INVESTIGATION PROTOCOL

A Guide for Conducting Workplace Investigations in PAHO

Pan American Health Organization

Regional Office of the World Health Organization

April 2010

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Protocol for Conducting Workplace Investigations in PAHO

PART 1: INTRODUCTION

General Overview

1. In general terms, an investigation is a process designed to gather information or collect facts. In the workplace, investigations are administrative in nature and are typically undertaken to determine if wrongdoing has occurred. The objectives and scope of investigations vary widely, but their overriding purpose is always to find out the relevant facts. This is accomplished by interviewing people, reviewing records and gathering data, information and documentation.

2. Workplace investigations cover a wide range of issues and are initiated in response to specific allegations of wrongdoing or suspected irregularities. Although each investigation is unique and may be handled differently, a common set of guiding principles can help to ensure to the extent possible that all investigations are carried out in a fair, transparent and consistent manner.

3. This protocol for conducting workplace investigations (the "Protocol") describes in general terms how administrative investigations will be carried out in the Pan American Health Organization ("PAHO" or "Organization") when possible wrongdoing, including harassment, has been uncovered or reported to officials in the Organization. Specifically, it sets out the:

   (i) Guiding principles of the investigative process;
   (ii) Role and level of authority of the investigator;
   (iii) Rights and obligations of people involved in an investigation;
   (iv) Conduct of interviews and preparation of records;
   (v) Findings of fact and conclusions;
   (vi) Release of the investigation report; and
   (vii) Safeguards to protect the integrity of the process.

4. The principles and guidelines established in this Protocol apply to all preliminary inquiries and investigations carried out in PAHO, irrespective of the office undertaking the investigation. However, due to the unique nature of each case, the scope and complexity of some investigations, unexpected turns that may occur and privacy considerations, flexibility may be required to ensure that every investigation is properly conducted and each case is evaluated on its own merit.

PART 2: GUIDING PRINCIPLES

Independence

5. Independence is a paramount concern to assure a fair and credible investigation. An investigator must be able to maintain his or her independence at all times and have the necessary freedom to pursue the investigation and determine the facts without outside influence or fear of retaliation. As such, the issue of independence must be taken into account when determining who conducts the investigation.

6. Independence can lead to a more thorough and complete investigation as individuals are more likely to disclose information and respond to questions when they feel that the information they provide will be examined by an independent investigator and used fairly.

7. Independence also bolsters fairness because of the expectation that an independent investigator has more freedom to see and report things clearly, has no personal interest in the outcome of the inquiry and has no organizational ties to the office or individuals who are the subject of investigation.

Impartiality

8. The person(s) undertaking the investigation must be impartial and have no prior or existing personal or close working relationship with the person being investigated that could compromise, or appear to compromise, the outcome of the investigation.

9. An allegation is not proof of wrongdoing, and it is the investigator's role to ascertain whether an allegation has merit. In assuming this important undertaking, the investigator must be fair, impartial and thorough.

10. If an investigator has an actual or perceived conflict of interest or is unable to conduct an impartial investigation, the investigator must make an appropriate and timely disclosure to the Office of the Legal Counsel (LEG) and recuse himself/herself from the investigation[1]. If the investigation has already been initiated and a conflict of interest is discovered, the investigator must also notify LEG and withdraw from the investigation. In such situations, the investigation will be assigned to another investigator by LEG.

11. An investigator cannot carry out an investigation when:

- His or her judgment may be affected by biases or predispositions;
- He or she has witnessed the conduct at issue or has personal knowledge of the facts surrounding the allegation;
- He or she has a personal or close working relationship with any of the parties involved in the investigation; or
- Because of other facts or circumstances, a reasonable person would believe a conflict of interest may exist.

[1] In harassment cases, the disclosure is made to the Chairperson of the Grievance Panel.

12. The subject of investigation should report to LEG, as soon as possible, if he or she believes that the investigator has an actual or apparent conflict of interest and is unable to undertake an objective investigation.

13. During the course of the investigation, the investigator must remain objective – and also maintain the appearance of objectivity – while striving to gather all the relevant facts.

Fairness

14. To be effective, the investigator must be fair. This requires that he/she maintain a clear and open mind and not have any preconceived opinions prior to the start of an investigation. It also requires that the investigator be truthful to all the parties and refrain from embellishing or disregarding relevant information that has been obtained during the investigation.

