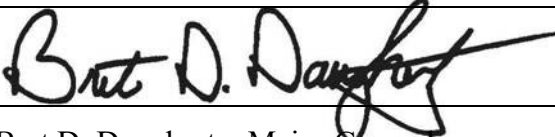




## Department Policy No. HR-205-05

<b>Title:</b>	Employee Investigations
<b>Authorizing Source:</b>	RCW 42.40 RCW 42.52 Executive Order 98-02 WAC 357-40, Discipline
<b>Information Contact:</b>	Human Resources Director Building #33 (253) 512-7941
<b>Effective Date:</b>	June 30, 2005
<b>Mandatory Review Date:</b>	November 28, 2022
<b>Revised:</b>	November 28, 2018
<b>Approved By:</b>	 Bret D. Daugherty, Major General The Adjutant General Washington Military Department Director

### Purpose

Provide information and guidelines for Department staff assigned to conduct confidential internal investigations related to allegations of employee misconduct.

### Applicability

This policy applies to all State employees of the Military Department. It does not apply to members of the National Guard on state active duty, federal personnel to include Active Guard Reserve (AGR), traditional Guard members in a federal military status or military technicians.

### Policy

- A. Employee investigations shall be conducted in a professional manner that protects employee rights, complies with applicable Collective Bargaining Agreements(s), and complies with applicable legal and regulatory requirements.

- B. Investigations may be conducted when allegations are received that involve incidents that adversely affect an employee's ability to carry out assigned job responsibilities. Examples can include but are not limited to:
  - 1. Misuse of state funds or materials;
  - 2. Violation of state, federal, or other applicable statutes
  - 3. Agency policies or procedures;
  - 4. Ethics (RCW 42.40); and/or
  - 5. Any incident where employee misconduct is alleged or reasonably suspected.
- C. The appropriate Executive Management Team (EMT) member will consult with the Human Resources Director to determine if an investigation is warranted.
- D. All matters regarding sexual harassment shall reference the Department's Sexual Harassment policy and follow the applicable policy/procedures.
- E. Employees assigned to conduct investigations shall complete the appropriate training provided by the Washington State Department of Enterprise Services. Supervisors that are required to conduct investigations prior to completing the required training shall contact the Human Resource Office for guidance.
- F. Investigations shall:
  - 1. Ensure the protection of both the department and employee interests;
  - 2. Provide a record that allegations were appropriately reviewed;
  - 3. Provide employee(s) an appropriate opportunity to respond to charges of misconduct;
  - 4. Determine the merits of the allegations based on pertinent facts; and
  - 5. Provide a basis for appropriate corrective and/or disciplinary action if applicable.
- G. Should disciplinary action become necessary, the applicable Washington Administrative Codes and Collective Bargaining Agreement(s) provision shall be followed.

### **Investigation Guidelines**

#### **A. Purpose and Authority**

- 1. The Washington Military Department has a public responsibility to investigate and resolve issues of alleged employee misconduct. The Department also has a responsibility to treat all employees with dignity and respect and ensure employee rights are protected. Investigations of alleged employee misconduct shall be conducted in a timely and fair manner that safeguards both employee rights and the integrity of the Department's programs. The purpose of this document is to

- provide guidelines for supervisors and other personnel regarding internal investigations.
2. Supervisors shall monitor performance. Supervisors have a personal responsibility for taking action to ensure that allegations of inappropriate conduct by employees under their supervision, are investigated in an appropriate and timely manner. When supervisors become aware of alleged employee misconduct, they shall document the situation and notify appropriate management staff. The following guidelines are intended to assist supervisors in conducting investigations regarding alleged employee misconduct.
    - a. Allegations of sexual harassment shall be handled pursuant to the Department's Sexual Harassment policy.
    - b. Supervisors shall consult with their chain of command and the Human Resources Office to determine how an investigation should be conducted and who should conduct the investigation. When the nature and/or scope of the allegations warrant an investigator other than the employee's supervisor, The Adjutant General (TAG)/ Department Director or designee shall determine if other department staff or an outside investigator should conduct the investigation.
    - c. If evidence of criminal activity is found and warrants the referral of the case to a law enforcement agency, the departmental investigation may be suspended until the criminal investigation report is provided to the Department. TAG/Department Director or designee shall determine the course of the internal investigation upon receipt of local law enforcement's reports/findings.
  3. While these guidelines provide general direction in conducting investigations of alleged employee misconduct, the unique circumstances of each situation must be considered. Questions regarding this procedure should be directed to the Human Resources Office.
  4. The Department may also seek outside counsel and advice, including legal counsel, on the proper conduct of employee investigations as determined by TAG/Department Director, Human Resources Director, and/or appropriate members of the Executive Management Team (EMT).

