



**UNITED STATES MARINE CORPS**  
INSPECTOR GENERAL OF THE MARINE CORPS  
HEADQUARTERS, U.S. MARINE CORPS  
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IGMC ASSISTANCE AND INVESTIGATIONS MANUAL

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Ref: (a) Inspector General Act of 1978  
(b) SECNAVINST 5430.57\_, Mission and Functions of the Naval  
Inspector General  
(c) SECNAVINST 5370.5\_ DoD, DoN Hotline Program  
(d) SECNAVINST 5430.92\_, Counteracting FWA in DoN  
(e) SECNAVINST 5300.26\_, Sexual Harassment  
(f) MCO 7510.5\_, Fraud, Waste and Abuse (FWA)  
(g) MCO 5800.13\_, Investigations of Allegations against Senior  
Officials  
(h) MCO 1700.23\_, Request Mast  
(i) MCO 1700.28\_, Hazing  
(j) MCO 1000.9\_, Sexual Harassment  
(k) PCIE/ECIE, Quality Standards for Investigations  
(l) IGDG 7050.6, Whistleblower Reprisal and Mental Health  
Evaluations  
(m) Article 15, Commanding Officer's Non-Judicial Punishment Guide

1. Purpose. To publish change one to the Office of the Inspector General for Marine Corps Matters (IGMC) Assistance and Investigations Manual.
2. Cancellation. Assistance and Investigations Manual dated 1998.
3. Background. The purpose of this Manual is to set forth guidelines for the conduct of investigations and inquiries by Deputy Naval Inspector General for the Marine Corps Matters personnel. This manual should also aid others who may be tasked to perform Inspector General (IG) functions.
4. Action. This change to the Assistance and Investigations Manual is effective 04 March 2004, and constitutes a complete revision of the manual.
5. Changes. Recommended changes and additions to this publication can be transmitted to the Assistance and Investigations Division IGMC 703-614-1348/DSN 224-1348.

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M. W. MCERLEAN  
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## CHAPTER 1 INTRODUCTION

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### **0101 PURPOSE.**

The purpose of this Manual is to set forth guidelines for the conduct of investigations and inquiries by Deputy Naval Inspector General for Marine Corps Matters/ Inspector General of the Marine Corps(IGMC) personnel. This manual should also aid others who may be tasked to perform Inspector General (IG) functions.

### **0102 APPLICATION.**

All Marine Corps major commands with Command Inspectors assigned pursuant to SECNAVINST 5430.57F, "Mission and Functions of the Naval Inspector General," shall use this Manual as a guide for IG inquiries and investigations. In addition, this Manual shall serve as a guide for all investigations and inquiries, at any level, conducted at the direction of the IGMC. The procedures outlined in this Manual apply to the administrative investigations done within the IG system and are not intended to apply to criminal investigations or investigations done pursuant to the JAGMAN or the Manual for Courts-Martial.

### **0103 ADVISORY NATURE.**

The information in this Manual should be viewed as advisory in nature. Though certain methods, techniques, and procedures should be followed in all IG investigations or inquiries, each investigative effort is unique. IG investigators must, therefore, exercise sound judgment in deciding how to proceed in each one. In most cases, the mandatory requirements mentioned in this Manual are imposed by law, regulation, Department of Defense (DoD) directives or Department of the Navy(DoN) instructions.

### **0104 STANDARD OF COMPETENCE.**

This Manual establishes a standard of competence by which investigations and inquiries may be judged when questions arise as to the practices to follow under certain circumstances. Therefore, the prudent IG investigator should be familiar with the procedures discussed in this Manual and should be prepared to articulate sound reasons when they are not used in a particular situation.

### **0105 DISCLAIMER.**

This Manual does not create, and shall not be construed as creating, any right or benefit, substantive or procedural, enforceable at law by any person against the United States, its agencies, its officers or employees, or any other person.

### **0106 DEFINITIONS.**

See the Glossary in Appendix F for a listing of terms and phrases used throughout this Manual.

**0107 SUGGESTIONS FOR REVISIONS.**

Suggestions for revision (addition, clarification, deletion, etc) to this Manual should be forwarded to the director of Assistance and Investigations Division, IGMC.

## CHAPTER 2 OVERVIEW OF IGMC AND IG RESPONSIBILITIES

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### **0201 BACKGROUND.**

The Inspector General Act of 1986 established a single statutory Inspector General (IG) within the secretariat of each military department (Army, Navy, Air Force). Title 10 USC. Section 5014 placed the IG function within the Office of the Secretary of the Navy and specified that no other office or entity within OPNAV or HQMC may be established to perform the IG function. The statutory IG within the Department of the Navy is the Naval Inspector General (NAVINSGEN).

### **0202 CREATION OF THE DEPUTY NAVAL INSPECTOR GENERAL FOR MARINE CORPS MATTERS.**

Because of the unique two-Service (Navy/Marine Corps) structure of DoN, there remained no basis for a Service IG within the Marine Corps after the Inspector General Act of 1986. This problem was remedied through a SecNav Instruction. Currently, paragraph 6 of SECNAVINST 5430.57F establishes the billet of the Deputy Naval Inspector General for Marine Corps Matters (DNIGMC). For purposes of this Manual, the term DNIGMC is synonymous with Inspector General of the Marine Corps (IGMC). The Office of the IGMC is a derivative of the NAVINSGEN and is assigned to the Table of Organization for the Office of the Secretary of the Navy.

### **0203 IGMC MISSION.**

The Inspector General of the Marine Corps promotes Marine Corps combat readiness, integrity, efficiency, effectiveness, and credibility through impartial and independent inspections, assessments, inquiries, and investigations.

### **0204 IGMC AUTHORITY AND RESPONSIBILITIES.**

As directed by the Commandant of the Marine Corps, together with various portions of Title 10 U.S. Code and SECNAVINST 5430.57F, the IGMC has overall responsibility for all Inspector General functions within the Marine Corps. The IGMC communicates directly with the SecNav/UnderSecNav on Marine Corps matters. IGMC also communicates directly with the Department of Defense (DoD), other organizations within the DoN (ie, NCIS, commanders, etc), non-DoD government entities (ie, Congress, GAO, etc), and non-government entities in matters pertaining to the Marine Corps.

### **0205 OFFICE OF THE IGMC.**

The Office of the IGMC is the part of the NAVINSGEN which conducts and coordinates IG activities in the Marine Corps. The IGMC is a Marine Corps General Officer, normally a Major General. The IGMC is supported by the Deputy Inspector General (Colonel) who is a SecNav- credentialed "Assistant

Inspector General for Investigations"; the IGMC Sergeant Major who is a SecNav- credentialed "Assistant Inspector General for Inspections"; and a secretary. The Office of the IGMC is structured into seven functional divisions as follows:

a. **Assistance and Investigations Division (IGA)**. This division provides support in the areas of non-criminal investigations to the IGMC. IGA receives reports, or allegations, of misconduct, impropriety, fraud, waste, mismanagement, inefficiency, or violation of law, and conducts investigations as appropriate. This division is the focal point and official Marine Corps representative to whom, as an alternative to the normal chain of command channels, military and civilian personnel may request assistance or lodge complaints without fear of reprisal. This division currently consists of the Director (O-6), the Deputy Director (O-5), five Marine Corps officers (O-3, O-4, & O-5) that function as investigators, three civilian Senior Official Investigators who are each credentialed as an "Assistant Inspector General for Investigations"; and one civilian Special Action Technicians.

b. **Inspection Division (IGI)**. This division provides support in the area of inspections to the IGMC. This division conducts no/short notice inspections and area visits of active, reserve, FMF, and supporting establishment commands, including operational forces assigned to unified and specified commands. IGI makes appropriate evaluations, reports, and recommendations; establishes objectives for, coordinates, and monitors inspection programs afloat and ashore in conjunction with appropriate commanders or supervisory authorities; and maintains oversight and follow-up to correct reported inspection findings. This division consists of three Marine Corps officers who are each credentialed as an "Assistant Inspector General for Inspections".

c. **Readiness Division (IGR)**. This division provides support in the area of readiness evaluations to the IGMC. IGR serves as the principal HQMC staff agency for monitoring and coordinating readiness issues, and coordinating resolution of readiness issues which inhibit or reduce the readiness of Marine forces. Also, this division conducts no/short notice assessments of Marine Corps units to ascertain readiness of those units based on assigned missions, structure, and equipment. This division consists of three Marine Corps officers who are each credentialed as an "Assistant Inspector General for Inspections".

d. **Oversight Division (IGO)**. This division provides oversight of USMC intelligence, counterintelligence, and non-intelligence sensitive activities to ensure legality, propriety, and regulatory compliance. This division represents the Marine Corps in oversight forums; responds to external taskers and requests for information; and ensures appropriate oversight training and awareness education of Marine Corps commands. Additionally, IGO is responsible for the coordination of the quarterly Marine Corps Oversight Review Board (MCORB) and provides staff assistance to the Department of the Navy's Sensitive Activities Review Board (SARB) and Senior Review Board (SRB). IGO assists other IGMC divisions on matters involving intelligence or non-intelligence activities; performs inspections and staff assistance visits; and ensures the reporting and corrective action involving questionable activities. The division consists of one senior civilian Intelligence Operations Specialist.

e. **Counsel to the IGMC (IGL)**. A civilian lawyer, IGL provides legal advice and assistance to the IGMC relating to investigations, inspections,

oversight, Freedom of Information and Privacy Act requests, and internal matters. IGL also provides assistance and information to government attorneys and other personnel involved in IGMC cases, particularly other Service IGs and DODIG, as well as providing advice in the areas of ethics, standards of conduct, and procurement fraud.

**f. Administrative Support Division (IGS).** This division provides administrative support to the entire Office of the IGMC in matters such as budget, TAD, and incoming correspondence tracking. IGS serves as the central coordinator for Marine Corps input to the DON Semi-annual Report and for Semi-annual Follow-up reports. This division consists of one Chief Warrant Officer, three enlisted Marines, and one civilian Computer Assistant who provides support to Inspection Division. It is desirable and beneficial for the officer and senior enlisted Marine (a SNCO) to be credentialed as an "Assistant Inspector General for Investigations".

**0206 ORGANIZATIONAL RELATIONSHIP BETWEEN THE IGMC AND FIELD COMMANDERS.**

There is no formal chain of command relationship between the IGMC and the commanders of the major commands. The IGMC authority is mainly derived from the SecNav and through "By direction" authority of the Commandant of the Marine Corps.

**0207 COMMAND INSPECTORS.**

In addition to the IGMC, the Marine Corps "IG system" includes the use of Command Inspectors. Command Inspectors are personnel assigned to perform IG functions for their respective commanders. The Command Inspector is an extension of the eyes and ears of the commander; the relationship with the commander should be one of extraordinary trust and confidence. The Command Inspector is normally granted a high degree of independence and normally has the full confidence of and direct access to the commander. In our decentralized IG system, Command Inspectors have a staff relationship with the IGMC and not a command relationship. Ultimately, Command Inspectors work for their Commanders.

**0208 SPHERE OF COMMAND INSPECTOR ACTIVITY.**

The sphere of Command Inspector activity includes everything for which a commander is legally responsible and over which a commander has command authority.

a. Command Inspectors are responsible to and report to their cognizant commanders for administrative and operational purposes. The internal structure (personnel) of the Command Inspector's office varies from command to command. In addition to investigative responsibilities, Command Inspectors are also responsible to their commanders for assessing and inspecting the readiness of their commands.

b. Command Inspectors generally do not establish command policy and have no directive authority outside of IG channels beyond that normally associated with their rank. Any additional authority must come from their commander.

c. Command Inspectors are authorized access to all documents and all other materials needed to discharge their duties. This authority may include direct access to pertinent extracts under applicable regulations. Command Inspectors may be required to present proof of their security clearance or special access to review classified documents, when appropriate.

d. Command Inspector investigations conducted as a result of IGMC Hotline referrals are usually conducted under Rule 303 of the Rules for Courts-Martial, UCMJ preliminary inquiries, or JAGMAN investigations (refer to the Manual for Courts-Martial 1995 and JAGINST 5800.7C [JAGMAN]). The command may also further refer the matter to criminal investigative organizations (NCIS, CID) as deemed appropriate per the provisions of SECNAVINST 5520.3B.

e. While Command Inspectors are responsible to their cognizant commanders, guidelines for their full support and cooperation to the IGMC are provided for by regulation. Principal regulations include: SECNAVINST 5430.57F; SECNAVINST 5370.5A; SECNAVINST 5800.12A; MCO 5040.6G; MCO 5800.13A; MCO 3800.2A; and MCO 7510.5A. In our decentralized IG system, the IGMC requires tracking and reporting for all those matters specifically referred to the cognizant commander by the IGMC. The IGMC does not normally require the reporting of any local matters handled by Command Inspectors which fall under the purview of the cognizant commander.

#### **0209 IGMC AND COMMAND INSPECTOR EDUCATION AND SELECTION CRITERIA.**

##### **a. Selection**

1. **IGMC.** There is no formal selection process for military members assigned to the IGMC. Selection is consistent with Marine Corps assignment policies and based on a review of the military member's quality of service and experience. For civilian employees of the IGMC knowledge, skills, and abilities are assessed during the civil service merit hiring process. All IGMC personnel assignments are subject to the approval of the IGMC.

2. **Command Inspector Personnel.** Selection of Command Inspectors, their military assistants, and civilian employees is the responsibility of the cognizant commander. The IGMC is involved in neither the selection nor the hiring of these persons. Commanders are encouraged to assign Command Inspectors for a minimum two-year period of assignment. Any Marine or civilian, eligible to conduct investigations or inquiries under the authority of the Manual for Courts-Martial, may assist in the conduct of an IGMC referral request for inquiry or investigation.

##### **b. Education**

1. **IGMC.** All SecNav credentialed investigators assigned to the IGMC attend the one-week Navy Inspector General Course conducted by the NAVINSGEN at the Washington Navy Yard, Washington, D.C. Barring this, the U.S. Air Force Installation Inspector General School held at the National Conference Center, Leesburg, VA is available and highly recommended. IGMC investigators may also attend the two-week Investigator Training Program offered by the Federal Law Enforcement Training Center (FLETC), Glynco, Georgia. Periodically, DODIG and NAVINSGEN provide orientation and special interest classes.

2. **Command Inspector Personnel.** While all Inspectors are required to have a basic familiarity with IG-related directives, commanders should recognize that Command Inspectors require specialized training and continuing education, and should make such allowances in their schedules as needed. The Navy IG Course, as well as the Air Forces' course are available for Command Inspectors and are highly recommended. It is offered four times a year. In addition to the formal training available, the IGMC attempts to host a three

to four day seminar for Command Inspectors each year; it is normally scheduled the week before one of the Investigations Course offerings, so Inspectors can attend both on one set of travel orders.

**Note:** The IGMC can provide scheduling and basic information on a variety of inter-service schools, as well as specialized courses covering fraud, waste, and abuse. Requests for educational assistance should be directed to the IGMC (Attn: IGA).

## CHAPTER 3 NATURE AND PURPOSE OF IG INVESTIGATIONS AND INQUIRIES

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### **0301 OVERVIEW.**

SECNAVINST 5430.57F (Mission and Functions of the Naval Inspector General) defines an investigation as "any form of examination into specific allegations of wrongdoing or misconduct." This Chapter provides a discussion of the role and authority of the IGMC/Command Inspector investigator to conduct investigations and inquiries.

### **0302 IG INVESTIGATIONS AND INQUIRIES.**

For purposes of this Manual, "IG" refers to actions and persons within the IG system, which consists of IGMC and Command Inspectors (CI). An "IG investigation" is a detailed fact-finding examination into allegations, issues, or adverse conditions to provide the directing authority a sound basis for decision or action. Such investigations involve the systematic collection and examination of testimony and documents, resulting in a formal Report of Investigation. An "IG inquiry" is a less formal fact-finding process followed by IGMC/Command Inspectors to gather information needed to respond to a requester seeking assistance, or to resolve allegations of misconduct or issues when investigative techniques are appropriate but circumstances do not merit the conduct of an "IG investigation." The amount of detail in an "IG inquiry" is determined by the nature or complexity of the issue; it may be as simple as a couple of phone calls and a Memo for the Record. "Investigation" and "inquiry" are two ends of a continuum; investigative efforts may fit anywhere along the spectrum. **For purposes of this Manual, the term "IG Investigation" will be used to refer to both investigations and inquiries unless there is significance to making the distinction.**

### **0303 POLICY FOR CONDUCT OF IG INVESTIGATIONS.**

SECNAVINST 5430.57F sets forth the general policy for the conduct of all IG functions, including investigations. It states:

All inquiries into matters affecting the integrity, efficiency, discipline and readiness of the DON shall be conducted in an independent and professional manner, without command influence,

pressure, or fear of reprisal from any level within DON. All non-frivolous allegations of misconduct shall be thoroughly and impartially investigated and reported.

#### **0304 PURPOSE OF IG INVESTIGATIONS.**

The purpose of an IG investigation is to obtain facts sufficient to enable the responsible authority to determine whether allegations are substantiated and decide what action, if any, should be taken in response. Response actions may be divided into three broad categories:

a. **Corrective Action.** Corrective action includes those steps taken to "fix the system" and to minimize the likelihood wrongdoing or other undesirable events will reoccur. Establishing checks and balances, modifying procedures, and conducting training are typical corrective responses. Responsible authority may take corrective actions even when the allegations are not substantiated.

b. **Remedial Action.** In some cases, the IG investigation reveals that wrongdoing or system deficiencies adversely affected the complainant or others. Although redress of wrongs is not, by itself, sufficient reason to initiate an IG investigation when other remedies are available, basic fairness requires that individuals harmed by improper conduct or unintended consequences of "the system" be restored to their prior circumstances whenever possible.

c. **Disciplinary Action.** In the context of an IG investigation, disciplinary action is any action, other than training, counseling, or a performance based action, taken with regard to an individual found to have engaged in wrongdoing. Disciplinary action runs the spectrum from letters of caution to criminal prosecution. Such actions could include punitive letters of reprimand, suspension, demotion or reduction in grade, judicial or non-judicial action under the UCMJ, and removal or discharge.

#### **0305 AUTHORITY FOR IG INVESTIGATIONS.**

The authority for IG investigations is derived from statute and regulation:

a. **Statute.** 10 USC 5020 sets forth the statutory basis for NAVINSGEN investigations. It authorizes the NAVINSGEN to investigate matters affecting discipline or military efficiency. There is no statutory basis for IG investigations performed by other DON IG organizations, except as a derivative of NAVINSGEN's authority.

b. **Regulation.** SecNav has given the NAVINSGEN/IGMC broad investigative authority in the U.S. Navy Regulations and such SecNav Instructions as 5430.57F (Mission and Functions of NAVINSGEN), 5430.92A (Assignment of Responsibilities to Counteract Fraud, Waste, and Related Improprieties within the DON), 5470.5A (DoD/Navy Hotline Program), and 5800.12A (Allegations Against Senior Officials of the DON). SECNAVINST 5430.57F also recognizes the existence of other IG organizations which are created by commanders and commanding officers in order to carry out their responsibilities under the U.S. Navy Regulations. In most cases, their authority and responsibility are set forth in mission statements, command instructions, policy memos, statements of organizational responsibilities, or similar documents.

