Allow the complainant to bring a supportive friend if so requested.
- Under no circumstances should the interviewee be physically restrained or prevented from leaving contingent on cooperation with the interviewer

Suggested questions

- Describe what happened. (If there are multiple incidents, begin with the most recent)
- Who was involved?
- What did each person say or do?
- What was your reaction to their words or actions?
- When did the event occur? How long has this been going on?
- Where did the event occur?
- How has the incident affected you?
- What are the names of other people who may have witnessed the incident?
- Who else has information about the incident?
- Do you have any documents or evidence related to your complaint?
- Did you tell anyone else about the incident?
- What is your relationship with the accused?
- Are you aware of any similar incidents involving other people?
- Ask follow up questions based on the information provided
- Ask about contradictory statements

Concluding the interview

- Review critical information that may have been provided
- Ask for or consider preparing a written statement for signature

- Assure the complainant that the Department does not tolerate retaliatory behavior and ask them to immediately report to you any retaliatory actions
- Direct employees not to discuss the complaint or the investigation with anyone outside of the investigation
- Explain that every effort will be made to keep the details of the complaint confidential, but some information must be shared to complete the investigation
- Ask them to contact you if they have any additional information related to the event
- Explain that the investigation will be completed as soon as possible, but the accused and all witnesses must all be interviewed and the pertinent documentation and evidence must be examined and analyzed

Interviewing the Accused

Starting the interview

- Reassure the complainant that the goal of the investigation is to find out the facts, take appropriate action to resolve any problems that are discovered, and that no conclusions have yet been reached
- Give the employee a straightforward description of the details of the complaint
- Allow the complainant to bring a representative to the meeting if the meeting could result in a disciplinary action
- Under no circumstances should the interviewee be physically restrained or prevented from leaving contingent on cooperation with the interviewer
- Be sure to provide the accused with the opportunity to address every allegation in detail

Suggested questions

- Begin with some simple closed questions such as current assignment, years of service, name of supervisor, etc. to help put the employee at ease
- What is your response to the complaint or allegations?
- Why might the individual lie? (if the employee denies the allegations)
- Could the complaining employee have misunderstood your actions?
- Have you and the complainant had any problems working together?
- Describe what happened (unless the employee completely denies the allegations).

- Who was involved?
- What did each person say or do?
- What was your reaction to their words or actions?
- When did the event occur?
- Where did the event occur?
- What are the names of other people who may have witnessed the incident?
- Who else has information about the incident?
- Do you have any documents or evidence related to the allegations?
- Did you tell anyone else about the incident?
- Ask follow up questions based on the information provided
- Ask about contradictory statements
- If the interviewee appears to be evasive or not forthcoming, consider pausing in silence and maintaining eye contact as a method of encouraging the witness to talk

Concluding the interview

- Review important information that may have been provided
- Ask for a signed statement
- Tell the accused that retaliation against the complainant or witnesses is strictly prohibited and any retaliatory actions are grounds for discipline up to and including termination
- Direct the employee not to discuss the complaint or the investigation with anyone outside of the investigation.
- Explain that every effort will be made to keep the details of the complaint confidential, but some information must be shared to complete the investigation
- Ask them to contact you if they have any additional information related to the event
- Explain that the investigation will be completed as soon as possible, but all of the witnesses must be interviewed and the pertinent documentation and evidence must be examined and analyzed

Interviewing the Witnesses

Starting the interview

- Encourage them to be completely forthcoming with any information they have related to the incident.
- State that the goal of the investigation is to find out the facts, take appropriate action to resolve any problems that are discovered, and that no conclusions have yet been reached
- Find out what the witness knows, but reveal as few details of the investigation as possible to protect the confidentiality of the complainant and the accused
- Third party witnesses should be interviewed individually
- Under no circumstances should the interviewee be physically restrained or prevented from leaving contingent on cooperation with the interviewer