15. The investigator's primary role is to ascertain the facts and protect the integrity of the process. Thus, if the investigator uncovers information that implicates or exonerates the person under investigation, this information must be reflected in the official record.

Confidentiality

16. All preliminary inquiries and investigations must be conducted in a confidential manner, and information about an investigation must only be shared with or communicated by the investigator to people who have a legitimate need to know this information.

17. An investigator cannot make an absolute promise of confidentiality. Rather, people involved in an investigation should be informed that any information they provide will remain confidential to the maximum extent possible and will not be revealed except on a need-to-know basis.

18. The investigator must take reasonable precautions to protect any confidential information obtained during the course of an investigation as well as the identities of the person under investigation, the person who reported the allegation, and anyone who provides relevant information or documentation.

19. Issues discussed during an investigation are confidential, and parties involved in an investigation or questioned by an investigator must not divulge the information discussed or obtained to anyone, unless there is a legitimate need for another person to know this information[2].

[2] Thus, for example, a party in an investigation may discuss the issue with PAHO's Ombudsperson.

PART 3: CONDUCTING AN INVESTIGATION

Purpose

20. Workplace investigations are administrative fact-finding exercises undertaken to look into allegations of wrongdoing involving people who work for PAHO or individuals, organizations or companies that have business dealings with PAHO. These investigations are strictly limited to and carried out within the legal and administrative framework of the Organization.

Role of Investigator

21. The investigator's primary role is to gather information and documentation pertaining to an allegation and provide an opinion on whether improper or unethical conduct or harassment has occurred. In fulfilling this role, an investigator must:

- Uncover the facts, whatever they may be;
- Conduct a thorough and systematic inquiry, considering all relevant facts and following all valid leads, to come to an independent assessment; and
- Reach an objective conclusion as to whether the allegation has been substantiated, regardless of the status or position of the person under investigation, the opinion of others or pressure to make a specific finding.

22. Once the investigation has been completed, the matter is referred to the appropriate official(s) in the Organization to enable them to decide what action, if any, should be taken in accordance with the Organization's rules and procedures.

23. Investigations may be carried out by more than one investigator, as determined by the lead investigator.

Duty to Cooperate

24. The investigator has the full authority to meet and question any person who works for PAHO and who may have relevant knowledge or information about an issue being investigated.

25. During an investigation, individuals working in PAHO have a duty to cooperate with the investigator. This obligation entails making themselves available to meet with investigators, providing truthful and relevant information and answering pertinent and reasonable questions. It also requires people who have been interviewed to review and sign the record of interview within a reasonable period of time.

26. It is improper for anyone to destroy documents, tamper with information, mislead investigators, interfere with someone who has provided information or violate the confidentiality of the investigative proceeding.

Access to Records, Documents and Workplace

27. The investigator has full and unrestricted access to official personnel, procurement, financial, telephone and other records, files and documents that the investigator reasonably believes may be relevant to the investigation.

28. The investigator also has full and unrestricted access to any message, document or file that was created or stored in the Organization's electronic systems and may monitor computer use when carrying out an investigation.

29. To preserve and protect medically sensitive information and the privacy of patients, the investigator will not generally have access to confidential medical records. However, if the allegation relates to health insurance fraud or abuse of sick leave, relevant medical information may be provided to the investigator by the Health Unit or Staff Physician.

30. Original files and records may be copied and/or reviewed in the investigator's own office or workplace, in which case every reasonable precaution must be taken to avoid the possibility of loss, theft or access by unauthorized persons. These documents will be returned by the investigator as soon as possible to the office concerned.

31. The workspace of any person who works for PAHO is the property of the Organization. While individuals have a reasonable expectation of privacy in their day-to-day work, PAHO reserves the right to gain access and search offices, cubicles, desks, computers, filing cabinets and other work areas during an investigative process, with or without notice.

Anonymous Allegations

32. PAHO's Ethics Help Line allows individuals to ask a question or file a report on an ethical concern or a suspected violation of PAHO's Code of Ethical Principles and Conduct without disclosing their identity. Anonymous allegations are accepted by the Organization and may be investigated if supported by sufficient information to warrant a proper inquiry.

Timing of Investigations

33. All investigations should be conducted as promptly as possible after an allegation is received to preserve relevant information and documentation and prevent the continuation of the alleged wrongdoing or the occurrence of other incidents. To this end, the investigator(s) should strive to complete the investigation, including the report, within a period of six months. Although expediency is an important consideration, investigators must not be pressured to meet unreasonable deadlines, and time constraints must not affect the due care and activity schedule of the investigator(s).