#### **0306 INITIATION OF AN IG INVESTIGATION.**

For IGMC investigations, the directing authority may be the SecNav, the CMC/ACMC, or the IGMC. Other requests may originate from a variety of

sources; in these cases, the decision to initiate an IGMC investigation rests with the IGMC. For Command Inspector investigations the directing authority is the cognizant commander. (When the IGMC forwards a complaint for investigation, it is forwarded to the commander; thus the Command Inspector takes action on that complaint based on direction from the commander.) IG investigators do not have the discretionary authority to refuse the directing authority's lawful order to conduct an investigation. If the directive is deemed inappropriate for an IG investigation, the IGMC or Command Inspector will so advise the directing authority and recommend the appropriate investigative forum. As a matter of policy, the IGMC will take some form of action on allegations or requests for assistance received.

**0307 MATTERS APPROPRIATE FOR IG INVESTIGATIONS.**

SECNAVINSTs 5430.57F, 5430.92A, and 5370.5A describe those matters appropriate for investigation by IG organizations. In general, the following applies:

a. The mission of every IG organization is to inquire into matters related to readiness, effectiveness, discipline, efficiency, integrity, ethics, and public confidence. Therefore, allegations that an individual's improper conduct has adversely affected readiness, etc, are proper subjects for IG investigations. Because improper conduct is likely to adversely affect one or more of these areas, it is necessary that all non-frivolous allegations of improper conduct be thoroughly and impartially investigated and reported.

b. An IG organization also may be requested to investigate any matter that can reasonably be expected to be of interest to the commander, SecNav, CMC, IGMC, or DODIG, even when there is no specific allegation of improper conduct.

c. Utilizing the local chain of command is the most appropriate, and preferred, method to voice a grievance; however, military and civilian personnel who fear reprisal may use a hotline to request IG investigations as an alternative to mechanisms available within normal chain of command channels. They also may request IG investigations when they believe the chain of command will not effectively address their concerns. As the hotline is only a management tool, the hotline complainant has no authority to demand the investigation of a matter; the IG organization receiving the hotline complaint determines the appropriate action to take.

**0308 COMMAND OR DCIO/MCIO REFERRAL TO IG SYSTEM.**

Some cases received by an IG may be best referred to either the appropriate Defense Criminal

Investigative Organization (DCIO) or Military Criminal investigative Organization (MCIO). (SECNAVINST 5430.92A requires NCIS to provide written notification to the NAVINSGEN or IGMC for cases it opens which meet certain criteria.) Conversely, allegations or issues outside the scope and responsibility of the DCIO/MCIO may be referred to the IGMC or the cognizant commander. Referrals from DCIO/MCIO are normally non-criminal in nature. Commanders may refer non-criminal matters to their Command Inspectors or subordinate commanders as deemed appropriate. A commander (or designated representative) may also refer matters of significance or extreme sensitivity to the IGMC via the chain of command or directly. These referrals may be telephonic, but are normally made in writing. Table 0308 is provided to assist in the referral process.

Table 0308.1 **When and How to Transfer a Complaint to IGMC or another Command Inspector:** The table below is provided to assist in the decision as to when to transfer a complaint to another Command Inspector (CI) or the Inspector General of the Marine Corps (IGMC). The basic logic is that the responsibility for the complaint resolution resides with the CI of the subject's convening authority.

<b>If:</b>	<b>And:</b>	<b>Then:</b>
The Subject is a Senior Official (General Officer, SES, or BGen select)	The complaint is received by any level other than IGMC	Transfer the complaint to IGMC
The complaint has not been addressed at the level where the alleged wrongdoing occurred.	The higher-level Command Inspector determines transfer to the lower-level Inspector is appropriate and no evidence of bias by the lower level Inspector exists.	Transfer the case to the lower-level Command Inspector
The complaint presents a conflict of interest for the Appointing Authority or Inspector		Transfer the complaint to the next higher level Command Inspector
The subject is the Appointing Authority or a member of his/her immediate staff, or an Command Inspector staff member		Transfer the complaint to the next higher level Command Inspector
The subject is an NCIS agent	The complaint is received by any level other than IGMC	Transfer the complaint to Naval Inspector General
The subject is assigned to a higher level command than the Command Inspector that received the complaint		Transfer the complaint to the Command Inspector at the same command as the subject.
The complainant is assigned to a tenant command, is anonymous or a third party	The subject is assigned to a tenant command	Transfer the complaint to the Command Inspector of the tenant command.
The complainant is assigned to a hosting command (base or station), is anonymous or a third party	The subject is assigned to a tenant command	Transfer the complaint to the Command Inspector of the tenant command.
The complainant is assigned to a tenant command, is anonymous or a third party	The subject is assigned to hosting command (base or station).	Transfer the complaint to the Command Inspector of host command (base or station).

2. The table listed below is provided to assist in the **process of transferring** a complaint to another Command Inspector (CI) or the Inspector General of the Marine Corps (IGMC).

	<b>Action</b>
1.	Using complaint analysis, determine if the complaint is appropriate for the IG process, and should be transferred to another Command Inspector.
2.	Transfer the complaint, in writing, to the appropriate CI explaining your rationale for transfer.
3.	Notify the complainant, in writing, of the transfer.
4.	Document the case in local files as a 'Transfer', and close the case at your level.

**0309 MATTERS INAPPROPRIATE FOR IG INVESTIGATION.**

IG organizations should refer investigations of certain types of allegations to other organizations. Examples include:

a. **Major Crimes.** NCIS has authority to investigate allegations that DON civilian or military personnel have committed major crimes, which as defined in SECNAVINST 5520.3B (Criminal and Security Investigations) as those offenses for which imprisonment for more than one year may be imposed under the UCMJ or federal, state, or local laws (such crimes often are referred to as felonies). Although IG organizations often investigate standards of conduct violations, many of the standards are derived from Federal felony statutes (see, for example, Office of Government Ethics Regulations at 5 CFR 2635.401 through 503 for a discussion of conflicts of interest based on a criminal statute, 18 USC

208, and conflicts based on agency regulations). In those cases, NCIS should be apprised of the allegations before the IG investigation proceeds. When NCIS has reason to believe the cognizant United States Attorney will not prosecute a case, it may decline jurisdiction in order to permit an IG investigation to proceed. When a matter appropriate for an IG investigation must be referred to NCIS for investigation pursuant to SECNAVINST 5520.3B, the IG organization should log the case into its tracking system and monitor the progress of the NCIS investigation. Should the NCIS investigation fail to establish a basis for criminal prosecution, NCIS may return the action to the IG organization for such further investigation as may be necessary to permit the responsible authority to determine whether non-criminal (judicial or administrative) action is appropriate.

b. **Crimes Committed by Military Personnel.** A request for an IG inquiry may arrive in the form of a complaint alleging that a military member has committed an offense punishable under the UCMJ. When such cases indicate the commission of a major crime within the jurisdiction of NCIS, they must be referred to it for investigation. Whenever NCIS declines to investigate the matter, the IG organization should next consider referring the allegation to the alleged violator's commander for action. See Rules for courts-martial 303 and 306. A referral is appropriate when the allegation is not one that would normally be the subject of an IG investigation. When a matter appropriate for an IG investigation could constitute an offense punishable under the UCMJ, close coordination with the convening authority is necessary to ensure the IG investigation does not interfere with any potential or actual judicial action.

c. **Adverse Actions.** Military and civilian personnel often seek IG assistance when faced with adverse action for which another more specific remedy or means of redress is available. For example, many adverse personnel actions taken against civilian employees are appealed to the Merit Systems Protection Board (MSPB) or subject to resolution through agency grievance procedures. Non-judicial punishments and court-martial actions under the UCMJ are subject to the appellate process within the military judicial system. Other individual complaints of wrong by military personnel may be handled through Article 138 UCMJ or Article 1150 U.S. Navy Regs procedures. In such cases, the complainant should be referred to the appropriate authority to resolve the matter. The IG system is not the "court of first resort" for most matters.

d. **Equal Opportunity/Equal Employment Opportunity Cases.** Complaints of discrimination should be addressed through the command EO/EEO process. In some cases, sexual harassment may be appropriate for IG inquiry, but all allegations of should be referred to NCIS or civil authorities, as appropriate. When allegations of discrimination are mixed with other allegations appropriate for IG inquiry, tell the complainant which matters the IG organization will investigate, and which should be taken through the EO/EEO process. When the allegations are so intertwined as to make separation inefficient, consultation with EO/EEO investigative personnel is appropriate to decide how to proceed.

e. **Correction of Fitness Reports.** The Board for Correction of Naval Records (BCNR) is the appropriate authority to review allegations of improper fitness reports and other requests for correction of records. Allegations of reprisal for military whistleblowing should be investigated by the IGMC; however, this is not a hard requirement.

f. **Chain of Command.** Many requests for assistance are best handled within the chain of command and should be referred to it for action. It is appropriate to request notification of the action taken. Be alert for systemic problems that would best be addressed through an IG investigation or inspection.

g. **Redress of Wrongs.** The fact that an individual believes he or she has been wronged by "the system" is not itself sufficient to justify an IG investigation. IGs are not a substitute for chain of command and other dispute resolution mechanisms, and should not be used for that purpose unless there is evidence those systems are being misused or are malfunctioning. Complaints from individuals seeking relief from adverse personnel or disciplinary actions, unfavorable findings in EO/EEO investigations, or other matters for which the chain of command provides a review mechanism, should be accepted for IG investigation only when coupled with a non-frivolous allegation that the chain of command is unable or unwilling to address the matter fairly and impartially.

h. **Outside Organizations.** Some violations of law or regulations must be investigated by specific organizations outside of the Marine Corps. For example, allegations of Hatch Act violations (18 U.S.C. 594) et.seq:

Partisan Political Activities) must be referred to the Office of Special Counsel. The Department of Labor is responsible for Investigation of many matters related to wage and hours of work. Some outside organizations have special or unique powers to help. For example, the

Office of the Special Counsel can seek a stay of a pending personnel action it believes is based on a prohibited personnel practice. Military personnel who present claims of reprisal to the DODIG for protected whistleblowing activity have statutory rights that do not exist if they present the claim to the IGMC or Command Inspector. Complainants should be advised of these special circumstances so they may make an informed choice among the investigative organizations authorized to address their concerns. When an outside organization such as the Office of Special Counsel initiates an investigation into a matter that is already the subject of an IG investigation, it may be appropriate to suspend the IG investigation pending the outcome of the external investigation.

**0310 CASE REFERRALS TO DCIO/MCIOs.**

Per the provisions of the Manual for Courts-Martial, commanders normally investigate offenses which call for less than one year confinement at hard labor. Generally, these include less serious violations of the Uniform Code of Military Justice. Per SECNAVINST 5520.3B (Criminal and Security Investigations and Related Activities within the Department of the Navy), NCIS has investigative jurisdiction over all felony crimes. Depending on the nature of the criminal allegation, the cognizant commander may refer the matter to the local NCIS office or the command's Criminal Investigations Division (CID) office, or initiate a JAGMAN investigation. Upon receipt of allegations which purport criminal misconduct, the IGMC may refer the matter directly to the NCIS or to the appropriate commander for action. The IGMC will not refer allegations directly to a command's CID office.

**Table 0310.1: Referral of Issues**

Generally, the Inspector General or Command Inspectors will assist in referring complaints that belong to another Marine Corps, Naval investigative or grievance channel. The following table is provided for assistance in determining if a complaint belongs in other channels.

	<b>Type of Complaint:</b>	<b>Referral Agency:</b>
1.	Administrative Separations	Refer to local Admin Offices or MMOA/MMEA
2.	Allegations against Military Defense Counsel	Refer to Chief Circuit Defense Counsel
3.	Allegations of homosexual conduct	Refer to Command
4.	Allegations of reprisal by DoD contractors	Refer to IG DoD
5.	Allegations regarding non-USMC organizations or agencies	Refer to specific agency or Service IG or Defense Hotline
6.	Anti-Deficiency Act violations	Refer to SJA
7.	Appeal of FITREP	Refer to BCNR
8.	Appropriated Fund employees—Conditions of employment (personnel policies, practices, and matters affecting working conditions); or EEO issues (discrimination based on age, race, color, sex, religion, disability, or national origin); or reprisal against a civil service employee.	Refer to the servicing Civilian Human Resources Office (HRO) for action in accordance with civilian grievance system (either Administrative or Negotiated procedures IAW locally negotiated agreements. Equal Opportunity Complaints should be referred to the EO Office for processing.
9.	Article 138, UCMJ (Complaint of Wrong)	Refer to legal channels
10.	Article 15 (NJP), Letters of Reprimand or Censure (other than discrimination/ reprisal)	Refer to chain of command or Area Defense Counsel, or HQMC JAM
11.	Assignment Matters USMC Reserve	Refer to MARFORRES
12.	Assignment Matters USMC	Refer to MMEA/MMOA
13.	Change to Instructions/Regulation or current policies	Refer to appropriate HQMC agency
14.	Claims against the government	Refer to SJA
15.	Command-Directed Investigations (CDI)	Refer to Command for CDI process issues, refer to chain of command or ADC for CDI corrective actions.
16.	Contracting Issues	Refer to issuing contract unit
17.	Correction of Military Records	Refer to BCNR
18.	Elimination from Training	Refer to Training Command
19.	Equal Opportunity Off-Base Housing	Refer to local Housing Office
20.	Hazardous Working Conditions (unsafe or unhealthy)	Refer to Safety channels
21.	Landlord or tenant disputes	Refer to Command
22.	Medical treatment	Refer to USN Health Services
23.	Military Equal Opportunity and Treatment Issues	Refer to local Military Equal Opportunity Office
24.	Misuse or abuse of government vehicles	Refer to Command
25.	Non-Appropriated Fund (NAF) employee conditions of employment issues or reprisal	Servicing NAF Employment Office (conditions of employment) or the IG, DoD for reprisal allegations.
26.	Punishment under UCMJ	Refer to Area Defense Counsel or HQMC JAM
27.	Re-Enlistment Matters USMC	Refer to MMEA
	(continued next page)	

	Type of Complaint:	Referral Agency:
28.	Suggestions	Refer to local command or appropriate agency
29.	Support of Dependents and Private Indebtedness	Refer to subject's Commander or DFAS
30.	Tri-Care Complaints	Refer to Tri-Care Benefits Services Office
31.	Unprofessional Relationships/ Adultery	Refer to Command

**Table 0310.2 How to Refer a Complaint**

Step	Action
1.	Using complaint analysis, determine if the complaint could be handled in other channels.
2.	Refer the complaint in writing to the appropriate agency and notify the complainant, in writing (if possible) of the referral
3.	If appropriate, ask the referral agency to provide you a copy of any closure response to the complainant for your case file. <b>(NOTE)</b>
4.	Document the case in local files as a "Referral", and close the case at your level.

*NOTE:* If the complainant notifies the referring Inspector/IG that he/she did not receive a final response from the referral agency, the Inspector/IG should follow-up to ensure the referral agency received the complaint and provided a response to the complainant.

**0311 SOURCES OF REQUESTS FOR IG INVESTIGATIONS.**

IG organizations receive requests for Investigations from many different sources. In most cases, such requests require some degree of investigative effort before they can be answered. The manner in which these requests should be handled varies, in part, with the source of the request, which may include:

a. **SECNAV and CMC.** 10 USC 5020 authorizes the SecNav and CNO to "direct" the NAVINSGEN to conduct investigations into matters that affect DON discipline or military efficiency. While CMC's authority is not explicitly set forth in 10 USC 5020, it is implied when read in conjunction with 10 USC 5042. SecNav and CMC direction to conduct investigations should be provided in writing whenever possible, and documented with an MFR in other cases.

b. **Under Secretary, Assistant Secretaries.** Although they have no expressed statutory or regulatory authority to initiate IG investigations, the Under Secretary and Assistant Secretaries may request the NAVINSGEN/IGMC to conduct investigations. As they are members of the Secretariat, their requests are deemed to be made on behalf of SecNav.

c. **Commanding Officers.** The U.S. Navy Regulations make commanding officers responsible for the integrity and efficiency of their organizations. Many commands have assigned the performance of IG functions to specific members of the organization, whether or not they carry the title of IG. In general, commanders who have such personnel assigned should task those people to conduct IG investigations or to oversee the investigations if IG manpower limitations prevent actually conducting all investigations.

d. **Congress.** There is no statute or regulation that provides for Congress to task IG organizations to perform investigations. Official requests, that is, those requests made on behalf of a Congressional committee, should be addressed to SecNav. Official committee requests for investigations made directly to an IG organization must be referred to the IGMC for a decision as to whether or not an investigation should be conducted and if so by whom. The Office of the Legislative Assistant to the Commandant (OLA) should be informed of the request, decision, and final action. Many Congressmen write directly to IG organizations with personal requests for themselves or, more often, constituents. These requests should be handled in the same manner as hotlines and requests by individuals.

e. **DODIG.** The DODIG has the authority to conduct investigations into matters concerning the DON or to refer them to NAVINSGEN/IGMC for action. DODIG involvement in investigations concerning DON personnel most often results from complaints made to the DOD hotline. The IGMC is the Marine Corps central point of contact for coordinating DODIG investigations and requests for information.

f. **Hotlines.** DODIG, NAVINSGEN, and Marine Corps Hotlines are designed to strengthen and focus efforts to combat fraud, waste, and mismanagement within DOD, DON, and the Marine Corps. U.S. Navy regulations and SECNAVINST 5430.92A require personnel to report suspected violations of standards of conduct to "proper authority". While that proper authority is normally the commander or other person in the chain of command, the Hotline serves as an alternate recipient of such reports.

g. **Individuals.** Many requests for investigations come from individuals who believe they have been wronged during the course of their exercise of a chain of command redress procedure. These requests often take the form of a hotline complaint in which it is alleged that the redress procedure produced the wrong result. Ensuring that people are treated fairly and in accordance with applicable law and regulation does promote the efficiency of the command and the Marine Corps. However, the mission of IG organizations does not normally include assistance in the correction of wrongs in individual cases absent special circumstances such as reprisal or systemic problems. Because IG organizations do not serve as advocates for individuals, complaints about actions personal to an individual should be carefully screened for referral to a more appropriate forum. In such cases, every reasonable effort should be made to direct individuals to the proper organization to address their concerns. When an individual's complaint of wrong is a proper subject for IG investigation, an IG organization may recommend the command consider remedial action that makes the complainant "whole", if the conclusions of the investigations warrant such action.