#### B. Preparation for the Investigation

1. The following actions should occur prior to an investigation of alleged employee misconduct.
  - a. Identify the specific action(s) representing alleged misconduct.
  - b. Determine if the alleged misconduct is criminal in nature, and if appropriate, notify law enforcement.
  - c. Notify the Human Resources Director and, as appropriate, management personnel in the chain of command of the situation.

- d. Under guidance from the Human Resources Office, conduct reasonable fact finding to determine if there is sufficient cause to believe that misconduct has occurred.
- e. The Human Resources Director in consultation with the Department Director or their designee shall, based on the nature and seriousness of the alleged misconduct, determine who will conduct the investigation. The Human Resources Director should consult with the Executive Management Team (EMT) Member as appropriate and/or the Attorney General's Office in determining the proper course of an employee investigation.
- f. If reassignment of the employee(s) identified in the allegation(s) of misconduct is appropriate, the reassignment to an alternate workstation and/or duty should be made in writing under the signature of TAG/Department Director or their designee.

#### C. Planning the Investigation

1. Gather available information and evidentiary materials related to the alleged misconduct. This may include work records, department policies and procedures, personnel records, organizational charts, etc.
2. Determine if immediate steps are needed to protect the safety and security of employees, taxpayers, departmental records or possible evidence related to the alleged misconduct. If needed, take action to secure evidentiary material.
3. Identify all known and potential witnesses to the alleged misconduct and other people who have factual information about the alleged misconduct.
4. If the employee(s) identified in the alleged misconduct is a member of the collective bargaining unit, review the appropriate Collective Bargaining Agreement provisions.
5. Develop an investigative plan that identifies witnesses, location of interview(s), standard interview documentation, the method to advise the accused employee(s) of the investigation, the resources and equipment needed to conduct the investigation, and the method to finalize the investigation.

#### D. Conducting the Investigation

1. Professional Conduct
  - a. Staff members conducting investigations of alleged misconduct are expected to conduct themselves professionally at all times and to respect employee rights. This includes the employee's right to representation. To the extent practical, confidentiality regarding employee investigations shall be maintained. Employees under investigation for alleged misconduct shall be treated with dignity and respect. Investigations are to be conducted in a fair and impartial manner.

- b. Investigators shall remove themselves from an investigation of alleged misconduct when their involvement would represent a conflict of interest or if they are not in a position to conduct an impartial inquiry.
2. Opening Contact
    - a. Generally, the employee accused of the alleged misconduct shall be informed of the investigation and corresponding allegations at the onset of the investigation, or at the earliest practical opportunity, in a private and confidential manner. Notification may be delayed if there is a reasonable expectation that prompt notification would jeopardize the integrity of the investigation or place others at risk.
    - b. The investigation and the contents of the allegation shall be considered confidential. Thus, only management/supervisory personnel who have a legitimate need to be aware of the investigation shall be notified. This may include the appropriate EMT member and supervisor(s) of the employee(s) being investigated, and supervisors of witnesses. Details of the matter shall be limited, to the extent possible, to protect confidentiality.
  3. Time Frames
    - a. Investigations of employee misconduct shall be initiated on a timely basis. Investigations should be completed as soon as reasonably possible, but in a manner that ensures the alleged misconduct has been appropriately reviewed. Timeframes begin at the time at which management becomes aware of the incident or action that is considered misconduct.
  4. Interviews and Witness Statements
    - a. Depending on the nature and severity of the alleged misconduct being investigated, interviews with witnesses may be informal or formal. For serious misconduct, that may lead to disciplinary action or situations in which a witness may not be available at a future point in time, formal interviews are preferred. Formal interviews include a written summary or transcript of the statements of the witness. Except for situations in which it would be impractical, interviews should be conducted in in-person (“face to face”) meetings.
    - b. The following are suggestions for effective interviews:
      - 1) Schedule interviews in advance.
      - 2) Conduct interviews in a private setting.
      - 3) Advise the individual being interviewed of the purpose for the interview, how the interview will be conducted, and how the information provided will be used.
      - 4) Tell the person being interviewed who may have access to the information provided. Do not guarantee confidentiality. All information in the course of an investigation is subject to the laws regarding public disclosure.