Preliminary Inquiry

34. Upon receipt of information alleging wrongdoing, a preliminary inquiry will normally be conducted to assess the credibility of the information provided and to determine if there is sufficient basis to initiate a full investigation. This inquiry may involve:

- Ascertaining whether the allegation is within the authority or competence of PAHO to investigate;
- Reviewing the information that has been presented and obtaining from the person who made the allegation any additional information relating to the issue that has been reported;
- Interviewing people who may possess relevant information and checking available documentation to assess the reliability of the allegation; and
- Examining the available information to determine whether there is enough information to warrant a full investigation.

35. If the investigator determines that the allegation is without merit or is unsupported by the facts, the preliminary inquiry will be closed, and the person who made the allegation will be notified in writing. Unless interviewed, the subject of the inquiry will not normally be notified that a preliminary inquiry was conducted or of its findings. Other parties involved in the preliminary inquiry may be informed of the outcome if deemed necessary to protect the reputation of the subject of the inquiry.

36. When a preliminary inquiry is closed, the investigator will prepare a short report summarizing the actions taken and the reasons for ending the inquiry.

Formal Investigation

37. If the investigator reasonably believes that there are sufficient facts following a preliminary inquiry to warrant a more comprehensive review or that an apparent violation of the Organization's standards of conduct has occurred, a full investigation is initiated based on established objectives and a plan of action.

Interim Actions

38. The investigator will consider whether the situation requires any interim precautionary measures to safeguard information, ensure a proper investigation or protect a party to the investigation or the interests of the Organization. Where necessary, the investigator will make an appropriate recommendation and refer the matter to the relevant official(s) in the Organization for consideration and necessary action.

Notification to Subject

39. The investigator(s) will notify the subject of investigation as soon as practicable that he or she is under investigation and of the general nature of the allegation[3]. The timing will depend on the circumstances of each individual case and the opinion of the investigator, taking into account the possible destruction or tampering with information, intimidation of witnesses or other actions that may compromise the investigation. As a result, the subject of investigation need not be informed in advance that an investigation will be undertaken and an investigator may interview people and/or obtain information prior to notifying or interviewing the subject of investigation.

Notification to Supervisors

40. As a general principle, supervisors are not informed that a subordinate is under investigation. This is to ensure that supervisors remain objective and to safeguard the reputation of persons who work for PAHO while an investigation is being undertaken.

41. Nonetheless, supervisors will be contacted if they have information that may be relevant to the investigation. In addition, the supervisor may be notified when the allegation relates to financial improprieties or serious wrongdoing when it is necessary to protect the interests of the Organization or of an individual.

Gathering Documents and Other Pertinent Information

42. Information gathered during the course of an investigation must be obtained within the boundaries of proper and ethical behaviour. Documents prepared by the investigator must be factual and accurate, and all notes and records must be dated.

PART 4: INTERVIEWS

Deciding Whom to Interview

43. The investigator has the discretion to decide who should be interviewed based on the specific circumstances of the case. After identifying the people to be interviewed, the investigator outlines the areas of inquiry and decides the order in which the people should be interviewed. To ensure a thorough and consistent line of questioning, the investigator may prepare a list of questions for each interviewee in advance but this does not preclude the investigator from asking ad hoc or follow-up questions.

[3] In harassment cases, the notification is provided in accordance with PAHO's Policy on the Prevention and Resolution of Harassment in the Workplace.

Location of Interviews

44. Interviews should take place in a private location to avoid disturbances and interruptions, protect the identity of the person being interviewed and maintain the confidentiality of the discussions. To the extent possible, interviews should not take place in the interviewee's office or immediate work area.

45. Telephone or video-conference interviews are appropriate in certain situations, although personal interviews should be conducted whenever possible.

Conduct of Interviews

46. Because an investigation is an internal administrative proceeding intended to ascertain the facts and is not a judicial or adversarial process, the interviewees, including the subject of investigation, do not have the right to be accompanied by legal counsel or to question any of the other interviewees.

47. An interview is normally limited to the person being interviewed and the investigator(s). If deemed necessary, a third party may be invited by the investigator(s) to be present at the interview.

48. In investigations of alleged harassment, the parties (the subject of investigation and the person who filed the complaint) may be accompanied during the interview by someone of their choice who works in PAHO and who is not a party to the process.