#### **0312 THE INVESTIGATIVE STANDARDS.**

IG investigations shall be performed in an independent, complete, and timely manner. The basic investigative standards are:

a. **Independence.** This standard requires that the individual performing an IG investigation be free, in fact and appearance, from any impairment of objectivity and impartiality.

b. **Accuracy & Completeness.** This standard requires that the investigative report address all relevant aspects of the investigation thoroughly. Reports must not raise unanswered questions, ignore any

allegations, nor leave matters open to question or misinterpretation. The investigative report be factual and correct. Opinions and conclusions must be clearly identified as such. The report must make sense and the facts be presented in a logical, direct manner. The report should be no longer than necessary to clearly and accurately communicate the relevant findings. Systemic weakness or management problems disclosed during the investigation must be reported.

c. **Timeliness.** Investigations are to be initiated, conducted, and completed in a timely manner. Command action and follow-up in response to the report must also be timely.

#### **0313 ACCOUNTABILITY.**

Commanders have the duty to hold their subordinates accountable for their actions and to correct systemic faults. The IG investigation must provide them with the information necessary to discharge this responsibility effectively.

#### **0314 IG AUTHORITY TO ACCESS RECORDS.**

Pursuant to SECNAVINST 5430.57F, no military member or civilian employee of the Marine Corps may deny the IGMC access to requested unclassified documents. While SECNAVINST 5430.57F provides the authority for such access, the IGMC also acts on behalf of the Commandant of the Marine Corps when requesting such access. Command Inspectors request such records on behalf of their commanders; therefore, they have no authority to require access to records outside the scope of their commander's own authority. Access to classified information is strictly based on the need to know and the level of security clearance possessed by the requesting IGMC/Command Inspector investigator; however, IG investigators shall be deemed to have a "need to know" for access to information and spaces classified through SECRET.

#### **0315 REQUESTING RECORDS.**

IGs may either formally or informally request records. As the IG request is made on the authority of the It's commander, no one subject to that commander may refuse the request. Outside the commander's authority, persuasion or other authority may be required.

a. **Informal Requests.** IGs should informally request records, at least initially. Normally, requests for records held outside the command should be made through IG channels.

b. **Formal Requests.** A written request may be necessary when the person receiving the request will not release the documents to the IG investigator without one. For example, this situation may occur when the information is protected under the provisions of the Privacy Act. In such situations, the written request is proper and should not be viewed as a challenge to the authority of the IG. The written request should be prepared on letterhead indicating the general need for the requested documents or other material.

#### **0316 CHALLENGES TO AUTHORITY.**

If an IG is denied on-site access to documents or other information during the conduct of an IG investigation, the IG should first make reasonable efforts to obtain access through the local chain of command. If the action persists, contact the local commander to resolve the matter. If the action cannot be resolved at the local level, IGs should immediately notify their supervisors who will undertake resolution of the matter at the level of

command necessary to obtain the required access. IGs have no authority to require non- government civilians to provide material for investigative purposes.

**0317 INVESTIGATION TIMELINESS STANDARDS.**

IG investigations are initiated upon the receipt of the directing authority's initiating directive. This is often immediately upon receipt and review of an allegation. Competing investigative demands will be prioritized on the basis of seriousness or relative importance by the IG or the directing authority. Rules of common sense apply. The more complex the issue being investigated, the longer the time required for investigation. IGs are fact-finders and, therefore, **do not sacrifice accuracy for speed**. As a general guideline, IG investigations should be completed within 30 days of the initiation date. Inquiries initiated on the receipt of a DOD/Navy/Marine Corps Hotline complaint should normally be completed by the investigating command in 30 days also; interim status reports are required at the end of that period for coordination purposes.

**Table 0317.1 The Complaints Resolution Process Recommended Timeline:**

<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>PHASE</b>	<b>STEP</b>	<b>PROCESS NAME</b>	<b>PROCESSING TIMELINE (duty days)</b>
<b>Phase 1: Initiation and Preparation</b>	1.	Contact	<1 Days
	2.	Analysis	<3 Days
	3.	Tasking	<5 Days
	4.	Pre-Fact Finding	<5 Days
<b>Phase 2: Execution</b>	5.	Fact Finding	<15 Days
	6.	Report Writing	<7 Days
<b>Phase 3: Completion</b>	7.	Quality Review	<3 Days
	8.	Technical Review	<3 Days
	9.	Legal Review	<7 Days
	10.	Re-work	<1 Days
	11.	Closure	<4 Days
	12.	Follow-up	<1Days
	13.	IGMC Review	<20 Days
<b>Total:</b>			<70 Days

**0318 QUALITY ASSURANCE REVIEWS (QARs).**

Quality assurance reviews are conducted by IGMC on all investigations determined to be of IGMC interest. All Hotline referrals, requests for investigation, Congressional/Special Interest Correspondence, and Assistance cases referred to field commands from the IGMC are subject to quality assurance review upon receipt by the IGMC. Legal reviews and substantive reviews by technical experts, outside of the IGMC, are conducted when determined appropriate. Additionally, all local inquiries and investigations conducted by Command Inspectors are subject to quality assurance review during IGMC inspections of major commands as part of the Marine Corps Command Inspection Program (CIP). CIP Inspections are normally conducted every three years, or as required. Periodic quality assurance reviews of major commands are also conducted by the Inspector General, Department of Defense (DODIG). The DODIG conducts QARs of IGMC-submitted investigative products upon receipt and also conducts periodic reviews of IG case files in the field.

**0319 LEGAL REVIEW.**

Legal reviews are mandatory for all investigations against senior officials, Military Whistle Blower Reprisal and Mental Health Evaluation cases. (These cases are investigated at the IGMC level). Legal review of all other IG investigations is mandatory when the Investigating Officer substantiates an allegation, and highly recommended even when the Investigating Officer does not substantiate the allegation.

a. *At a minimum*, the SJA's will review Command Inspector/ IG reports for legal sufficiency and provide written legal reviews before the Appointing Authority approves the report and its findings. Legal sufficiency is a review of the ROI and supporting documentation to determine whether:

1. The investigation complies with all applicable legal and administrative requirements.

2. The Investigating Officer was independent in fact and in appearance.

3. The allegations are properly framed (a wrong must be alleged), and when appropriate, reframed during the course of the investigation.

4. The allegations are not compound allegations.

5. Any additional allegations arising during the course of the investigation are properly framed and fully addressed both in the investigative process and in the report of investigation.

6. The investigation properly recites and applies the law, regulation or policy.

7. The Investigating Officer considered and documented all relevant evidence, including witness testimony and documentary evidence, and presented it in the report.

8. The evidence supports the findings of fact.

9. The conclusions are based on and consistent with the findings of fact set forth in the report of investigation.

10. The Investigating Officer properly applied the preponderance of evidence standard in arriving at the conclusions.

11. The analysis in the report of investigation has a logical flow, indicates what evidence the Investigating Officer relied on, explains how he or she resolved conflicting or disputed evidence, which witnesses were more credible and why, and what evidence was more important and why.

12. The investigation is complete: it fully addresses all matters under investigation.

13. The report of investigation is stand-alone document that, without referring to supporting documents, fully addresses the matters under investigation.

14. The report of investigation presents only relevant information and is written in a logical, precise and concise fashion. In addition, the tone attests to the independence, impartiality and objectivity of the Investigating Officer, is unbiased, diplomatic and professional. The report shall not contain

any personal attacks on the complainant, Subject, witnesses, IG system, or the Service.

15. The investigation provides sufficient information to permit responsible authorities to hold subordinates accountable for their actions and to correct systemic faults.

16. Any errors or irregularities exist, and if so, their legal effects, if any.

## CHAPTER 4 REQUESTS FOR INSPECTOR GENERAL ACTION

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### **STEP 1 - Receive the Request for IG Action**

#### **0401 GENERAL.**

IG assistance is the process of receiving, inquiring into (or investigating), and responding to complaints, allegations, and requests for assistance presented or referred to an IG. The IG analyzes each request for action upon

receipt to determine the appropriate action needed to resolve it. Many of the requests received by an IG must be resolved by the chain of command or some other agency. When appropriate, IGs should remain aware of the need to protect the confidentiality of those involved in accordance with FOIA/PA.

**0402 REQUEST FOR INSPECTOR GENERAL ACTION.**

This is a complaint, allegation, or assistance request presented to an IG for resolution. An IG may receive a request directly or by referral from another IG or from outside the IG system. The request is resolved by providing assistance, referring the matter to the appropriate agency, conducting an IG investigation, or referring the case to the appropriate commander for further action outside IG channels. This process enables the IG to assist the commander in correcting injustices and eliminating conditions detrimental to the morale, efficiency, and reputation of the organization.

**0403 SUBMITTING A REQUEST FOR ASSISTANCE.**

Anyone may submit a complaint, allegation, or request for assistance to an IG. In situations where it is more appropriate for issues to be handled at the local level, IGs will encourage such complaints or requests be addressed to the local commander or the local chain of command. Incoming requests for assistance may be submitted in person, in writing, telephonically, or in any other manner.

**0404 RECORDING REQUESTS FOR IG ACTION.**

To assist in maintaining a written record of all requests for assistance, a standardized form is recommended to collect essential information. Recording action requests allows the IG to organize information gathered during the resolution of the request. A sample form is contained in Appendix A to this Manual.

**0405 IG ACTION APPEALS.**

Requesters who are not satisfied with the IG responses to their request for assistance should be advised that they may seek redress through the IG at the next higher command, up to and including the IGMC and DODIG.

**0406 SEVEN STEP PROCESS.**

This section addresses how an IG receives an action request, conducts an analysis of it, and resolves it. There are seven basic steps used in receiving and resolving requests. Following the seven steps will ensure all critical tasks are accomplished.

- STEP 1 - Receive the request
- STEP 2 - Identify the issues and develop the allegations
- STEP 3 - Acknowledge receipt of request for assistance
- STEP 4 - Conduct a preliminary analysis
- STEP 5 - Obtain the facts (inquiry or investigation)
- STEP 6 - Conduct follow-up
- STEP 7 - Close the case file

**STEP 1 - RECEIVE THE REQUEST FOR IG ACTION**

**0407 SOURCE OF THE COMPLAINT.**

Any individual or representative acting on behalf of an individual or organization can request IG action. See Chapter 3 Section 0311 for a detailed discussion of potential sources of such requests.

#### **0408 METHOD OF RECEIPT.**

As previously stated, requests may be submitted orally (in person or by telephone), by letter, or by other means. The following discusses the most prevalent methods for presenting such requests.

#### **0409 WALK-IN.**

The approach to walk-in sources of complainants should be applied, as appropriate, to all requests for IG action. The process described is an idealized one; adjustments can be made to fit specific circumstances and limitations of space, manpower, etc.

a. Screen walk-in requesters in a semiprivate area and then move them to a private room for interview. Put the individual at ease, and maintain an attitude of sincere interest throughout the interview. Afford the individual sufficient time to discuss the complaint or request and ask questions to develop pertinent facts. Carefully consider each request, but maintain control of the interview. Ask the individual, "**What do you want the IG to do?**" This focuses the complainant and helps to ensure the complaint is of Marine Corps interest and appropriate for IG action. Ask the individual making the request whether any previous actions have been taken to resolve the matter and if so, who, when, what results, etc.

b. Complete the standardized form used in your office (sample in Appendix A); this can be done by the IG or the requester.

1. The advantage of having the requester do so is that his complaint or request is accurately stated, at least from his perspective. The disadvantage is that it may not be complete or clear to another person.

2. The advantage of having the IG complete the form is that the complaint or request is more likely to be complete and clear. The disadvantage is that the requester may later disown it.

3. One solution is to have the requester complete the form initially; the IG then reviews it, providing any clarification or supplementation required.

c. Ask the individual to read and sign the Privacy Act Statement at the top of the form, as well as the statement concerning presenting false statements to an IG at the bottom of the page. Explain to the individual the IG policy on confidentiality and determine if the individual wishes to remain confidential (not usually possible if requesting assistance in a matter pertaining to that individual). On conclusion of the interview, do not make promises or commitments other than that the matter will be looked into and, when appropriate, that a response will be provided. After the requester departs, add any additional comments about the interview that may be relevant.

#### **0410 CALL-IN.**

When receiving a request for assistance over the telephone, the IG should note in writing the important facts about the request, as well as the fact that it was a telephone request. The IG should always ask the individual to submit the complaint in writing. If the individual refuses, make note of the refusal then take the complaint. In many cases, callers are presenting concerns which affect them emotionally. Requesting a follow-up request in writing allows callers to gather their thoughts and present more detailed

information. The interviewer should follow the techniques for successful interviewing outlined in Chapter 9 (Interviewing) as much as possible given the circumstances of the interview.

#### **0411 WRITE-IN.**

IGs may receive written requests for assistance or presentations of complaint. The most frequent categories are:

a. **DOD / Navy / Marine Corps / Local Hotlines.** The majority of requests for investigations come through the hotline complaint system. As the name implies these requests are received (orally or in writing) by the organization's Hotline Coordinator. The Director, Assistance and Investigations Division, IGMC, is the Hotline coordinator for the Marine Corps. The IGMC normally refers cases it receives (either directly or by referral from DODIG/NAVINSGEN) to the cognizant command for appropriate action, reply, and reporting in a specific format. DODDir 7050.1 and SECNAVINST 5370.5A provide an in-depth discussion of handling this method of presenting requests for assistance or complaints of fraud, waste, and mismanagement. Sample hotline referral letters and required format for response are contained in Appendix B of this Manual.

b. **White House Correspondence.** Referrals from the President, Vice President, or their wives are tasked through the Marine Corps White House Liaison Office (WHLO) to either the cognizant HQMC staff section (which may be the IGMC) or responsible command.

c. **SecDef / SecNav Correspondence.** A request from the Secretary of Defense or the Secretary of the Navy is normally tasked to the appropriate Headquarters Marine Corps staff section for action and response. Some are then tasked to the command most able to gather the facts and respond. At the command level, such requests may be tasked to the Command Inspector by the commander. These taskings include instructions as to the type of action requested and the desired form of reply. It is IGMC policy that all matters referred by the IGMC, in which the investigative work is done by a command, will be answered by IGMC.

d. **"Normal" correspondence.** These are letters presenting a complaint or requesting assistance which come directly to the IG from a complainant.

#### **e. Referral Correspondence**

1. **IGMC Referral.** Normally, the IGMC will refer requests for assistance directly to the level of command appropriate for resolution. The sample referral letter contained in Appendix B is used for referrals and to provide special instructions, including who makes the final response.

2. **Other IG Referral.** Referrals from other IGs, including other Services and government agencies, are normally received in writing. These requests are usually accompanied with instructions including the specific actions requested, the desired form of response, and the due date.

3. **Other agencies/ Commands.** Handle as "normal" correspondence above. Advise both the transferring agency and the complainant of the receipt.

**0412 DISCUSS PRIVACY AND CONFIDENTIALITY IMPLICATIONS OF AN INVESTIGATION.**

It may become necessary to discuss with the requester the privacy and confidentiality implications of a decision to initiate an IG investigation. Explain that if the IG office decides to initiate an investigation, a case file that is subject to the Privacy Act will be opened. If the complainant is physically present, provide the Privacy Act Statement (see Appendix A). Tell the complainant to sign one copy for the IG file and keep another for reference. If the complainant declines to sign, make a note of that fact on one copy and put it in the file. If the interview is conducted by telephone, read the statement to the complainant. Mail or fax a copy to the complainant upon request.

**0413 DISCUSS THE COMPLAINANT'S ROLE AS A WITNESS.**

If complainants who are concerned about confidentiality appear to be logical witnesses in the investigation, the IG should explain that there is a possibility they may be interviewed at the same time as other witnesses. If the complainant has requested confidentiality, the investigator may interview him again, along with others involved, to reduce the likelihood the complainant may be perceived as the original source of the complaint. To not do so may arouse suspicion. Investigators must not promise complete or absolute confidentiality because there is no way to ensure it in all circumstances.

**0414 OBTAINING WRITTEN STATEMENTS.**

In all cases it is appropriate to request the complainant provide a written statement of the allegations and supporting evidence. The writing process may assist the complainant in remembering additional pertinent facts. A written complaint is particularly useful if the matter will be referred to another organization. The IG investigator should also consider whether to ask the complainant to provide a sworn statement. If the complainant agrees to give a statement, the interviewer should take it at that time to avoid the possibility the complainant may subsequently decline to make a statement. Should the complainant decline to give a sworn statement, take an unsworn statement and make an MFR noting the declination.

**0415 DO NOT PROMISE AN INVESTIGATION.**

The IG investigator should not make any promises or commitments about the action that will be taken, other than that the complaint will be looked into and, when appropriate, that a response will be provided to the complainant.

**0416 WRITING UP THE INTERVIEW.**

After the interview is completed, the IG investigator should write a results of interview report if a case file will be opened in connection with the complaint. If a case file will not be opened, the notes may be destroyed.

**0417 EFFECT OF ESTABLISHING A CASE FILE.**

During the course of the initial interview, the complainant and interviewer may conclude the matter does not warrant an IG investigation. Since there is no legal requirement to maintain any record of the call or visit, the investigator has the option to destroy any notes that have been made, and no official record of the visit will exist. Once a case is opened, an official government record is created, and it must be maintained in accordance with the laws and regulations applicable to federal records (See Chapter 10). It is subject to review by government officials who have a need to know its contents, and is subject to release in accordance with the Freedom of Information and Privacy Acts (Chapter 10). It is also subject to release in litigation. Thus, the decision to open a case file could adversely impact the

privacy and reputation of people identified in it. **Most of the time, the interviewer should open a case file, even if only to document the existence of the complaint for future reference.**

**0418 WHEN NOT TO OPEN A CASE FILE.**

Circumstances which may justify not opening a case file include those instances where, after discussing the case, the IG investigator and the complainant agree there is no basis for IG action. This may occur when the investigator can demonstrate to the complainant that the conduct described is not improper under applicable laws or regulations, and therefore a complaint would be frivolous. It also may occur when the complainant and investigator agree that matter should be handled by another organization and that the complainant will take the matter there directly.