Suggested questions

- Describe what you saw and heard
- Who was involved?
- What did each person say or do?
- When did the event occur?
- Where did the event occur?
- What are the names of other people who may have witnessed the incident?
- Who else has information about the incident?
- Do you know of any documents or evidence related to the complaint?
- Did you tell anyone else about the incident?
- Did the complainant or the accused discuss the incident with you?
- Are you personally witnessed any other incidents involving these people?
- Have you heard of these issues being discussed in the workplace? If so, when, where, and by whom?
- Ask follow up questions based on the information provided
- Ask about contradictory statements
- If the witness appears to be evasive or not forthcoming, consider pausing in silence and maintaining eye contact as a method of encouraging the witness to talk

Concluding the interview

- Review important information that may have been provided
- Ask for a signed statement
- Assure the witness that the Department does not tolerate retaliatory behavior and ask them to immediately report to you any retaliatory actions
- Direct the employee not to discuss the complaint or the investigation with anyone outside of the investigation
- Explain that every effort will be made to keep the details of the complaint confidential, but some information must be shared to complete the investigation
- Ask them to contact you if they have any additional information related to the event
- Explain that the investigation will be completed as soon as possible, but the accused and all witnesses must all be interviewed and the pertinent documentation and evidence must be examined and analyzed

Additional Investigative Techniques

Searches

Search of personal spaces such as lockers, desks, and computers is legally permissible under many circumstances. The Department's existing policy on search of employee's personal areas in the workplace shall be strictly followed when such a search is required as part of the investigation.

Monitoring and Surveillance

Although monitoring and surveillance of employees is permitted under many circumstances, investigators shall consult with the Deputy Chief in their chain of command prior to monitoring the activities of any employee, whether in the workplace or while off duty.

Drug and Alcohol Testing

Drug and alcohol testing is normally beyond the scope of the investigator. The Department's existing policy on drug and alcohol testing shall be complied with in all incidents that require employees to be tested.

Evaluate the Facts

If new allegations, evidence, or information was developed during the course of the investigation, the key protagonists should be re-interviewed. It is very important to ensure that the accused party has been given an opportunity to respond to all of the claims and allegations before a final analysis is made.

In order to reach a reasoned conclusion about what actually happened during the incident, it is best to begin by listing those facts upon which everyone agrees. Next create a list of facts which are in dispute and determine if there is testimony, documentation, or evidence that supports or refutes a particular version of the event.

The credibility of witnesses and evidence should be determined through evaluation of the following factors:

- Plausibility: Whose story makes the most sense?
- Source of information: Did the witness have firsthand knowledge of the incident?
- Corroborating testimony, documentation, and evidence: Does witness testimony, documentation, and/or evidence support a particular version of the story?
- Contradiction: Did any witnesses contradict themselves during the interview?
- Demeanor: Did the witness appear to be telling the truth or lying? Did the accused have a strong reaction to the complaint? Did the complainant seem genuinely upset?
- Omissions: Did anyone leave out important information?
- Prior incidents: Does the accused have a history of related misconduct?
- Motive: Does the complainant or accused have a motive to lie about or exaggerate the incident? Is there a history between accused and complainant that affects their credibility?

The Investigative Report

The investigative report shall be addressed to the Chief of Department. It should be an impartial, unemotional document that contains the conclusions of the investigator about what actually happened based on an analysis of the facts. If a definitive conclusion cannot be made due to lack of evidence or conflicting testimony, the final report must explain in detail the reasons that no determination could be made.

The investigative report shall be prepared using the following format:

- A summary of the complaint
- The name of each witness and the date they were interviewed
- A summary of each witness' statement
- A summary of the information from each document that was reviewed
- An assessment of the credibility of each witnesses' testimony, each document reviewed, and each piece of evidence
- A finding of fact on each element of the complaint
- A list of each rule or procedure that was violated and a description of the violation

Unless otherwise directed, the report shall conclude with a recommendation for action including counseling, remediation, retraining, discipline, revisions to policies and procedures, or no further action as necessary to prevent a recurrence of the problem. The recommendation shall be based upon:

- Which policies were violated
- The seriousness of the violation
- The legal obligations of the Department
- The employee's past history
- Any factors which could mitigate against discipline

A properly done investigation should provide a solid rationale for actions taken by the Department to solve the problem raised in the complaint and should help to prevent claims of inaction or unfair treatment.