49. A person may be interviewed on more than one occasion during the course of an investigation.

50. During the interview, the subject of investigation will be informed of the nature of the allegation(s), the investigator's role during the investigation, how confidentiality will be handled and generally what to expect during the investigative process. At that time, he or she will also be provided with a copy of the Protocol and any other policy or rule that is relevant to the allegation or the investigative process.

51. Interviews will be conducted in one of the four official languages of the Organization (English, Spanish, Portuguese or French) based on the preference of the person being interviewed, using interpreters selected by the investigator(s) when necessary.

52. Interviews with the subject of investigation will be taped by the investigator. Interviews with other parties in an investigation may be recorded at the discretion of the investigator(s) or at the request of the person being interviewed. When an interview is taped, the investigator will provide an appropriate notification at the beginning of the interview.

53. The recording will be used, if necessary, to corroborate or clarify the discussions which took place. A person whose interview has been taped will be given an opportunity to listen to the tape in case clarification is required or upon request, but will not be given a copy of the recording.

54. The investigator's role during an interview is to listen and hear all sides of the story. The investigator must be objective, nonjudgmental and respectful of each interviewee. Questions should be designed to elicit facts, not opinions.

55. It is important for the investigator to assure each interviewee, and particularly the subject of investigation, that no conclusion has been reached and that the investigator's task is simply to ascertain the relevant facts.

56. During interviews, the investigator should also elicit information about any other person who might be able to provide relevant information about the allegation.

57. At the end of the interview, the investigator will inform the interviewee that he or she is:

- Required to maintain the confidentiality of the information discussed and the record of interview;
- Urged to report any attempt to influence, intimidate or impede the interviewee or tamper with information; and
- Protected from retaliation under PAHO's Policy to Protect Against Retaliation for Reporting Wrongdoing or Cooperating in an Investigation or Audit.

Records of Interview

58. Following each interview, the investigator will prepare a record of interview in the prescribed format (see Annex 1). This record, in the language in which the interview was held, contains a summary of the information that was communicated by the interviewee.

59. The interviewee will be given a reasonable opportunity to review the record of interview to confirm that it is accurate and reflects the discussion that took place. After any necessary changes have been made, the statement will be signed by both the interviewee and the investigator(s), after which time it becomes an official record of the interview[4]. Where an interviewee has been given a reasonable opportunity to review and sign the record but fails to do so, the record will be deemed to be accurate.

60. A signed copy of the interview record will be provided to the interviewee, who is required to maintain the confidentiality of this document and to refrain from sharing it with anyone, unless there is a legitimate need for another person to know this information.

[4] In situations where the record cannot be personally signed by the interviewee, an acknowledgment by e-mail or other means will be obtained.

PART 5: FINDINGS AND CONCLUSIONS

Findings and Conclusions

61. Following the conduct of an investigation, the investigator will evaluate the information obtained during the interview and data collection phases. The investigator will then assess the credibility of this information and present his or her views, including reasonable inferences, on the particulars of the investigation and the facts that he or she reasonably believes to be true.

62. The investigator will then analyze the information obtained, weigh the evidence and reach an opinion regarding the allegation. The standard of proof used to determine whether the person under investigation committed the alleged wrongdoing or violated the Organization's standards of conduct is whether it is more probable than not that a violation occurred.

63. This analysis will result in one of two possible outcomes:

Allegation Substantiated: The investigator concludes that the allegation is supported by the available evidence and considers it more probable than not to have occurred. When an allegation is substantiated, the investigator then assesses whether the person under investigation committed an ethical violation or breached the Organization's standards of conduct.

Allegation Unsubstantiated: The investigator concludes that the allegation is not supported by the available evidence in one of two ways:

- *Allegation did not occur:* The evidence indicates that the act under investigation did not occur as alleged, and the allegation is therefore unfounded; or

- *Inconclusive Allegation:* The evidence is insufficient to substantiate the alleged wrongdoing. This does not mean that wrongdoing did not occur but rather that it is more probable than not that it did not occur.