**Table 0418.1: MATTERS THAT MAY NOT WARRANT IG INVESTIGATION**

Type of Complaint:	Referral Agency:
Administrative Separations	Refer to local Admin Offices or MMOA/MMEA
Allegations against Military Defense Counsel	Refer to Chief Circuit Defense Counsel
Allegations of homosexual conduct	Refer to Command
Allegations of reprisal by DoD contractors	Refer to IG DoD
Allegations regarding non-USMC organizations or agencies	Refer to specific agency or Service IG or Defense Hotline
Anti-Deficiency Act violations	Refer to SJA
Appeal of FITREP	Refer to BCNR
Appropriated Fund employees—Conditions of employment (personnel policies, practices, and matters affecting working conditions); or EEO issues (discrimination based on age, race, color, sex, religion, disability, or national origin); or reprisal against a civil service employee.	Refer to the servicing Civilian Human Resources Office (HRO) for action in accordance with civilian grievance system (either Administrative or Negotiated procedures IAW locally negotiated agreements. Equal Opportunity Complaints should be referred to the EO Office for processing.
Article 138, UCMJ (Complaint of Wrong)	Refer to legal channels
Article 15 (NJP), Letters of Reprimand or Censure (other than discrimination/ reprisal)	Refer to chain of command or Area Defense Counsel, or HQMC JAM
Assignment Matters USMC Reserve	Refer to MARFORRES
Assignment Matters USMC	Refer to MMEA/MMOA
Change to Instructions/Regulation or current policies	Refer to appropriate HQMC agency
Claims against the government	Refer to SJA
Command-Directed Investigations (CDI)	Refer to Command for CDI process issues, refer to chain of command or ADC for CDI corrective actions.
Contracting Issues	Refer to issuing contract unit or HQMC INL?
Correction of Military Records	Refer to BCNR
Elimination from Training	Refer to Training Command
Equal Opportunity Off-Base Housing	Refer to local Housing Office
Hazardous Working Conditions (unsafe or unhealthy)	Refer to Safety channels
Landlord or tenant disputes	Refer to Command
Medical treatment	Refer to USN Health Services
Military Equal Opportunity and Treatment Issues	Refer to local Military Equal Opportunity Office
Misuse or abuse of government vehicles	Refer to Command
Non-Appropriated Fund (NAF) employee conditions of employment issues or reprisal	Servicing NAF Employment Office (conditions of employment) or the IG, DoD for reprisal allegations.
Punishment under UCMJ	Refer to Area Defense Counsel or HQMC JAM
Re-Enlistment Matters USMC	Refer to MMEA
Suggestions	Refer to local command or appropriate agency
(continued next page)	

<b>Type of Complaint: (continued)</b>	<b>Referral Agency: (continued)</b>
Support of Dependents and Private Indebtedness	Refer to subject's Commander or DFAS
Tri-Care Complaints	Refer to Tri-Care Benefits Services Office
Unprofessional Relationships/ Adultery	Refer to Command

**Table 0418.2 How to Refer a Complaint**

<b>Step</b>	<b>Action</b>
1.	Using complaint analysis, determine if the complaint could be handled in other channels.
2.	Refer the complaint in writing to the appropriate agency and notify the complainant, in writing (if possible) of the referral
3.	If appropriate, ask the referral agency to provide you a copy of any closure response to the complainant for your case file. <b>(NOTE)</b>
4.	Document the case in local files as a "Referral", and close the case at your level.

**0419 OPENING A CASE FILE TO PROTECT THE COMPLAINANT.**

If the complainant agrees to take the matter to the chain of command, the investigator should consider opening a case file for record purposes in order to protect the complainant in the event of reprisal. A case file may be opened up at the request of the complainant who fears reprisal, or in any other case where it would be prudent to be able to establish the date and nature of the complainant's disclosure.

**0420 OPENING OR CONTINUING A CASE OVER A COMPLAINANT'S OBJECTIONS.**

Once a complainant has made contact with an IG organization, he has started an official government process. Consequently, complainants have no right to insist that a case file not be opened on a matter. Nor do they have the right to "withdraw" the complaint during an investigation and demand that an investigation be closed at that point. Such decisions are made by the IG organization. One exception is the situation where complainants are willing to state in writing that they withdraw their complaints as erroneous.

**STEP 2 - IDENTIFY THE ISSUES AND DEVELOP THE ALLEGATIONS**

**0421 DETERMINE TYPE OF CASE.**

Determine whether the complaint is an allegation, a request for assistance, or a combination. It is the responsibility of the IG to identify what assistance is requested and what (if any) allegations and issues have been presented, even though some matters may not be appropriate for IG action. This is the process of reviewing to determine whether the facts presented would provide the basis, or potential basis, for a decision to take corrective, remedial, or disciplinary action. This analysis begins during the initial contact with the complainant. It continues after the interview is completed, in order for the investigator to determine whether to open a case file, and what referrals, if any, may be necessary. If the issues still remain unclear, subsequent written or oral communication with the complainant may be required to clarify them. Sections 0422 through 0425 below apply to complaints that are determined to be or to contain allegations.

**Table 0421.1 How to Conduct a Complaint Clarification**

Step	Action
1.	Find a private location if the complaint is made in person.
2.	Find out if the complaint was filed with another agency/individual.
3.	If the complainant has not talked to their supervisor or commander via the chain of command, find out why. Unless the circumstances warrant otherwise, encourage the complainant to attempt resolution in supervisory or command channels first. Explain why this is the preferred approach (faster resolution, command has the authority to remedy the situation, etc.). Explain that, if the matter is clearly a command issue and not within the purview of the IG, the complaint could be referred to command channels regardless of the desires of the complainant.
4.	Determine if the individual has sought assistance from an appropriate source for the information (for example, family services, finance or military equal opportunity office). Refer them to that source if they have not.
5.	If it has been an extended period of time since the complainant learned of the alleged wrong, tell them the complaint may be difficult or impossible to investigate. Explain that the complaints are reviewed on a case-by-case basis and the length of time since the alleged event can seriously impede the effectiveness of an investigation. Ask the complainant why they delayed in filing the complaint and if there were any compelling circumstances.
6.	Ask the complainant to clarify their allegations, as necessary. Generally, a statement of fact must identify the nature and substance of the alleged wrong with sufficient detail and facts to enable the IG to ascertain what potential violations may have been committed. The complainant should also identify sources (for example, the documents or names of witnesses who can corroborate the allegations); the date; and the act or condition that occurred or existed at that date. If the complainants allege reprisal, explain to them the whistleblower protection afforded by 10 U.S.C 1034, that <b>you (or any IG representative) can extend that protection</b> without any further request to IG, DoD. Refer all Whistleblower Reprisal cases to IGMC.
7.	Ask the complainant what remedy they are seeking.
8.	Explain the steps involved in processing an IG complaint and/or conducting an investigation
9.	Inform the individual when you expect to get back to them (normally this will be an interim reply).

**Table 0421.2 Processing Complaints.**

	Action
1.	Document the complaint appropriately in local case files.
2.	Contact complainant in writing, by telephone, or in person within 5 duty days to acknowledge receipt (unless received directly from complainant). Provide interim updates 60 days after receipt of the complaint and every 60 days thereafter until a final response is provided.

**Table 0421.3 How to Assist a Complainant**

Step	Action
1.	Discuss concerns/issues with the complainant.
2.	Determine if the complaint can be appropriately handled through assistance.
3.	Advise the complainant that their complaint is not an IG matter but that you can assist them in resolving their concerns.
4.	Make phone calls or other contacts to provide the complainant with the assistance they need.
5.	Ensure the complainant's concerns are being addressed by the appropriate authority/agency.
6.	Document the case in local files as an "Assist" and close the case.

**0422 ELEMENTS OF AN ALLEGATION.**

Carefully analyze the complaint for any allegations. There are three elements to an allegation: (1) who? (2) did what? (3) in violation of what standard? Additionally, IGs should also look for the larger issues, systemic problems, implied allegations, and any condoning of wrongdoing.

**0423 DETERMINE STANDARDS VIOLATED.**

The standards used usually fall into three categories: (1) violations of regulatory guidance; (2) violations of law (UCMJ, Federal, state, and local) and regulation; and (3) violations of established policy, SOPs, etc.

**0424 DRAFTING THE ALLEGATIONS.**

Once the issues have been identified, they should be written as allegations to be investigated. Consider the following:

a. Investigators should not rely on the complainant's description or characterization of the facts, but should formulate their own statements of the allegations.

b. An allegation to be investigated should be expressed in neutral, non-emotional terms. It should be formulated in such manner that substantiation of the allegation (a "yes" answer to the question "did this happen?") demonstrates there has been some form of impropriety.

c. In general, the allegation should be worded in the following manner: someone (the subject) did, or failed to do, something (the act or omission), and such act or omission was improper (the wrongdoing) because it violated some standard (the law, rule, regulation, directive, instruction, notice, or policy).

**0425 DETERMINE IG APPROPRIATENESS.**

Determine whether the issue is appropriate for IG involvement. As a general rule, serious criminal allegations and issues which have other means of redress (eg, fitreps, NJP) are inappropriate for IG action. See Chapter 3, Sections 0307 and 0309, of this Manual for a detailed discussion of matters both appropriate and inappropriate for IG action.

a. Appropriate for IG Involvement. Handle such requests in accordance with the guidelines contained in this Manual. The general rule is to refer allegations to the lowest level able to perform an investigation that will be thorough and impartial, in fact as well as appearance.

b. Referral to the chain of command. Many allegations and requests for assistance are best handled within the chain of command. Where appropriate, the IG should refer matters to the chain of command and provide oversight by requiring a closing response upon resolution of the case.

c. The issue is not related to the Marine Corps. In those cases, the individual should be advised and assisted concerning the appropriate agency to address the problem. Follow-up may be appropriate.

d. No additional action required. At some point the investigator may realize that some or all of the allegations simply do not warrant any form of action. IGs do not have sufficient resources to go on "fishing expeditions".

### **STEP 3 - ACKNOWLEDGE RECEIPT OF THE REQUEST**

#### **0426 GENERAL.**

Whenever practical, IGs should acknowledge receipt of requests for action. Acknowledgment may be oral or in writing, formal or informal. The acknowledgment may indicate when the requester can expect a final response. Appendix B contains sample acknowledgments, which should be modified to fit the specifics of the case. Every request for assistance will result in a response to the requester, unless anonymous. Additionally, the following guidance is provided:

a. Requests which are received orally may be acknowledged at that time, but a written record of the acknowledgment should be made in the case file. Anonymous requests/complaints generally cannot be acknowledged.

b. When acknowledging receipt of a request, the IG may inform the complainant that he will be informed only of those results of the action which affect him personally.

c. Acknowledge requests referred to your office from another IG (except those received from the IGMC, unless notified otherwise).

d. There is no need to acknowledge receipt of information copies of letters addressed to other agencies, unless action is deemed necessary.

e. Provide an interim response to requesters when the final response will be delayed beyond the time indicated in the acknowledgment.

#### **0427 THIRD PARTY REQUESTS.**

Third Party Letters (those sent on behalf of the service member) may have been submitted without the knowledge of the service member. To ensure the service member's rights to privacy are protected, the IG should attempt to obtain a Privacy Act Release Authorization from the service member prior to providing any Privacy Act information in response to such requests. Without such authorization the IG must be careful not to release information protected by the Privacy Act to third parties.

#### **0428 CONGRESSIONAL INTERVENTION.**

On occasion, an individual asks an IG for assistance at the same time he seeks help from a Member of Congress. Once a Member of Congress intervenes on behalf of the complainant, the final response should be provided to the Member of Congress not to the complainant. In this case the IG should inform the complainant that the IG will respond via the Member of Congress and not directly.

### **STEP 4 - CONDUCT A PRELIMINARY ANALYSIS**

#### **0429 GENERAL.**

The Preliminary Analysis (PA) is a thought process used by an IG to determine how best to proceed. This process helps to clarify issues, refine allegations, and develop a plan of action. It also helps the IG determine who should resolve the problem and how it can be resolved. The PA is the beginning of a process which may result in several courses of action for the IG. The PA flows into the remainder of the investigative process.

#### **0430 COURSES OF IG ACTION.**

After determining the issues to be addressed, the IG may provide assistance, conduct an inquiry or investigation, refer the case to another IG or agency, or recommend a follow-on investigation (using another investigative process; eg, commander's inquiry, JAGMAN, NCIS/CID, etc).

a. If the IG determines that help (assistance) is requested, then assistance should be provided. It is important to remember that individuals who request IG investigations may not be aware of alternative methods for dealing with the matter in question. When appropriate, the interviewer and complainant should discuss whether avenues of relief other than an IG investigation are available and more appropriate. Properly viewed, IG intervention is an alternative to the chain of command reserved for those cases where the chain of command can not or will not address the problem, or where the complainant fears reprisal. Referral to another agency usually means the IG will need to follow up to determine if appropriate action has been taken.

b. If the IG determines that the request cannot be resolved by providing assistance, he must determine the action necessary to resolve the issues by either referral or investigation.

#### **0431 CRIMINAL VS NON-CRIMINAL MISCONDUCT.**

After developing the allegations, the IG should determine if criminal or non-criminal misconduct appears to be involved. The SJA, as well as IGMC's legal counsel, can assist in this decision. Depending upon the seriousness of the alleged misconduct, the IG may recommend that the commander refer the case to NCIS or CID, initiate an Article 32 investigation or preliminary inquiry under Rule of courts-martial 303, or direct an IG investigation be conducted. If the matter is not referred for criminal investigation, the IG should identify and collect evidence which could easily corroborate or refute the allegations. At this point, you will have either disposed of the issues or concluded they are proper for continued IG involvement.

#### **0432 FACTORS INFLUENCING THE IG DECISION.**

If the issues are appropriate for continued IG involvement, the IG is now at the point of deciding what sort of investigative effort is required. Factors influencing the decision to choose an IG inquiry or more formal investigation

include: the sensitivity of the issues; the degree of formal reporting requirements to higher command or outside organizations; and the amount of potential outside (including media) interest. Use the following table when the decision to dismiss a complaint is considered.

**Table 0432.1 Guide for When to Dismiss a Complaint**

	<b>Considerations: IF...</b>	<b>and...</b>	<b>THEN...</b>
1.	If complaint analysis discloses the complaint is frivolous in that there is no recognizable wrong, or violation of the law, regulation, or policy		Dismiss the complaint. <b>(Note 1)</b>
2.	The complaint analysis discloses a matter within the IG's purview, but the amount of time that has elapsed is such that there is little or no potential to determine the facts and circumstances surrounding the alleged wrongdoing	There are no extra-ordinary circumstances justifying the inquiry or special Marine Corps interest in the matters alleged.	Dismiss the complaint.
3.	The complainant has not provided sufficient information to properly conduct the complaint analysis.		Dismiss the complaint.
4.	The complainant files a complaint under that is already the subject of investigation by an alternative investigative agencies or venues.	The complaint addresses the same matter addressed in the IG complaint.	Dismiss the complaint. <b>(Note 2)</b>
5.	The complaint analysis discloses a matter within the IG's purview, but The allegations have already been investigated and reviewed by higher level IG office.	The complainant provides <b>no</b> new evidence or information that justifies further investigation.	Dismiss the complaint.

**NOTES:**

1. Generally, a complaint is **not frivolous** if it pertains to Marine Corps personnel, organization, program, or policy and identifies a violation of law, regulation, policy, or procedure.
2. Examples of alternative investigative agencies or venues are: NCIS, CID, Command Investigation (JAGMAN), and ARTICLE 138 UCMJ, EEOC (Civilian), EO (Military), Merit Protection (Civilian).

**Table 0432.2 Guide on How to Dismiss a Complaint**

<b>Step</b>	<b>Action</b>
1.	Using complaint analysis, determine if the complaint should be dismissed.
2.	Notify the complainant, in writing (if possible) of the dismissal ensuring the rationale for the dismissal is clearly communicated.
3.	Document the case in local files as a "Dismissal" and close the case.

**STEP 5 - OBTAIN THE FACTS**

**0433 GENERAL.**

If the preliminary analysis has resulted in a decision to conduct an inquiry or investigation, see Chapter 5 for a detailed discussion of investigation procedures.

## STEP 6 - CONDUCT FOLLOW-UP

### 0434 GENERAL.

Do not close a case until all of the issues have been thoroughly addressed and the complainant's problem is solved or until you are satisfied the complainant has received fair and just treatment. This includes follow-up on any needed corrective action. You may personally conduct the follow-up or refer the issue for inclusion in a future inspection. The IG may even ask the complainant to inform him of the results of the assistance provided by other agencies. In this instance, you might keep the file open even though you have provided a final reply to the complainant.

## STEP 7 - CLOSE THE CASE

### 0435 GENERAL.

Closing a case consists of (1) providing the complainant a final reply which briefly relates the conclusion regarding each allegation; (2) making the appropriate reports; (3) closing the file; and (4) analyzing any trends which may be developing. Note: The complainant has no right to know the details of allegations which do not pertain to him directly; he can be told that his allegations were or were not substantiated and, if substantiated, that appropriate action has been or will be taken (more detail can be provided in some issues which pertain personally to the complainant). The Privacy Act rights of other persons involved (witnesses as well as subject) take precedence over the complainant's curiosity. The complainant can be advised that further information may be requested using FOIA procedures, although there is no requirement to so advise him.

### 0436 FINAL REPLIES.

Every request for assistance will result in a final response to the requester, unless anonymous. Final replies should be prepared after consideration of the following:

a. **"Normal" Correspondence.** The final reply to the complainant may be made orally or in writing. It should be sufficiently detailed so that the complainant understands the facts surrounding each allegation which directly involves him. The response should be helpful and understanding, reflect established policies, express appreciation, and state that corrective actions have been taken, if appropriate. The response should not contain classified information, information from agencies outside of the Marine Corps (or the command represented by a Command Inspector), Privacy Act information about other people, unconfirmed or speculative information, or information release of which could involve a breach of faith or violate a moral obligation to keep a confidence.

b. **Presidential and Congressional Correspondence.** Matters referred to the IGMC will be responded to by the IGMC. If the IGMC forwards the matter to a command or activity for the purpose of gathering pertinent information, the IGMC will still provide the final response on such correspondence. If such correspondence is forwarded directly to a command, the command may provide the response in accordance with current directives. In these cases, there is no need to refer the matter to the IGMC for response or information, unless the subject matter is of interest to the IGMC. Responses should be fully responsive to the original request.

### 0437 MAKE APPROPRIATE REPORTS.

See Chapter 6 of this Manual for discussion of proper reporting requirements.

**0438 CLOSE THE FILE.**

Ensure that all relevant documents, including memorandums and collected evidence, are present. Review completed actions to ensure all allegations and other issues have been appropriately addressed.

**0439 CASE ANALYSIS.**

The final process in the closing of a case is analyzing trends which may be developing. The objectives are to identify trends that affect the command, to identify and correct systemic problems or potential problem areas, and to provide the commander and staff with information and insight for their use in improving the command. Some guidelines are as follows:

a. Do not compare units. Start the analysis with major categories and work down to sub-categories. Look for "good news" as well as bad; be observant for seasonal aberrations.

b. A high level of not substantiated allegations may indicate areas that require more information or training. Look at allegations most frequently substantiated in addition to allegations most frequently received.

c. Do not be misled by small numbers -- they can hide significant problems (e.g., sexual harassment and racial discrimination).

CHAPTER 5 THE IG INQUIRY OR INVESTIGATION

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**0501 OVERVIEW.**

As a result of Step #2 of the IGAR process, the Directing Authority may determine the requirement for an IG investigation. This Chapter addresses the IG investigative effort, which is Step #5 of the IGAR process (See Chapter 4).