- 5) Demonstrate neutrality regarding the issue being investigated.
  - 6) Use an established set of questions, but follow-up as necessary.
  - 7) Ask open-ended questions. Keep questions as straightforward as possible. Use questions that focus on the “who,” “when,” “what,” “where,” “how,” and “why” of the investigation. Follow up and refocus as appropriate during the interview.
  - 8) Focus on facts directly observed and/or known by the witness, avoid second-hand information and/or hearsay.
  - 9) Schedule enough time for the person being interviewed to fully answer all questions.
  - 10) Ensure that you fully understand the statements and information provided during the interview. Clarify as appropriate.
  - 11) Ask the witness to identify others who may have information pertinent to your investigation.
  - 12) Thank the person for the interview and express appreciation for their participation and their candor.
  - 13) Ask for a written statement from the witness. (This may be requested prior to the interview and provided by the witness at the interview session.)
  - 14) Document the interview as appropriate and/or have the witness sign their interview document(s). Be sure to include dates on all signed materials.
  - 15) Seek assistance from the Human Resources Office as needed.
5. Chain of Custody of Physical Evidence
- a. Ensure the integrity of any materials that represent physical evidence regarding a matter being investigated. Safeguard materials in a secure location whenever possible. Restrict and log access to evidence as appropriate.
6. Personal Safety
- a. Investigators are not expected to place themselves in situations that may endanger their personal safety.
  - b. If investigators have concerns, they should notify the Human Resources Office and/or appropriate EMT member as soon as possible.
7. Completing the Investigation
- The following are tips for an effective investigation:
- a. Ensure the facts of the situation have been verified so you can complete a thorough investigative report. This report should be written to stand on its own for purposes of assessing whether or not misconduct has occurred.

- b. Review your interview notes and evidentiary materials related to the investigation.
- c. Assess the credibility of witnesses and the employee being investigated.
- d. Consider personal relationships, tensions, problems, etc., between witnesses, initiator, and the accused employee(s).
- e. Consider possible environmental factors such as provocation, short staffing, lack of supervision, series of smaller incidents leading to the major one, etc. Document factual information; refrain from using “opinions.”
- f. Determine if any written rules, policies, procedures, performance expectations, and/or supervisory directives have been violated. If so, it may be helpful to attach a copy of the policy, procedures, etc., to the investigation report.
- g. Determine if training or instruction was received related to the alleged misconduct and/or any rules, policies, or procedures that may have been violated.
- h. Resolve any discrepancies or gaps in statement or facts.
- i. Detail actions and circumstances as appropriate leading up to the matter under investigation. Again, document factual information and refrain from using “opinions.”
- j. Determine if further investigation is needed before the final investigative report is completed. This might include follow up with witnesses, additional interviews, and/or further review of records/documents.

## E. Conclusions

### 1. Final Report

- a. The final investigative report provides an outline of the matters investigated and the investigator’s findings related to each issue. This must be objective and focus on facts. Opinions should not be included in the report unless specifically requested by the TAG/Department Director or their designee
- b. Conclusions should be factually based and not include recommendations regarding sanctions.
- c. Investigative reports should not make specific recommendations for disciplinary action.

### 2. Review

- a. The Department Director or their designee shall determine the appropriate administrative resolution of the matter. Human Resources and legal counsel may be consulted, as appropriate. The Human Resources Office is responsible for finalization and disposition of the employee investigation.

- b. If an investigation exonerates employees of misconduct or the misconduct is not substantiated, the employees shall be notified in writing of No Findings and the Investigation shall be closed and any documentation of such removed from the employee's personnel file.
  - c. Disciplinary action taken as a result of investigations of employee misconduct shall be in accordance with department policy, Washington Administrative Code (WAC) and appropriate Collective Bargaining Agreements.
  - d. The Department can only impose one sanction in response to each case of misconduct. Disciplinary actions that impact an employee's pay can only be imposed by the TAG/Department Director or their designee.
3. File Maintenance
- a. The investigator shall maintain confidential files for investigations. Upon completion of the investigation, the investigator shall provide all files and investigative materials to the Human Resources Office for maintenance.