Malicious and Frivolous Allegations

64. In addition to finding that an allegation is unsubstantiated, an investigator may also conclude that the allegation was not made in good faith. Since disciplinary action may be taken against a person who makes an allegation that is intentionally false or misleading under PAHO's Policy to Protect Against Retaliation for Reporting Wrongdoing or Cooperating in an Investigation or Audit, the investigator should specify if he or she believes that an allegation was made in bad faith. Typically, false allegations can be characterized as:

- *Malicious Allegations:* An allegation made against another person that causes harm and is done without just cause or proper motive; or
- *Frivolous Allegations:* An allegation made without foundation and which embarrasses or annoys the other person

PART 6: REPORTING

Investigation Report

65. A written report will be prepared following an investigation. This report will contain the findings of fact, an analysis of all the material information gathered during the investigation and conclusions. The records of interview and other pertinent documentation will be attached as annexes to the report.

66. The investigation report should not contain any recommendations regarding possible actions that could be taken against any party involved in the investigation, including the subject of investigation, or on the imposition of administrative or disciplinary measures.

67. The investigator may make recommendations of a general nature to improve administrative procedures, strengthen internal controls and mitigate future risks. However, these recommendations should not be included in the investigation report but rather contained in a separate document, such as a transmittal memorandum or after-action report.

Release of Investigation Report

68. The investigation report and all documents obtained during an investigation and/or prepared by the investigator are considered a work product and privileged information and are not subject to release or disclosure. For this reason, the report must be marked as "strictly confidential" and may not be disseminated to any party, except as specified below.

69. No other person will be provided with a copy of the investigation report, including the person who reported the allegation, the subject of investigation nor any other person who provided information or cooperated in the investigation.

Reports to Organization Officials

70. The investigation report will be provided by the investigator to the official or entity in PAHO that has primary responsibility to take action or make a decision concerning the issue under investigation[5].

71. Reports into allegations of wrongdoing involving a PAHO staff member or national employee, as referred to in PAHO's Staff Rules and Regulations, will normally be referred to Human Resources Management (HRM), which will decide whether to initiate disciplinary proceedings in accordance with the applicable Staff Rules and procedures. At the same time, a copy of the report will be sent to LEG.

[5] When an investigation has been carried out by an external investigator, the report will be provided to the Ethics Office, which will transmit it to the appropriate party.

72. Reports into allegations that a contractor, vendor or supplier committed fraud or misappropriated resources of the Organization will normally be submitted to the Director of Administration (AM) to determine what action, if any, should be taken against the party or company concerned. Examples of cases that would generally be referred to AM for review and decision are investigations into the theft of resources or property not involving PAHO staff, irregular procurement or financial practices and other administrative irregularities. At the same time, a copy of the report will be sent to LEG.

73. Reports into formal complaints of harassment will be submitted to the Grievance Panel[6], which will issue a recommendation to HRM for final decision and notify the concerned parties that the investigation has been completed.

74. Once a report has been submitted, the investigator should also inform the subject of investigation and the person who reported the allegation that the investigation has been completed and a report sent to the appropriate official or committee. When an investigation has been conducted by an external investigator, this notification will be provided by the Ethics Office.

Release of Findings to External Auditors

75. The Organization's external auditors may be provided with a copy of an investigation report, upon written request, when the report is required in the normal course of an audit review.

National Authorities

76. An investigator does not have the authority to contact the local or national authorities. Only the Director of PAHO, in consultation with LEG, may refer a matter to the relevant government authorities, including law enforcement agencies.

Securing Information

77. The investigator must take reasonable measures to properly secure and safeguard all documentation obtained during an investigation to prevent it from being lost, stolen or manipulated by a third party.

78. All information, notes and data relevant to the investigation must be retained by the investigator in accordance with WHO/PAHO's document retention policy so that they can be used, if necessary, to substantiate any of the facts or findings of the investigation.

[6] Or to any other committee established by the Director for the purpose of considering formal complaints of harassment.

Annex 1

RECORD OF INTERVIEW

CONFIDENTIAL

Case No.

Interview date:
Start time:
Completed:

Individual(s) interviewed (Title and Organization):		
Contact information:		
Other persons present:		
Investigator(s):		
Type of interview:	In person: ____	Telephone: ___
Location:		
Date of this record:		
Topics discussed:		
Documents received:		

Introduction

Summary of Discussion

*****

I have reviewed this record of interview and acknowledge that it accurately summarizes the statements I made both voluntarily and in response to questions posed by the Investigator. I recognize that this record is a confidential document and agree not to disseminate or share it with anyone without the express written authorization of the Investigator.

Name: _____

Signed: _____

Date: _____

Investigator: _____

Signed: _____

Date: _____