**0502 INTRODUCTION.**

As stated in Chapter 3, an "IG investigation" is a detailed fact-finding examination into allegations, issues, or adverse conditions to provide the directing authority (decision-maker) a sound basis for decision or action. Such investigations involve the systematic collection and examination of testimony and documents, and result in a formal Report of Investigation.

a. An "IG inquiry" is a less formal fact-finding process followed by IGMC/Command Inspectors to gather information needed to respond to a requester seeking assistance, or to resolve allegations of misconduct or other issues when investigative techniques are appropriate but circumstances do not merit the conduct of an "IG investigation". As part of Step #2 of the IGAR process (Paragraph #0425 - Determine IG Appropriateness), a preliminary inquiry (PI) is often used to determine if an allegation(s) has/have investigative merit; if yes, what agency should have investigative control; and, if retained by the IG, whether the case will be conducted as an inquiry or investigation. The amount of detail in an "IG inquiry" is determined by the nature or complexity of the issue; it may be as simple as a couple of phone calls and a Memorandum for the Record.

b. "Investigation" and "inquiry" are two ends of a continuum; investigative efforts may fit anywhere along the spectrum. This chapter will provide guidance for conducting an investigation. If tasked with conducting an inquiry and the investigator determines that a less formal inquiry will suffice, he may omit some of the administrative and procedural steps. **The basic requirements, however, apply to any IG investigative effort: independence, accuracy and completeness, protection of the rights and privacy of those involved, and a determination of the facts to allow a decision-maker to act.**

#### **0503 CHARACTERISTICS OF AN IG INQUIRY.**

The following are the main characteristics of an inquiry:

a. The amount of detail in an inquiry is determined by the nature and complexity of the issues. The inquiry may consist of a couple phone calls, or be a detailed collection of facts.

b. A formal directive from the directing authority is not required for an IG to initiate an inquiry.

c. The allegations generally involve less sensitive or less complex matters.

d. The IG inquiry is a flexible and fluid process which has no mandatory steps.

e. Inquiries will not normally include sworn testimony or recorded statements. As an exception, the complainant may be sworn as you may not know at the time you talk to the complainant whether you will conduct an inquiry or an investigation. It may also be necessary, on occasion, to record statements to enable you to gain a thorough understanding of a system or process, or technical terminology.

#### **0504 THE IG INVESTIGATION.**

The IG investigation is a formal process designed specifically to look into allegations of wrongdoing. It builds upon the preliminary analysis and any inquiry conducted and is used to respond to serious, sensitive, or complex allegations or other matters as deemed appropriate by the commander. All steps and procedures in the inquiry can be used in the IG investigation; conversely, any investigation step can be used during an inquiry. The following facts describe the IG investigation and highlight major differences between the investigation and inquiry:

a. An IG investigation is a formal fact-finding process.

b. Most of the interviews are sworn and may be recorded.

c. IG investigations tend to be concerned with more serious, sensitive, or complex matters.

d. The authority to conduct an IG investigation is a formal directive.

e. There is a prescribed Report of Investigation (ROI) format.

#### **0505 SPECIAL CATEGORY CASES.**

Generally, the special category cases listed below have special reporting and timeliness requirements:

a. **Senior Official Allegations.** See Chapter 11 Section 1127 of this Manual for further discussion. These allegations must be reported to the IGMC. They will be investigated by the IGMC or DODIG, as appropriate.

b. **Post-Employment Violations.** Allegations concerning 18 USC 207(a), (b), or (c), Post-Employment Violations, should be reported to the IGMC. If an investigation is required, usually the major command involved will be requested to conduct the investigation and will be furnished specific guidance by the IGMC.

c. **Whistleblower Reprisal Cases.** See Chapter 11 Sections 1102 through 1111 of this Manual for further discussion. Military complainants must be advised of their option to file such complaints with the DODIG; Command Inspectors and the IGMC are not authorized to investigate such complaints by appropriated civilian employees. The Office of Special Counsel will conduct these investigations.

#### **0506 CONDUCT OF THE INVESTIGATION.**

The IG investigation is often preceded by a preliminary inquiry. If during the course of a preliminary inquiry the IG believes an investigation is the most appropriate way to proceed, he should seek a directive. In some cases, the IG may decide that an IG investigation is appropriate immediately upon receipt of an allegation. If the IG has not done a preliminary inquiry prior to deciding to conduct an IG investigation, he should go through the "analysis of the allegations" step to determine the allegations and issues in order to prepare the directive. Remember that evidence correctly gathered during the preliminary analysis and/or preliminary inquiry can be used for the investigation.

### **PART ONE - SEQUENCE OF THE INVESTIGATION**

#### **0507 OVERVIEW.**

The investigative process in this section is arranged in the sequence in which events normally would occur or be accomplished. Following the steps listed below will assist the investigator to organize his thoughts, keep the investigation on track, and ensure that a complete and thoroughly professional investigative product is presented to the directing authority:

- a. Obtain a formal directive.
- b. Notify commander and subject.
- c. Plan the investigation.
- d. Notify the witnesses.
- e. Gather and evaluate the evidence (interview witnesses, obtain documents).
- f. Write the report and obtain the Commander's Approval.

g. Notify commander, subject, and complainant of the results of investigation.

#### **STEP 1 - OBTAIN A FORMAL DIRECTIVE**

##### **0508 PREPARE AN ACTION MEMORANDUM.**

After the IG determines that an investigation should be conducted, he should prepare an action memorandum which provides to the directing authority a brief background of how the allegations were received, who made the allegations, and whom they are against. It defines the scope and limits of what should be investigated and may even contain a summary of the IG inquiry. The action memorandum forwards a directive for signature. As a document prepared in conjunction with an IG investigation, it is protected from release under the FOIA. There is no specific format for an action memorandum, unless one is specified by the local commander.

##### **0509 DIRECTIVE FOR INVESTIGATION.**

Normally, the IG prepares the directive for investigation which will be the authority to investigate the specific allegations outlined in the action memorandum. While the action memorandum is very specific, the directive is very general. In fact, the names of individuals involved and the precise nature of the allegations are not disclosed. The directive is prepared by the IG, signed by the directing authority, and addressed back to the directing authority's IG. If the initial directive is issued orally, write a memorandum for record (MFR) which outlines the specific instructions issued should be written. A sample directive for investigation is contained in Appendix B to this Manual.

##### **0510 PURPOSE OF THE DIRECTIVE.**

While containing no specifics, the directive defines the scope and limits of investigation. This assures that there is a clear, mutual understanding between the IG and directing authority concerning what should be investigated. It also provides the IG authority to require the presence of persons at interviews, and the authority to secure documents and other pertinent evidence. The directive also protects the IG against civil liability by providing a historical record of authority to investigate.

##### **0511 DIRECTIVE AUTHORITY.**

At the command level, an IG investigation may be directed by any commander who is authorized a Command Inspector. A deputy commander may sign the directive over his own signature block when so authorized by the commander. However, it is not intended that an assistant division commander or chief of staff have the authority to direct an IG investigation, unless the commander is absent.

##### **0512 AUTHORITY TO TERMINATE AN INVESTIGATION.**

Only the directing authority or higher authority can stop an IG investigation in progress. The most common reason for an IG investigation is terminated early because the decision is made, normally on the recommendation of the investigator, that the issues involved are more appropriate for a criminal investigation or other action; see Section 0575 for handling a complainant who wishes to withdraw his complaint. When an investigation is stopped prior to its completion, the IG should prepare an abbreviated report of investigation or memorandum for record which states the investigative effort to date and any findings, the reason for termination and who directed it. The IG should also notify the

commander and the subject who were notified of the initiation of the investigation (see Section 0513-0517), telling them of the disposition of the case and any findings, if appropriate; as an alternate course of action, the IG may wait until completion of the follow-on action before making final notifications.

## **STEP 2 - COMMAND NOTIFICATIONS**

### **0513 GENERAL CONSIDERATIONS.**

After obtaining a formal directive for investigation, the investigator should notify appropriate persons of the investigation. Assuming that limited evidence has already been obtained through a preliminary inquiry, the notification process is intended to be accomplished prior to contacting any new witnesses or further gathering of evidence. Invasion of privacy, damage to reputation, and the risk of compromising an investigation are important factors to be weighed when deciding who should be notified of an investigation and when. The notification process may serve to minimize speculation, the likelihood of deliberate or inadvertent interference, or the concealment of evidence, and allows the investigator to set the ground rules for the conduct of the investigation. Notifications should be made in the following sequence:

- A. Chain of Command
- B. Complainants
- C. Subjects

### **0514 CHAIN OF COMMAND.**

Notification of involved organizational commanders helps to ensure their cooperation and understanding. Normally, at least the first commander/supervisor in the chain of command of the individual being investigated should be notified. Use the sample notifications at Appendix A to make these notifications. The IG, the directing authority, or someone designated by the directing authority may make these notifications. Unless there is a specific need to conceal the existence of the investigation from senior officials in the command, courtesy and professionalism dictate they be notified before the first witness in their organization is contacted.

a. Each investigation requires the assistance of one or more involved commands. If the initial notice is oral, the investigative file should document who was contacted. A personal courtesy visit early in the investigation is also helpful to establish good rapport. If there is an IG organization attached to the command, the investigator could choose to make the notification through that office.

b. During a courtesy visit, the investigator may choose to advise the command of only the general nature of the allegations; this protects the command as well as the integrity of the investigation. For the same reason, the command normally should not be apprised of the complainant's identity, unless the case file clearly shows the complainant has agreed to permit such action. It is appropriate to remind command officials not to discuss the investigation with others, especially witnesses, and to be careful to avoid any action that might be construed as reprisal for initiating or cooperating with the investigation.

c. The investigator may visit organizations or staff sections to obtain information and interview witnesses when there are no individuals in that organization who have allegations against them. The commanders of these

organizations should be notified of the investigation. However, only the general information contained in the directive need be provided.

d. Higher commands are not routinely notified of IG investigations. The decision to notify higher commands of the investigation is based on the nature of the investigation; the rank, grade, or position of the persons being investigated; or the request of higher headquarters.

**0515 COMPLAINANTS.**

Complainants should be notified as soon as the decision to conduct an investigation is made. This alleviates concerns that no one is looking into the matter, and reduces the likelihood of multiple investigations of the same issue. Complainants may be told they will be advised of the general results of the investigation upon its conclusion. If the notification is oral, the file should document how it was done. Complainants should also be informed if the IG office decides no investigation is appropriate. Complainants need not be provided status reports, but there is nothing wrong with advising them that an investigation is still in progress or of the expected time for its completion.

**0516 SUBJECTS.**

Always notify the individuals against whom the allegations are made; failure to do so may jeopardize their due process rights. Notification of the subject allows for the opportunity to seek appropriate legal counsel. In most cases, subjects become aware they are being investigated during the course of an investigation, and notice may become necessary to prevent them from interfering with the investigation. Moreover, subjects against whom credible derogatory information is developed must be provided an opportunity to comment on that information, usually during the subject interview. Normally the subject is notified at the time the investigation is opened; see Chapter 9 Section 0926 for discussion of circumstances when other timing is appropriate.

a. **Who Makes the Notification.** Normally the investigator makes the notification; in some cases, depending on the rank of the person the allegations are against and on the nature of the allegations, it may be someone else. The advantage of the investigator making the notification is that it gives the investigator the opportunity to begin to develop a rapport with the subject. The investigator may also be able to anticipate from this conversation whether the subject will be cooperative and to prepare themselves accordingly. Experience has shown that telephone notification is best. Face-to-face notifications can be very difficult to control and needlessly disruptive to the organization at which the notification is made. When notifying a subject, the investigator should simply restate the allegations as given in the directive and avoid discussion concerning the facts surrounding the allegations. Notification memorandums should not be sent or given to the subject.

b. **What to Tell the Subject.** An IG investigation is not an adversarial proceeding. Therefore, the IG should not notify the subject of the specific allegations at the time of notification, but should inform him of the information contained in the directive. Under most circumstances, the investigator will inform the subject of the specific allegations at the time of interview. Subjects who are not officially informed of the existence and nature of an investigation involving them before they learn about it from unofficial sources may become upset, regard the investigation as unprofessional, exhibit resentment during the interview, or otherwise

interfere with the investigation. Usually, subjects are interviewed near the end of the evidence gathering stage of an investigation, after the investigator has interviewed everyone else believed to have pertinent information about the case.

**0517 USE OF IG CHANNELS.**

IG channels are frequently used to assist during an IG inquiry or investigation. Use judgment when discussing the investigation with another IG to reduce the possibility of breach of confidence. The rule usually followed for IG-to-IG information flow is "need-to-know". Some of the tasks typically asked of another IG are:

- a. Notify his commander of the investigation.
- b. Notify witnesses, schedule interviews, and arrange locations for interviews.
- c. Assist with lodging and transportation requirements and with administrative support.
- d. Assist in gathering documents and other physical evidence.
- e. Assist with interviews as part of the interview team. Assist by giving the oath and off-tape read-in/out to a witness or by conducting the interview.

**STEP 3- THE INVESTIGATIVE PLAN**

**0518 PURPOSE OF THE INVESTIGATIVE PLAN.**

The investigative plan is an outline of how the investigator intends to carry out the investigation in order to obtain the facts necessary to enable responsible authorities to make appropriate decisions. It serves as a checklist to ensure all necessary points are covered in an efficient manner.

**0519 REQUIREMENT FOR INVESTIGATIVE PLAN.**

Every investigation is conducted in accordance with some plan. Poor planning not only wastes resources, it diminishes the credibility of the investigator and the IG organization. Therefore, every investigator should make a conscious effort to devise an effective, efficient investigative plan. The plan need not be elaborate or formal. In simple cases, it need be no more than a statement of the allegations and a list of the witnesses to be interviewed about each allegation.

**0520 ELEMENTS OF A GOOD PLAN.**

More complicated investigations require more comprehensive and detailed investigative plans. Some of the items that may appear in a good investigative plan include:

- (1) contact list
- (2) notification list
- (3) background information
- (4) allegations list
- (5) outline of proof, including legal theory and evidence required for each allegation
- (6) witness and document lists
- (7) interview sequence plan
- (8) chronology of events
- (9) logistical information. A brief discussion of each follows.

**0521 THE CONTACT LIST.**

This section of the plan identifies every person the investigator intends to contact in connection with each allegation to be investigated. The list should contain the name, title, rank or grade, address, phone number, and other pertinent information, including relationship to the investigation, of each person. The contact list usually grows as the investigation proceeds. In addition to complainants, subjects, and witnesses, the list should include cognizant commanders or other points of contact within the subject command, available legal assistance, and technical experts. The contact list facilitates contact efforts during the investigation, and makes it easy to prepare the list of "persons interviewed" when writing the report. It can also be used as a method to keep track of who has been notified of the existence of the investigation.

**0522 NOTIFICATION LIST.**

Often a part of the contact list, the notification list should include the name of everyone who has been, or should be, told an IG investigation is taking place, and the dates of notification. Many of these people will be notified only at the time of their interview. It may also include a list of every person the complainant has identified as having knowledge of the allegations or the complainant's intent to contact to request an IG investigation. People who should be considered for notification include:

- (1) complainants
- (2) responsible authorities and convening authorities
- (3) commanders
- (4) subjects
- (5) witnesses

**0523 BACKGROUND INFORMATION.**

This part of the plan may be used to explain how the allegations were received and to highlight information about the complainant's willingness to be identified with the allegations. It should contain any information about previous investigations of similar allegations requested by the complainant, and related previous investigations of the allegations, the subjects, or the subject command. In simple cases, information that would appear in other sections, such as applicable laws or regulations, may be included here.

**0524 ALLEGATION LIST.**

Every allegation made by the complainant should be set forth in this section. Those allegations the investigator has decided not to investigate, or to refer elsewhere for action, should be included, with an explanation for that decision. Other allegations the investigator believes warrant investigation based on the facts presented by the complainant, or facts developed during the course of the investigation, should also be included, with a statement as to whether they will be addressed in this investigation, deferred for later action, or referred to another organization.

**0525 OUTLINE OF PROOF.**

An outline of proof necessary to substantiate each allegation should be prepared in more complex cases. Each outline should start with a statement of the allegation as framed by the investigator. It should also include a list of applicable standards and how they apply, the facts necessary to prove or disprove the allegation given the applicable legal theory, the likely sources of those facts (complainant/ witness/subject interviews, documents), and the

standard of proof (preponderance of the credible evidence) required to sustain the allegation.

#### **0526 WITNESS AND DOCUMENT LIST.**

The sources of facts in the outline of proof will lead to the creation of a witness list and a document list for each allegation. These witness and document lists can then be reviewed to create the list of allegations and documents to be discussed with each witness. These lists may be used when making the outline for witness interviews and document collection.

#### **0527 INTERVIEW SEQUENCE PLAN.**

The witness and document lists can be reviewed to determine which witnesses it will be necessary to interview, which allegations should be disorder in which they should be interviewed. **As a general rule, start with the complainant and end with the subject.** After the complainant, consider starting with collateral witnesses outside the command to minimize the embarrassment to the subject and disruption to the command should you make an early determination the allegations are unfounded. Remember to include those witnesses who may have information relevant to the allegations under investigation, whether they are likely to prove or disprove the allegations; the IG investigator is looking for the truth, not support for someone's position.

#### **0528 CHRONOLOGY OF EVENTS.**

A timeline or chronology of what happened is useful in almost every case. It is most important to have a good understanding of the order in which events occurred, or are stated to have occurred, before interviewing subjects.

#### **0529 LOGISTICS.**

The investigation may require that the investigator travel to another site for interviews, etc. Arrangements for travel, local transportation, lodging, access to secured spaces and classified documents, interview rooms, number of investigators required for interviews, office space, and equipment are some of the logistical considerations that may impact the efficiency and effectiveness of an investigation. The investigative plan should demonstrate how these matters will be addressed. An IG or other point of contact at the travel site can be invaluable here.

#### **0530 UPDATING THE PLAN.**

The investigative plan should be updated as the investigation proceeds. Note whether, and how, the facts necessary for each allegation have been established during the course of the investigation. Make changes to the plan that may be necessary to reflect information obtained during the interview process. Add new allegations to be investigated as they are developed, indicating whether they will be explored as part of this case, or through a separate action. A well thought-out investigative plan that is conscientiously updated becomes the outline of the investigative report.

### **STEP 4 - NOTIFY THE WITNESSES**

#### **0531 OVERVIEW.**

Witnesses do not need to be notified of the existence of an investigation until it is time to interview them, or to make arrangements for their interview. Normally, the witness should be notified after the investigation plan is developed and as the case progresses, and more names become available to you. Notify and interview the minimum number of witnesses consistent with thoroughness.

**0532 WITNESS NOTIFICATION.**

Normally, provide the witness only the information contained in the directive for investigation. Avoid revealing the details of the allegations. Occasionally, it will be necessary to provide a witness additional information so that he can prepare for the interview. Follow the notification format except for answering administrative questions (like location and direction to interview location). Normally, it is best to restrict the witnesses from providing information about the case during notification. Direct the witness not to discuss the investigation with anyone. A sample witness notification is contained at Appendix A to this Manual.

**0533 WITNESS RIGHTS.**

Because witnesses may desire to consult with counsel before being interviewed, the investigator may wish to notify witnesses who were directly involved in the matter under investigation far enough in advance to permit them that opportunity. The investigator does not have to advise witnesses of their right to seek counsel, but may do so. In practice, witnesses are unlikely to seek counsel, especially when they provide only background information, such as descriptions of normal office procedures. In any event, the investigator should take all measures to protect the witnesses' confidentiality and the confidentiality of others. See Chapter 9 of this Manual for a complete discussion of witness rights and responsibilities.

**STEP 5 - GATHER AND EVALUATE THE EVIDENCE**

**0534 GENERAL.**

Since IG investigations usually concern sensitive allegations, it is imperative that the investigator thoroughly understand the standards by which he will evaluate the case before collecting testimonial evidence. This section provides a brief discussion of evidence and interviewing. Detailed discussions of these subjects are addressed in Chapters 7 and 8 of this Manual.

**0535 EVIDENCE DISTINGUISHED FROM FACTS AND INFORMATION.**

During the course of an investigation, the investigator will obtain a great deal of information, including expressions of opinion and statements of facts, as well as materials, such as documents or physical objects. For the purposes of an IG investigation, evidence consists of information and materials that may be used to prove facts that tend to demonstrate whether or not the allegation is substantiated.

**0536 REQUIRED STRENGTH OF THE EVIDENCE.**

Almost every investigation requires the exercise of judgment to determine the amount and quality of evidence that must be gathered to prove a fact. To a large extent, this depends on the action that will be taken based on those facts, a matter committed to the discretion of the responsible authority. One measure of the strength of evidence is the number and type of sources for it. The number of sources necessary depends on the extent to which any particular fact is disputed. In general, the investigator should attempt to obtain two unbiased or disinterested sources to establish the existence of any fact. The statement of two witnesses who are willing to testify in a disciplinary action, or one witness and a credible document, would normally satisfy this requirement.

#### **0537 CATEGORIES OF EVIDENCE.**

Evidence generally falls into one of three major categories: documentary, physical, and oral. While some investigations center around the testimony of witnesses, others require extensive use of documentary and physical evidence. See Chapter 7 of this Manual.

#### **0538 PRESERVING ORAL EVIDENCE.**

Many of the facts developed in IG investigations are based on oral evidence obtained during an interview that is subsequently reduced to writing in some manner. Ensuring the accuracy of the writing is essential to a professional investigation.

Techniques for converting oral to written evidence include:

- (1) investigator's notes
- (2) interview summary written by the investigator
- (3) written statement prepared by the investigator or the interviewee and signed by the interviewee
- (4) sworn written statement of the interviewee
- (5) tape recording or stenographic recording of the interview that is available for subsequent transcription.

The main consideration is the investigator's ability to establish that the facts presented in the investigative report and supporting documents are accurate and complete. This becomes particularly important when the person from whom the evidence was obtained later denies that he provided the information presented in the ROI. See Chapter 7 of this Manual.

#### **0539 DOCUMENTARY EVIDENCE.**

Documents are important sources of evidence in most cases. Issues relating to the use of documents as evidence are discussed in Chapter 7 of this Manual.

#### **0540 STANDARD INTERVIEW PROCEDURES.**

Certain procedures should be adhered to in all interview situations. See Chapter 8 of this Manual for a full discussion. In summary, they include the following:

a. **The Opening.** This sets the tone of the investigative interview. It starts with the introduction of the investigators, the display of credentials (if issued), and the explanation of the purpose of an IG investigation. Investigators should never underestimate the effect of such ceremony during the investigation. Such actions make interviewees take the matter more seriously and provide information about how the testimony may be used, including the Privacy Act notice.

b. **The Oath.** It is not necessary to put all interviewees under oath for interview. It is more common to put complainants and subjects under oath than other witnesses. Whether the investigator decides to administer an oath, it is appropriate to remind interviewees that knowingly making a false statement to an investigator is a violation of federal law, under oath or not.

c. **Probe for Bias or Influence.** Ask interviewees what they have heard about the investigation, whether anyone has discussed it with them, and what, if anything, they have done to prepare for the interview. In particular, ask if any of the prior testimony has been related to them, and whether anyone has asked what they will say to the investigator, or has attempted to suggest what they should say. Ask if they have any special relationship to the subject, the complainant (if the complainant's identity may be revealed),

other witnesses, any victims, etc. Ask if there is any reason why they cannot be fully objective in answering the questions during the interview or if they have any reason to fear reprisal for their testimony.

d. **The Closing.** Ask if they are willing to testify in any judicial or administrative proceedings that may result from the investigation. **Caution all interviewees not to discuss their testimony with anyone else, and to contact the investigator immediately if any attempts are made to discover what they discussed with the investigator or they believe action has been taken against them in reprisal for their cooperation with the investigation.**

**0541 GETTING STARTED-INTERVIEW THE COMPLAINANT.**

If the investigator assigned to the case was not the one with whom the complainant made initial contact, the investigator should interview the complainant as close to the start of the investigation as possible. If the complainant can be interviewed at a site away from the subject command, the investigator may consider conducting that interview before meeting with command officials or the local point of contact. The investigator should go over any materials obtained from the initial contact with the complainant to ensure their accuracy and to update them if necessary. The investigator should also review Confidentiality issues with the complainant.

**0542 GETTING STARTED-BRIEF THE CHAIN OF COMMAND.**

If the investigative plan calls for a courtesy visit, it should be arranged as soon as the investigator checks in with the local point of contact. If the command has already been notified of the investigation, a courtesy visit is not necessary. Often, it is sufficient for the Investigator to advise the point of contact that he is available for a courtesy call. The courtesy call can be used to inform the command what is expected from them in terms of cooperation and noninterference. A discussion of reprisal will address this serious matter up front. The command will want to know as much as possible about the allegations; the investigator's responses should be brief but address the issues unless there is a reason to believe such action would compromise the investigation.

**0543 OBTAINING INFORMATION AND COLLECTING DOCUMENTS.**

See Chapter 8 of this Manual for a full discussion of interview procedures. Chapter 9 of this Manual discusses witness rights and responsibilities. Chapter 7 discusses methods to obtain evidence.

**0544 THE INVESTIGATOR MUST DECIDE WHAT HAPPENED.**

When witnesses disagree over what happened, the investigator's job is to reconcile those differences if at all possible. This usually will require the investigator to interview more witnesses or search for other documents. It also may require the investigator to choose between conflicting versions of events. Although the investigative report should clearly indicate which facts are disputed, the report should also state which version is more credible, and why. In many cases, this will depend on the investigator's evaluation of witness credibility during the interview. See Chapter 8 of this Manual for a discussion of techniques that may assist in evaluating witness credibility.

**0545 CONCLUDING THE ON-SITE INVESTIGATION.**

When the investigator has finished gathering evidence from the site, command officials should be notified, and the investigator should generally be available to attend an exit meeting if requested. The investigator should express appreciation for the support received, and indicate whether there were any significant problems that hindered the conduct of the investigation.

The investigator should also advise whether the command climate suggested a concern over reprisal for cooperating with the Investigators. The investigator should comment on any findings, noting that the investigation is not considered complete until the investigative report is completed and approved by the investigator's superiors. The command may be Advised of the general time frame in which to expect the report to be finalized, and who to contact for a status update.

**0546 EVALUATING THE EVIDENCE.**

During or after the conduct of the interviews, it becomes necessary to evaluate the evidence and determine if the investigator has sufficient evidence to make a conclusion. He must decide whether the allegations are substantiated or not substantiated. See the Glossary at Appendix F of this Manual for definitions of findings. Remember that conclusions are based on a preponderance of the evidence and not on "proof beyond reasonable doubt". Understanding the types and categories of evidence will help in evaluating the evidence and determining whether the investigator has a preponderance of evidence. If the investigator has developed enough evidence for a finding of substantiated or not substantiated and no unanswered questions, he should stop. However, if the investigator cannot get a preponderance of credible evidence either way, more investigative work is required or a conclusion of unsubstantiated must be made.

**0547 REPORTING THE EVIDENCE.**

One of the most important parts of the investigative process is the presentation of the evidence in the Report of Investigation (ROI). Therefore, it is important that the investigator give careful thought to its organization and content. See Chapter 6 of this Manual for a discussion on the organization and presentation of evidence in the ROI.

**0548 INTERIM REPORTS.**

IG investigations often take several weeks or months to complete. In order to keep the directing authority apprised of the progress made, the investigator may provide an interim report.

The investigator must be careful not to speculate on the results of the investigation before completion of the investigative process and approval of the ROI because subsequent evidence and legal reviews may alter early conclusions. When complainants request progress reports or the results of an investigation before it has been approved, the investigator should not provide any information other than to state that the complaint has been received and appropriate action is being taken. The investigator should never lead anyone to believe that the allegations have been decided before they are approved by the directing authority.

**STEP 6 - OBTAIN COMMANDER'S APPROVAL**

**0549 GENERAL.**

Once all of the investigative actions noted in steps one through five have been completed, the report of investigation(ROI) must be presented to the directing authority for approval. Prior to doing so, it may be beneficial to forward the ROI to the supporting SJA and/or CL for an opinion regarding its legal sufficiency. In addition, ROIs should also be reviewed within the IG to determine if the investigative standards have been met. If the report is complex or extraordinarily lengthy, it may be appropriate to brief the directing authority orally of any considerations the investigator deems appropriate.

**0550 ACTIONS BY THE DIRECTING AUTHORITY.**

The directing authority and decision authority may not always be the same person, depending on the circumstances. The directing authority approves, modifies, or disapproves the recommendations, and directs any actions to be taken. On occasion, the directing authority may not agree with either the conclusions or the recommendations. While it would be improper for the directing authority to suggest that a particular conclusion or recommendation appear in the report or that a conclusion should be changed, it would not be incorrect for the directing authority to request that the investigator gather more evidence to support a conclusion. Remember, the directing authority, and/or decision authority, is not bound by the investigator's findings, conclusions, or recommendations and may act as he deems appropriate. The directing authority, and/or decision authority, will take action on the approved portions that are within his authority and responsibility. The IG should include a record of the action taken with the original report.

**0551 ACTIONS BY HIGHER AUTHORITY.**

Do not transmit ROIs to higher authority unless the investigation is requested, is of interest to a higher headquarters, or the investigation involves other commands. If the investigation is requested by higher authority, that authority reviews the conclusions and recommendations, monitors action taken by the subordinate command, and determines if further action is required. If the case is referred to higher authority because other commands are involved, that headquarters takes the necessary action if the other commands are within its jurisdiction. If they are not, the case is referred to the next higher headquarters. When the investigation has been directed by the Commandant of the Marine Corps, and referred by the IGMC, the immediate commander of the IG who conducted the investigation will indicate concurrence/nonconcurrence in the investigation's conclusions and forward the report within 10 working days to the IGMC.

**STEP 7 - NOTIFY COMMANDERS, SUBJECT, AND COMPLAINANT OF THE RESULTS OF INVESTIGATION**

**0552 GENERAL.**

No IG investigative process is complete until the parties to the investigation have been notified of its conclusion. Such notifications may be written or oral. A copy of written notifications should be included in the case file. In the case of oral notifications, the investigator should make a memorandum for record (MFR) indicating the date of notification and the individual notified. Depending on the status of the involved party, certain rights and limits to disclosure will pertain.

**0553 NOTIFICATION TO THE CHAIN OF COMMAND.**

Those commanders or supervisors who were notified at the beginning of the investigation should be notified at the completion of the case of the results which apply to members of their command. Remember, the IG is notifying the position, not the individual. A departed commander has no right to know the results. A sample notification letter is contained in Appendix B of this Manual.

**0554 NOTIFICATION TO THE SUBJECT.**

Inform the subject of the results of the investigation after it is completed and approved. Do not comment on any action the command may be taking. If the subject wants more information, he must request it under the provisions of the Freedom of Information Act (FOIA). However, if the investigation substantiated misconduct on the part of the subject, the commander or other

decision authority may de facto inform the subject of the results in the process of taking corrective or disciplinary action. File a copy of the notification (eg, IG letter, MFR, commander's correspondence) with the ROI.

**0555 NOTIFICATION TO THE COMPLAINANT.**

While known complainants are provided a final response to all requests for IG action, they do not have the inherent right to know information about other people which is often the result of an investigation into alleged wrongdoing. As a general rule, complainants may be notified of the general outcome of the investigative effort (whether the allegation was substantiated) and an assurance that appropriate action will be or has been taken, if appropriate. If the complainant wishes more information, he may request it under the provisions of FOIA.

**0556 NOTIFICATION OF REFERRAL.**

Notify subjects and commanders when the case has been turned over to a follow-on investigation or other action; see Section 0512. It is best that the investigator not reach a conclusion on whether the allegation was substantiated or not substantiated in cases turned over to a follow-on investigator. In those cases, the conclusion should be simply that sufficient evidence was found to warrant referring the case.

**PART TWO - COMMON PROBLEMS AND OTHER ISSUES**

**0557 OVERVIEW.**

The majority of IG investigative efforts are conducted without notable incident or problem. The following presents some of the problems or distractions the IG investigator may confront during the course of his assignment. Each of the below can be quickly overcome if the investigator is prepared to handle it.

**0558 UNCOOPERATIVE COMMAND.**

On occasion, a commander or supervisor may refuse to make witnesses available for interview, or may engage in other activity that impedes the investigation. In such cases, the investigator should immediately advise the senior member of the unit of the conduct in question and request that it be corrected. If the senior member fails to take appropriate action, the investigator should state that the senior member's superiors will be apprised of the situation, and report the problem back to the investigator's IG office for action. If the problem is not corrected after a telephone call to the appropriate superior, the matter shall be reported in writing to the responsible authority with a copy to the IGMC.

**0559 REFUSAL TO TESTIFY.**

Military personnel and civilian federal employees have the duty and the right to answer all questions asked of them during an investigation. See Chapter 9 of this Manual for a discussion of rights and privileges and as follows.

a. Military members and Federal civilian employees are required to answer all questions related to an investigation except questions that may be self-incriminating (unless immunity has been properly granted) or those that concern privileged communications.

b. Witnesses who refuse to answer questions may be ordered to answer by their commander or supervisor; IGs should not themselves order a witness to testify because by doing so they depart from their impartial investigative role. The witness should be allowed to explain why he should not testify

before being required to do so. Additionally, IGs confronted with a witness who refuses to answer questions may consult with their SJA or legal advisor. Failure to cooperate is an offense punishable under applicable regulations. Possible punishments include dismissal from Federal service.

c. A witness may properly delay answering if the answer may reveal classified information. If the IG involved does not have the proper clearance, he should obtain it or request assistance from an IG who does have the proper clearance. See Chapter 3 Section 0314 for a discussion of IG access and "need to know".

d. The witness may not refuse to testify on the basis that the question is not material. The investigator alone determines the materiality of a question, and the witness should be so advised.

e. If the investigator is confronted with a reluctant witness who may have information concerning a felony, a discussion of Title 18, United States Code, Section 4, may encourage the witness to reveal his knowledge of the issue. This law provides that any person who has knowledge of a felony and who does not make this known to civil or military authority is subject to a fine and/or imprisonment.

f. Civilian witnesses who are not Federal employees may rightfully refuse to testify on the basis that you have no authority to make them do so. They have no legal obligation to submit to an IG interview.

#### **0560 FALSE TESTIMONY BY A WITNESS.**

False testimony under oath by an individual subject to the Uniform Code of Military Justice (UCMJ) constitutes false swearing under Articles 107 or 134. False testimony knowingly given under oath by a civilian witness constitutes an offense under Title 18, US Code, Section 1001. Interviewees should also be advised they are subject to disciplinary action, which in many cases is a more effective warning. Remember that a false official statement made by someone subject to the UCMJ is a criminal offense. Appropriate advisement which should be read to individuals who provide false testimony or are suspected of providing false testimony is contained in applicable read-in scripts (Appendix A) and as follows.

a. **Civilian Employees** - "I consider it my duty to advise you that under the provisions of Section 1001, Title 18, United States Code, whoever in any matter within the jurisdiction of any Department or Agency of the United States knowingly and willfully falsifies, conceals, or covers up by a trick, scheme, or device, a material fact, or makes any false, fictitious, or fraudulent statement or representation, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both. Additionally, any person who willfully and contrary to his oath testifies falsely while under oath may be punished for perjury in accordance with Section 1621, Title 18, United States Code. Do you understand?"

b. **Military Personnel** - "I consider it my duty to advise you that any person subject to the UCMJ who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, may be subject to action under the provisions of Article 107, UCMJ. Additionally, under the provisions of Article 134, UCMJ, any person subject to the UCMJ who makes a false statement, oral or written, under oath, not believing the statement to be true, may be punished as a court-martial may direct. Do you understand?"

**0561 REFUSAL TO SWEAR OR AFFIRM TESTIMONY.**

Military and civilian personnel may be directed to provide testimony under oath or affirmation. Witnesses who object should be advised that they may be disciplined for giving false testimony even if they are not under oath. They should also be advised that since other witnesses are providing testimony under oath, their testimony is likely to be deemed less credible. If a witness refuses to swear, the investigator may continue with an unsworn interview, or may consult with legal counsel and then ask the witness's commander or supervisor to direct the witness to swear or affirm to his testimony. It is often sufficient to take unsworn testimony and note the refusal for the record. IGs cannot require individuals who are not subject to UCMJ or who are not DOD employees to testify under oath or affirmation.

**0562 INTIMIDATION OF A WITNESS.**

Investigators who believe there may have been tampering or interference with a witness should immediately report the matter to the witness' commander and request action be taken to ensure this ceases immediately. If the commander does not cooperate, or if the commander is suspected of being a party to the action, the investigator should advise his IG office and request appropriate action. Investigators shall document all incidents of suspected tampering or interference, place the documentation in the case file, and report the matter to the IGMC.

**0563 CLAIM OF REPRISAL.**

IGs who are told that a witness has been subjected to reprisal action for cooperating with the investigation shall conduct an interview of the witness with regard to this matter and forward it to their IG office for appropriate action. Because each category of witness has different rights and investigative bodies responsible for inquiring into such claims, see Chapter 12 of this Manual for further discussion. At the minimum, the IG office should immediately notify the IGMC.

**0564 REQUEST TO HAVE OTHER PEOPLE ATTEND INTERVIEW.**

Generally, it is not appropriate to allow the witness to have friends or relatives present during the interview, because this tends to inhibit candor and full disclosure. The investigator may permit third parties to be present if it appears this would facilitate communications during the interview. The interview record should reflect the presence of third parties (including attorneys and union representatives). The investigator must clearly explain and enforce the "ground rules" for the interview, and ensure that the observer does not attempt to respond for the witness or otherwise interfere with the interview. Refer to Chapter 9 Sections 0918 through 0921 for further discussion of this subject.

**0565 REQUEST FOR ADVICE.**

A witness may seek the investigator's advice. The IG must tell the witness that he cannot give any advice except as to rights, duties, and procedures regarding the interview.

**0566 REQUEST BY WITNESS TO RECORD AN INTERVIEW.**

Persons providing testimony are normally not allowed to tape interviews, in order to preclude compromising testimony and other evidence. Follow the procedures outlined below when you receive a request to record an interview.

a. **Military or Civilian Employee Witness.** Inform the witness that IG investigative procedures prohibit the witness from recording the interview.

Should this question continue to be a problem, offer him the opportunity to read the testimony in your office upon proper request. Also upon proper request, provide the witness a copy of his testimony after the ROI is approved. Both of these requests must be in writing. If the witness is uncooperative and refuses to testify because he has been denied permission to record the interview, have him ordered to testify.

**b. Non-DOD Civilian Witness.** If a civilian not affiliated with the DOD puts a condition on his cooperation such as refusing to testify unless he is allowed to record the session, you can persuade him otherwise, honor the request, or forgo receiving his testimony. A "pure" civilian witness cannot be required to testify. If you do permit a civilian witness to record an interview, attempt to retain the tape until the investigation is complete. This precludes compromising the investigation. Failing this, consider interviewing all other witnesses before letting a civilian witness record his testimony.

#### **0567 OFF-THE-TAPE DISCUSSIONS.**

If the witness appears to be withholding information or is uneasy talking about a subject, considering turning off the recording devices and discussing the apparent problem. Although the tape recorders are off, the discussion is still on the record and official and the witness should be so informed. Discuss the witness' concerns, attempt to dispel them, and encourage the witness to allow the information to be taped. While an MFR may be made of off-the-tape discussions, the witness may later contend that you modified or misunderstood what he or she said. It is best to have the witness or the investigator put off-the-tape answers into the taped testimony; a simple method is for the investigator to summarize the off-the-tape conversation and have the witness confirm it.

#### **0568 NEW ALLEGATIONS RECEIVED DURING AN INTERVIEW.**

It is not uncommon for the investigator to receive new allegations while interviewing a witness. If they are related to the investigation, the investigator should include them in the case and notify the IG. If the allegations are not related to the current case, the IG should take them through the seven step process (See Chapter 4), as they could result in separate inquiries.

#### **0569 LOCATING CIVILIAN WITNESSES.**

If you have difficulty locating essential civilian witnesses, the first choice is to seek help through IG channels. When this is not practical, sources such as the local provost marshal, local CID or NCIS office, or designated liaison official for the local police or other law enforcement agency can be helpful. Command Inspectors can also request assistance from IGMC.

#### **0570 GIFTS AND SOCIAL ACTIVITIES.**

Don't accept gifts or be involved in any social activities which might give the appearance of conflict of interest with anyone involved in your investigation, or one being conducted by an IG in your office. Should you find yourself in a position where someone might question your impartiality in an investigation, disqualify yourself to the senior IG or directing authority. Even if think you can be impartial, it matters what others think. If you are the senior IG, hand the matter off to an IG in a senior command or have the directing authority task someone else within the command. Seek legal advise prior to recusing yourself.

**0571 LOSING IMPARTIALITY.**

IGs must be careful to avoid situations which make it appear they are not impartial. IGs who believe they can remain impartial should still disqualify themselves if the appearance of impartiality will be lost. IGs who find that they actually are biased, favorably or negatively, for whatever reason, must disqualify themselves immediately.

**0572 INADEQUATE INITIATING DIRECTIVES.**

Occasionally, initiating directives are found to be inadequate for the task at hand because the investigator either misinterpreted the original information or found new information outside the scope of the original directive. If this happens amend the directive, or prepare a new directive and an MFR explaining the circumstances. Do not confuse this situation with the discovery of new allegations or of matters not appropriate for IG investigation. Refer inappropriate matters to the appropriate agency.

**0573 ANONYMOUS COMPLAINTS.**

Do not ignore anonymous complaints; the source of the complaint does not determine its validity or truth. The prudent IG will take action to resolve them and protect the interests of the government. When conducting an inquiry into anonymous complaints of wrongdoing, it is best not to try to identify the complainant. To do so often creates the appearance of trying to "get" complainants instead of determining the facts and circumstances related to an allegation.

**0574 PEN (OR PHONE) PALS.**

Some complainants will repeatedly bring complaints to an IG. Some will be new complaints; others will be repeats. If the issue has been entertained before, you may choose not to reopen the case if no new information or evidence is presented. However, you must clearly document the rationale for not reopening the case. If there is new information, analyze the complaints individually, case by case. Do not automatically reject the correspondence or phone call because of the source without thoroughly analyzing each new complaint.

**0575 WITHDRAWN COMPLAINTS.**

At any point after making a complaint, the complainant may ask to withdraw the complaint. However, since the complainant is not in charge of the investigation, he cannot control it. It is the decision of the IG whether to continue, based on the best interests of the Marine Corps and the command: any non-frivolous allegation of misconduct must be resolved, for the sake of the subject and of the institution. See Section 0512 on terminating an investigation prior to completion. If a decision is made to continue the case, permission of the complainant is not required. If the complaint is withdrawn, but you keep the case open, consider changing the "case name" from that of complainant to a generic title (no final reply is made to the complainant). If a complainant wishes to withdraw his complaint as erroneous, he must do so in writing.

## CHAPTER 6 REPORT WRITING

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### **0601 INTRODUCTION.**

The purpose of the IG Report of Investigation (ROI) is to thoroughly address all relevant aspects of the investigation in an accurate, clear, complete, concise, logically organized, timely, and objective manner. The ROI must inform the reader of the allegations, findings of fact, and conclusions. The reader must be able to understand the evidence found, and the analysis the investigator used to arrive at the conclusions.

### **0602 OVERVIEW.**

This chapter includes the specific formats required for each type of investigation, as well as characteristics of a good ROI, and administrative requirements.

## **PART ONE - SPECIFIC INVESTIGATION FORMATS**

### **0603 FORMAT.**

Details of the format of the ROI will vary with the nature of the investigation. There are three specific report formats that Inspectors General and their field organizations use. They are the DoD/ Navy/ Marine Corps Hotline Completion Report (Chapter 4, Section 0411 and Appendix C), The Military Whistleblower Reprisal Report of Investigation (Chapter 11), and the Formal Investigation Report (Chapter 5, Section 0547 and Appendix C). The formal investigation report is used for Senior Official Investigations (SOI), Improper Referral to Mental Health Evaluations (MHE), and other special investigations.

### **0604 HOTLINE COMPLETION REPORTS (HCR).**

Command Inspectors must use the HCR format (Appendix C) when submitting reports of investigation to IGMC. [Note: IGMC recommends the use of the HCR format for all investigations conducted by Command Inspectors.]

**0605 MILITARY WHISTLEBLOWER REPRISAL REPORTS (MWR) and IMPROPER MENTAL HEALTH EVALUATIONS.**

Military Whistleblower Reprisal (MWR) investigative reports must comply with the format set forth in IGDG 7050.6, Guide to Investigating Reprisal, details can be found in Appendix C.

**0606 FORMAL INVESTIGATION REPORTS.**

Details regarding the format for SOI, MHE, and other special investigations are listed below in sections 0607-0611 and at Appendix C.

**0607 EXECUTIVE SUMMARY.**

If used, an executive summary condenses into a few pages the salient issues addressed in the ROI. The executive summary should identify subjects or suspects, the source of the tasking, the allegations, a brief discussion of the findings for each allegation, and conclusions. The executive summary should be structured as a stand-alone document that can be read and understood without referral to other material.

**0608 AUTHORITY AND SCOPE.**

The first paragraph of this section cites the statutory authority for the investigation. The second paragraph of this section delineates the following information: appointing authority; investigator; complainant; dates and location of the investigation.

**0609 INTRODUCTION: BACKGROUND AND ALLEGATIONS.**

This section includes details of the circumstances surrounding the alleged violations and a discussion of applicable standards. The IO should list all military and civilian witnesses (rank/ rate, name, billet/ job description, and duty station). The Investigating Officer (IO) must list and number all allegations examined during the course of the case. Additionally, this paragraph should include a synopsis of all allegations not investigated and why; account for all unusual occurrences that took place during the investigation.

**0610 FINDINGS, ANALYSIS, AND CONCLUSIONS.**

This section lists each allegation, the findings of fact, the analysis, and conclusions.

- a. Findings of Fact. The basic foundation of an ROI is the description of facts. The ROI should completely and thoroughly describe the facts and circumstances surrounding the events or conduct at issue. Organization and content of the findings of fact are critical to a good report. A chronological statement of facts is commonly used to organize the findings. Where there is substantial disagreement over the facts, it may be helpful to first set forth the complainant's version, followed by the subject's version. Facts provided by neutral parties should follow, ending with a discussion that reconciles or selects between conflicting facts.
- b. Analysis. The IO must analyze all documentary, physical, and testimonial facts relating to each allegation to reach a conclusion. The facts relied upon to reach each conclusion should be apparent to the reader. When the applicable standards are themselves vague, or the testimony conflicts, the reasoning that leads to a conclusion is not always apparent. In that case, the analysis in the ROI must explain to the reader how the investigator reached the conclusion.

- c. Each allegation must have a specific conclusion that is consistent with, and flows logically from the findings of fact. There are three types of acceptable conclusions for allegations: Substantiated (S), Not Substantiated (NS), and Unfounded (UN). See Appendix F (Glossary) under "Allegation" for definitions of each. The format for the conclusion is as follows:
  - 1. each conclusion must begin with a restatement of the allegation;
  - 2. the allegation must be followed by the finding (S, NS, or UN);
  - 3. each finding must be followed by discussion of the finding; and
  - 4. where the allegation is substantiated, but extenuating or mitigating circumstances are present, they should be presented.
  
- d. Supporting Documents. Each finding of fact will be followed by a parenthetical reference to the documents that support the fact. (e.g., Finding of Fact. (SD #)). The Supporting Document indicators will remain in the working copies of the report. The indicators are intended to assist in the oversight process (both the quality review and the legal review). Once the report is final and ready for endorsements, the SD indicators will be removed.

**0611 RECOMMENDATIONS.**

Every ROI should contain a recommendation as to the status of the investigation (i.e., that the directing authority approve the investigative report as written and the case be closed). Where the ROI has identified systemic problems or program weakness, a recommendation to consider corrective action is appropriate. *IG investigators should never recommend a specific administrative or disciplinary action be taken against the subject of an ROI.* The investigator should refer the matter to the responsible authority for "action deemed appropriate."

**PART TWO - REPORT WRITING TECHNIQUES**

**0612 CHARACTERISTICS OF A GOOD ROI.**

Clarity, completeness, and accuracy are the three principal characteristics of a good ROI. Clarity mandates a concise, systematic arrangement of facts and analysis stated in precise, neutral terms. Completeness dictates that all information a prudent commander would reasonably want to consider before reaching a decision should appear in the report. Accuracy requires there be no errors in reporting facts or identifying people, places, events, dates, documents, and other tangible matters.

**0613 STYLE AND TONE.**

Style varies from one writer to another, but a simple, direct approach, void of colorful language, is the most effective way to convey facts. The tone also should be neutral, not judgmental, convincing, not provocative in its descriptions. Style, tone, and clarity must complement and support one another. Above all, the ROI must be written in a style that communicates clearly with the reader. Every sentence, phrase, and paragraph must be unblemished.

**0614 ANALYSIS.**

In most investigations, more information is collected than is necessary to reach a conclusion. Some information is redundant; other information is not pertinent to a decision. Sometimes the information is conflicting. Deciding what information to treat as evidence and how to deal with it in the ROI is important because in cases where remedial or disciplinary action is a

possibility, the decision to accept the conclusions in the ROI is likely to be made only after an examination of all the evidentiary material in the file. If the report does not appear to fairly address pertinent evidence, its conclusions may be rejected. Some common issues include:

- a. Evidence considered, but not relied upon, should be discussed in the ROI if it is likely that others would want to consider it, or question the completeness of the report. This is critical when there is conflicting evidence. The failure to discuss and explain why one version of events is relied upon in lieu of competing evidence will cause readers who are aware of the conflicts to question the objectivity of the writer.
- b. Evidence that is redundant or repetitive can be summarized when it comes from various sources that present no unique information (e.g. stating that five people saw the subject in the office on a particular day is adequate in most cases).
- c. Testimony may prove difficult to analyze in some cases. Often, only a few witnesses have the entire story. The investigator must piece together fragments of the story to present the entire picture. Summarizing the testimony of witnesses providing these fragments is one acceptable technique to make the sequence of events clear. In complex cases, or cases with many witnesses, it is helpful to use some system for identifying what each witness said about each allegation, such as a matrix, an outline, or file cards.

#### **0615 SPECIFIC PROBLEMS.**

Most problems in ROIs occur because investigators know the case so well that they tend to assume things that a reader unfamiliar with the case does not know. Other problems occur because of sloppy writing habits or the failure to organize and place information in the appropriate sections of the report. Some common examples include the following:

- a. Mixing facts, opinions, and conclusions. There are separate sections of the ROI for recording facts and conclusions. Too often, investigators give their opinions in the middle of a recitation of facts. Opinions may also creep in through the use of adjectives and adverbs in a sentence setting forth facts. Another common problem is the inclusion of facts, for the first time in the report, in the sections of the report reserved for conclusions. This often happens when the investigator realizes that a fact necessary to support the conclusion does not appear in the findings section. These problems can be avoided by carefully following the outline of the ROI described earlier (also see Appendix C).
- b. Unsupported conclusions. This usually occurs for one of three reasons. First, because investigators are so familiar with the case, they may think they included a fact when they did not, or they may assume something will be apparent to the reader. In most cases, the evidence was gathered, and simply not reported. A second cause is the inclusion of conflicting statements of fact that are not resolved in the discussion of the findings. This requires the reader to attempt to resolve the conflicts, often without any information in the report that would provide a logical basis for doing so. A third cause is the failure to cite and, where necessary, discuss the standard that should be applied to the facts in order to reach a conclusion.

- c. Insupportable conclusions. Misinterpreting testimony, misreading documents, and not wording allegations properly may result in erroneous conclusions. This discredits the recommendations and may bring into question the integrity of the IG investigative process. This problem may not be obvious from a simple reading of the ROI itself; it is most likely to be discovered when the command is reviewing the investigative file to determine whether or not it will support disciplinary action. To avoid this situation, the investigator should meticulously document the source of every fact in the report. Additionally, these errors are likely to be identified during the quality assurance review of the ROI by IG investigative personnel and/or legal personnel.
- d. Recommendations not consistent with conclusions. Occasionally, conclusions are presented that merit a recommendation, but none appears in the ROI. In other cases, the conclusion does not support the recommendation. Investigators not familiar with the case can eliminate these errors by conducting quality assurance reviews of the ROI drafts.

### **PART THREE - OTHER ADMINISTRATIVE REQUIREMENTS**

#### **0616 INTERIM REPORTS.**

When an investigation will require more than 90 days to complete, an interim report may be required. The purpose is to report the status of the investigation and identify any problems that have been encountered, particularly those that may delay the investigation or need to be addressed at a higher level. The interim report should not be used to indicate the likely outcome of the investigation. Similarly, complainants and subjects should not be provided information indicating the anticipated outcome of the investigation.

#### **0617 PROTECTIVE MARKINGS.**

At a minimum, every ROI should be marked in accordance with the provisions of SECNAVINST 5720.42E. This requires that the words "FOR OFFICIAL USE ONLY" appear at the bottom center of each page of the report. The purpose of this marking is to alert DoN personnel that material so marked may contain information not appropriate for release to the general public. The marking, in itself, provides no protection. In addition, ROIs that contain classified information should be marked in accordance with DoD/ DoN information security requirements. Since the first page of most ROIs will contain derogatory information, a cover sheet or neutrally worded cover letter should be used with every ROI.

## CHAPTER 7 EVIDENCE

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### **0701 DEFINITION.**

Evidence consists of information and objects which are used to prove or disprove alleged matters of fact.

### **0702 GENERAL.**

The IG investigator gathers evidence in order to determine and prove the facts in the case. The quality of that evidence will eventually determine the degree to which the facts will be accepted by others, especially in administrative or judicial proceedings. Rules of evidence exist to ensure evidence obtained is reliable and admissible in legal proceedings. IG investigators, however, are not bound by the rules of evidence prescribed for trial by courts-martial or for court proceedings, but should consider the impact of these rules while collecting evidence. Evidence is distinguished from proof in that the proof is the result or effect of evidence.

### **0703 IG AUTHORITY TO OBTAIN OR COLLECT EVIDENCE.**

The commander's directive to conduct an investigation provides the authority for the IG investigator to take testimony, and obtain access and use official documents and physical objects within the command. The IG's authority to conduct inquiries/investigations is derived from statute and regulation and is implemented by directing authorities. See Chapter 3 Section 0303 for further discussion. The IG investigator has authority to require DoN personnel to cooperate with IG inquiries/ investigations; however, IG investigators have no authority to require non-DoN civilians to provide testimony, privately owned documents or physical objects; in these cases the individual's consent must be obtained. The success in obtaining that consent may depend primarily on the IG investigator's persuasiveness, but he must remember the consent to search must be voluntary for it to be valid. Assurances of confidentiality, the offer of a receipt, and an arrangement for early return of documents or objects may help overcome individual objections.

### **0704 BURDEN OF PROOF.**

The standard of proof for supporting conclusions in an IG investigation or inquiry is by a preponderance of credible evidence as viewed by a reasonable person. Preponderance is defined as "superiority of weight." This means that the greater weight of evidence supported your findings than that of the contrary findings. Therefore, at a minimum, all facts developed should be

verified or corroborated by some other source. Only in criminal cases is the standard of proof, for conviction, established as beyond a reasonable doubt.

#### **0705 CATEGORIES OF EVIDENCE.**

Evidence includes information obtained from people, documents, and physical objects. Information from human witnesses may be testimonial (oral or written descriptions of statements, acts, and events) or demonstrative. It may constitute first hand knowledge of the witness, or hearsay. Documents and physical objects may be obtained by the IG investigator merely to prove their existence, or to establish their contents/characteristics.

a. **Documentary Evidence.** Documentary evidence includes writings, photographs, maps, sketches, regulations, laws, and other types of written material. Gather it early in the investigation, and identify it by showing the date obtained, whether it is an original or copy, the location of original, and identity of custodian and signature of the investigating officer. In some cases, documentary evidence is the primary source of evidence.

b. **Physical Evidence.** Physical evidence consists of objects or conditions which establish facts. For investigative purposes, it is considered in the following two categories:

1. **Objects which accompany the Report of Investigation (ROI).**

Normally, it is not necessary for an object to accompany an ROI. However, if this is deemed necessary, securely attach objects to the ROI and identify them by showing:

- a) The name of the object.
- b) Where and when the object was obtained.
- c) Custodian or from whom obtained.
- d) Its function, if applicable.
- e) Serial number or other identifying information.
- f) Monetary value, if applicable.
- g) Description of container, if appropriate.
- h) State of serviceability.

2. **Objects which do not accompany the ROI.** Because of size, perishability, monetary value, or other reasons, most objects do not accompany the ROI. Photograph, sketch or describe these objects in an memorandum for record (MFR) which contains the above information and include it as an enclosure to the ROI.

c. **Written and Oral Statements.** Testimony may be obtained from individuals via written or oral form. Witnesses, Subjects, and Suspects, may provide testimony via sworn or unsworn written statements, response to written questions, or via sworn or unsworn oral statements conducted during and interview/ interrogation. An oral statement is evidence given orally by a competent individual. Oral statements are usually the primary means of gathering evidence in an IG inquiry or investigation.

1. It is not required that all oral information obtained in IG inquiries and investigation be taken as testimony. Notwithstanding that, unsworn oral testimony and/or statements taken during an inquiry or investigation are usually put in the form of a MFR. The IG investigator who received the statement or who conducted the interview should prepare a summary and attest to the accuracy of the summary.

Whenever possible the person providing the testimony/statement should also sign the MFR verifying the accuracy of the information contained therein.

2. A sworn oral statement is always considered testimony and may be tape recorded.

a) **Sworn Testimony.** During an IG inquiry or investigation, the investigator may choose to conduct some taped interviews because the issues are complicated, serious (could result in an IG investigation), or conflicting evidence has been received from different sources. Witnesses who do not desire to take an oath may affirm their testimony. The importance of sworn testimony is that it creates the belief and expectation in the witnesses' mind that they must be truthful or suffer the consequences. When weighing evidence, sworn statements are usually given more weight than those that are not sworn.

b) **Transcribed Testimony.** Recorded testimony is normally transcribed verbatim in order to provide an accurate record of the interview. However, for IG investigators in the field, transcribing all recorded testimony obtained may not be practical. An alternative is to record and summarize the testimony. Only transcribe the testimony when it becomes necessary. Another alternative is to have testimony transcribed from only the key, necessary witnesses, complainant and subject. The IG investigator must verify manuscripts of verbatim testimony obtained from tape recordings or court reporters. If an IG investigator interviews a witness for an IG in another command, he/she will have the interview transcribed, verify the testimony and sign it as the IG investigator conducting the interview. For verbatim transcripts, witnesses should not normally be requested to verify their own testimony. The IG investigator verifies the transcript by listening to the tape while reading the transcript to check for accuracy. Pen corrections can be made to the transcript, if necessary. Upon written request, the IG can allow witnesses to read their testimony and/or obtain a copy once the investigation is closed.

b) **Statements.** Witnesses should sign sworn statements and other forms of their own written testimony. The IG investigator signs the statement only as a witness to their signature.

3. **Sworn and Unsworn Response to Written Questions**. In some cases, the IG investigator may choose to conduct some or all interviews via sworn or unsworn responses to written questions/questionnaires.

4. **Personal Observation**. The IG investigator can document or describe physical conditions for the record in the form of a memorandum for record (MFR). Conditions may include vehicle damage, unsanitary dining facilities, overcrowded barracks, and the state of building maintenance, etc. The IG investigator's observations can supplement or provide background for reports or testimony by technicians or authorities whose expertise may be better evidence than your observations alone. The IG investigator can also provide information pertaining to nonverbal behavior particularly where there are indicators of possible deception on the part of the witness, subject, or suspect. This would be done to facilitate making a determination as to what credibility to assess to an individual's testimony. See Chapter 8, Sections 0811 and 0812.

#### 0706 QUALITIES OF EVIDENCE USED IN INVESTIGATIONS.

The IG investigator should consider the following qualities of evidence in determining its value to the investigation:

a. **Relevance.** In evaluating evidence, consider its relevance by asking whether it tends to make a fact more probable than it would be without that evidence. If not, then the evidence is not relevant.

b. **Materiality.** A fact is material if it tends to prove or disprove an allegation.

c. **Competence.** In obtaining and evaluating information, consider whether the circumstances by which it was obtained supports a belief in its veracity. Statements by a biased witness are likely to be of limited value in establishing facts.

d. **Authenticity.** In obtaining and evaluating information, consider its authenticity. Is it what it purports to be? Issues of authenticity are generally resolved by the quality of chain of custody proof.

#### 0707 TYPES OF EVIDENCE PERTINENT TO INVESTIGATIONS.

The IG investigator must deal with several types of evidence and understand the distinctions between them. The most important include direct versus circumstantial evidence, and fact versus opinion evidence:

a. **Direct Evidence** is that which proves the existence of a fact without any inference or presumption. A fact is proved by direct evidence when the witness has actual, or direct, knowledge of the fact to be proved, and does not need to rely on evidence the witness did not actually observe.

b. **Circumstantial Evidence** is that which tends to prove a fact by inference. It is evidence of one or more facts from which other facts may be inferred, or established indirectly, because there is a logical relationship between them. Circumstantial evidence leaves room for an alternate explanation of what really happened. While circumstantial evidence may not have the weight of direct evidence, it is still valid evidence.

c. **Hearsay Evidence** is "a statement, other than one made by the declarant, offered in evidence to prove the truth of the matter asserted." When a document is offered to prove the truth of the statements in it, it is hearsay evidence. Evidence constitutes hearsay only if: (a) the evidence is an assertive statement or act; (b) the statement or act was made or committed out of court; and (c) the evidence is being used to prove the truth of the assertion. Unless all three conditions are satisfied, the evidence is not hearsay.

1) Hearsay evidence may not be admissible as evidence in trials by courts-martial, except as provided by the Manual for Courts-Martial or by an act of Congress; however, IG inquiries and investigations do, as a matter of routine, use hearsay evidence. In simple terms, hearsay may be either an individual's claim that someone else made a statement or a document provided by an individual who claims it is the work product of someone else.

2) Hearsay evidence may be helpful in producing investigative leads which may produce direct evidence.

3) It is important for the investigator to obtain

verification and or corroboration of hearsay evidence before using it in a ROI.

(a) Attempt to have the person alleged to have made the statement, or to have written a document, to validate or verify that they did in fact make the statement or they did write the document in question.

(b) Attempt to obtain corroboration from other witnesses that the person alleged to have made the statement may have made the same statement to or that were present when the statement was made.

(c) Attempt to obtain corroboration from other witnesses who have knowledge that the person in question did produce the document.

4) Normally, it is not recommended for investigators to include hearsay in a ROI without some form of verification or corroboration.

d. **Fact vs. Opinion.** Opinions are generally conclusions premised on facts and the interpretation of those facts. A fact is established by a combination of testimony, documentary evidence, and physical evidence which agree on a single point.

#### **0708 RULES OF EVIDENCE IMPORTANT TO INVESTIGATIONS.**

The administrative and judicial proceedings which may result from an IG investigation are generally governed by the Federal Rules of Evidence, either directly (because their application is mandatory in a federal district court) or indirectly (because administrative boards often look to them for general guidance). IG investigators should be familiar with the more important of these rules in order to evaluate whether the evidence they develop in support of the facts may be used in such proceedings.

#### **0709 STATEMENTS AGAINST INTEREST.**

When people make admissions, or other statements they know are likely to be detrimental to their interests, they are less likely to be lying than when they protest their innocence.

#### **0710 DoN OFFICIAL RECORDS.**

The Federal Records Act makes almost every record regularly maintained by the DoN an official document. In those cases, the IG investigator may ask for a "certified copy" of the document from the official custodian.

#### **0711 BEST EVIDENCE RULE.**

This rule once required the production of the original of a document in order to prove its contents. In general, a photographic copy is accepted in legal proceedings unless the opposing party can articulate a specific reason why it may not be accurate. In such cases, it may become necessary to produce the original, or a certified copy from the custodian of the document.

#### **0712 CHAIN OF CUSTODY.**

Chain of custody issues relate to proving the authenticity of objects, both physical and documentary evidence. Chain of custody refers to the possession of evidence by the successive custodians of the evidence tending to prove that the item is the one that it purports to be, and is in substantially the same condition as it was at the relevant time.

### **0713 PHOTOGRAPHIC EVIDENCE.**

Anyone familiar with the scene or object depicted in the photograph may be used to introduce and verify its accuracy. Usually it is sufficient for the investigator to establish that the witness recognizes and is familiar with the object or scene depicted in the photo; and the witness states that the photograph is accurate and can explain the basis for his or her familiarity with the object or scene.

### **0714 PRIVILEGE.**

Certain types and sources of information have restrictions imposed by law on their solicitation and use. They are as follows:

a. **Self-incrimination.** The Fifth Amendment guarantees that no person "shall be compelled in any criminal case to be a witness against himself." Its application extends to IG investigations that may furnish leads on which a criminal prosecution could be based. Questions asked in the context of an IG investigation must be considered in light of the right against self-incrimination.

b. **Attorney/Client.** Communications made by a person to his attorney for the purpose of obtaining legal advice or representation are privileged. The privilege belongs to the client. An exception exists where the communication was made in connection with the future commission of a crime. Consultation with a military defense counsel or legal assistance attorney, done for the purpose of obtaining legal advice, and with an expectation of confidentiality, will come within the privilege. An organization's SJA cannot provide personal legal counsel for any individual member of that organization. Information provided in this manner does not fall within the scope of attorney/client privilege. See Military Rules for Evidence (MRE) 502.8, Manual for Courts-Manual (MCM).

c. **Spousal.** There are two types of spousal privilege. The first allows a spouse, during the existence of the marriage, to refuse to testify against the other spouse. It further prevents a spouse from having to disclose any confidential communications. The second applies to confidential communications made during the marriage. It applies even after the marriage is ended, and may be asserted by the spouse who made the confidential communication, or the other spouse, on his or her behalf (See MRE 504, MCM). These privileges should not bar solicitation of information in an IG inquiry or investigation. However, subsequent use of such information in a more formal proceeding may be barred.

d. **Doctor-Patient.** There is no generally recognized doctor-patient privilege, but some jurisdictions have created the privilege by statute. Neither the Federal Rules of Evidence nor the Military Rules of Evidence recognize the privilege.

e. **Communications to Clergy.** To be recognized as confidential, the communication must be made to a clergyman in the clergyman's capacity as a spiritual advisor or to a clergyman's assistant, in the assistant's official capacity, and is not intended to be disclosed to third persons. The communicant owns the privilege (See MRE 503, MCM).

### **0715 OTHER POTENTIAL SOURCES OF EVIDENCE.**

Certain potential sources of evidence require special mention:

a. **Tax returns.** Section 6103 of the Internal Revenue Code restricts the disclosure of tax returns and return information. Disclosure will only be considered if the information is relevant to a federal criminal investigation. Therefore, this provision is of little use in an IG investigation or inquiry. Generally, if the facts suggest the commission of a crime, the matter will be referred to the appropriate criminal investigative organization.

b. **Financial institutions.** IG investigations or inquiries may raise a need for information maintained by financial Institutions. Access to such information (e.g. bank account records) is restricted by the Right to Financial Privacy Act (RFPA), 12 USC Section 3401. Such information can only be disclosed if the customer has consented to disclosure, or in response to an administrative summons or subpoena, a judicial subpoena; a search warrant; or other formal written request. SECNAVINST 5500.13 establishes procedures for compliance with the RFPA.

**0716 DECLARATIONS VERSUS AFFIDAVITS.**

When taking sworn statements, IG investigators should consider putting them in the form of a declaration rather than an affidavit. Technically, an affidavit must be notarized, and although IG investigators have the authority to administer oaths, not all are authorized to act as a notary.

## CHAPTER 8 INTERVIEWING

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### **0801 GENERAL.**

The purpose of interviewing is to gather information. Through the interview process, information can be derived through both verbal and nonverbal behavior. Therefore, it is best to conduct an interview with an informal (even if taped) question and answer period as opposed to taking written statements. This chapter presents techniques effective for interviewing and the considerations that govern their application.

#### **0802 IMPORTANCE OF PROPER INTERVIEWING TECHNIQUES.**

The basis for the resolution of many IG cases is intelligent, careful questioning. Therefore, the goals of the IG investigator are to ascertain the objective truth and to systematically assess the problem. Proficiency in interviewing assures a high degree of reliability in the results achieved and helps prove or disprove the issue at hand. No IG inquiry or investigation is complete until every important witness and person involved in a particular matter has been interviewed.

#### **0803 ATTRIBUTES OF A GOOD INTERVIEWER.**

The interviewer's attitude and demeanor contribute immeasurably to the success or failure of the interview. As each witness is unique and reacts differently, the IG investigator must adapt accordingly. The qualities and personal attributes required of a good interviewer can usually be developed with training and practice. Important qualities for success as an interviewer are:

a. Honesty, integrity, and the ability to impress upon all interviewees that you seek only truthful information regarding the matter under investigation. Maintain an attitude of fairness. Be courteous, sincere, self-confident, and professional.

b. The ability to establish rapport quickly and under many diverse conditions. Try to put the witness at ease and then direct the conversation to the matters being investigated. Adopt an objective and friendly, but not familiar, attitude. If the witness proves to be hostile, adopt a firmer attitude.

c. The ability to "actively" listen to interviewees and evaluate responses.

d. The ability to maintain self-control during interviews and not become emotionally involved in the investigation. Gain and maintain the witness's respect. Remain an impersonal, calm, objective fact-finder.

#### **0804 RIGHTS & PROTECTIONS TO CONSIDER.**

Prior to initiating any interview, the IG investigator should be aware of the participant's status, rights, and responsibilities in an IG inquiry or investigation. See Chapter 9 of this Manual for a detailed discussion.

#### **0805 CUSTODIAL ISSUES.**

IG investigators are not law enforcement officers and do not take people into custody. Therefore, if an interview for evidence of wrongdoing is to be held in a home or office, it should be conducted by a minimum number of investigators, without any language or display of force or duress and at a reasonable hour for normal activity. The interviewee should also be advised that he or she is under no restraint and is free to terminate the interview at any time.

#### **0806 USE OF THE POLYGRAPH.**

The polygraph, commonly termed "lie detector," is not normally an appropriate method for gathering evidence in an IG investigation or inquiry. An investigation that requires the use of the polygraph has most likely gone beyond the scope appropriate for an IG and the case should be turned over to a criminal investigator. However, the results of a polygraph that has already been conducted, by a certified tester, for some other purpose may be used as evidence. In any event, consult legal counsel.

#### **0807 QUESTIONING MINORS.**

One type of specialized interview that an IG will rarely conduct is the questioning of a minor. When interviewing a child under the age of 18 years, the interviewer should always request that the child's parents be present. Prior to the interview, consult with legal counsel.

#### **0808 NOTE TAKING.**

Notes are any record of facts, actions, words or incidents made in the course of an interview as part of an IG investigation or inquiry. If notes are not taken during the interview or at the time of the event, they should be made as soon as possible after the event. The accuracy should also be verified with others present.

a. Notes should be identifiable as to who wrote them, when and for what purpose, with as much identifying data as reasonable. They should also be factual, objective, complete, concise and clear. If a quote is recorded in the notes, make it clear in the notes that it is a quote. Any other investigative personnel present at the scene should be identified in the notes and may initial the notes taken in order to enhance merit. The legal basis for retention of contemporaneous notes has evolved from several legal sources, Rule 16(a) of the Federal Rules of Criminal Procedure for the United States District Courts, the Jencks Act (18 USC 3500) and Rule 612 of the Federal Rules of Evidence.

b. A memorandum for record (MFR) is a suitable way to record your observations, to identify exhibits, or to record other information important to an IG investigation or inquiry. The MFR should contain what was observed (who, what, where, when, and how); why the action was recorded; what was found; explanatory notes, comments, or comparisons; and the signature of at least one IG investigator.

### **PART ONE - INFLUENCE FACTORS**

#### **0809 PHYSICAL.**

Physical influence factors include not only those things that pertain to the body and mind of the interviewee, but the physical environment of the interview setting as well. Therefore, each interviewer must make an informed judgment for each interviewee regarding what will be appropriate and allowable during the interview.

a. Smoking, drugs (legal and illegal), alcohol, coffee or tea with its caffeine, and food and drink which control hunger and thirst all dramatically affect the interviewee. Health and age are also factors for consideration.

b. The physical environment such as comfort, noise, privacy, distance between the interviewer and interviewee, seating arrangement and territoriality affects interviews.

1. The investigator can enhance the interviewee's concentration and motivation with a well-lighted, pleasantly painted, moderately sized room that has a comfortable temperature and proper ventilation.

2. Noise, movements and interruptions, especially telephone calls, disrupt concentration, thought patterns and the mood of the interview. People have difficulty listening and thinking when they see cars on the street outside a window, persons moving about in an outer office, or other

investigative personnel coming and going. The investigator must provide privacy and a good atmosphere for an effective interview to take place.

3. For the majority of interviews planned by the investigator, all communications barriers such as desks, tables, personal items, etc. should be eliminated. Generally, the person sitting behind a desk, whether the interviewer or the interviewee, gains power and formality. The elimination of physical structures limits the ability of the interviewee to hide behind barriers that can provide a feeling of security as well as emotional and psychological support. For a friendly witness, the room should be casual and comfortable. For a hostile witness or suspect, the room should be sparsely furnished with perhaps only chairs for the interview participants.

c. The IG investigator's decision concerning where the actual location of interview will take place is often based on the sensitivity of the matter and the cost, time and resources available to conduct the inquiry. See Section 0820 of this Chapter for a discussion of alternatives.

#### **0810 PSYCHOLOGICAL.**

There are a number of psychological factors that have a bearing on interviewing as well as the reliability of the information obtained. Some of the more important emotional factors are anger and fear. These factors are readily recognizable through physical and verbal manifestations. Anger must be suppressed because it causes the interviewee to resist the interviewer emotionally. Fear is aroused through any present or imagined danger. The fear associated with interviews is not fear of physical danger, but psychological danger which is associated with job and financial security.

#### **0811 BODY LANGUAGE (Nonverbal Behavior).**

Verbal behavior is more controlled than nonverbal. The investigator must realize and understand the following:

a. Eye gaze and movement, pupil constriction/dilation, distance/pacing, and touching are all part of nonverbal communication. But more than just knowing what these terms mean, the interviewer needs to know how to use these concepts in an interviewing context. You can use these nonverbal elements to reduce or increase tension in an interviewee, to gain rapport, and to enhance the subject's cooperation.

b. The investigator needs to be aware of the interviewee's nonverbal behavior to properly evaluate his/her credibility. Unfortunately, there is no one single nonverbal indicator which will tell the investigator when the interviewee is being deceptive. What you are doing is evaluating the interviewee's stress response, since most people will exhibit some signs of stress when they are omitting or falsifying information.

#### **0812 POSSIBLE INDICATORS OF DECEPTION.**

Some general observations regarding deceptive persons are as follows:

a. Deceptive persons tend to deny their wrongdoing specifically while the truthful person will deny the problem in general.

b. Deceptive persons tend to avoid realistic or harsh language while the truthful do not.

c. Deceptive persons may fail to answer or attempt to delay answers. They may ask to have the question repeated or repeat the question themselves. This allows them time to think of an answer. Truthful persons generally answer specific inquiries or questions with direct and spontaneous answers. The answers are "on time" with no pause.

d. Deceptive persons may have a memory failure or have too good a memory.

e. Deceptive persons tend to qualify their answers more than truthful persons.

f. Deceptive persons may evade answering by talking off the subject.

g. Deceptive persons may support their answers with religion or oaths. The truthful rarely employ this tactic.

h. Deceptive persons tend to be overly polite and it is more difficult to arouse their anger. The truthful will be quick to anger and any denial will grow stronger.

i. Deceptive persons may feign indignation or anger initially, but will quit as the interview continues.

#### **0813 ADMISSIONS OF GUILT.**

One of the most effective items of evidence at any administrative or disciplinary forum is an individual's admission or confession. However, to effectively use an admission or confession, it must be properly obtained and legally admissible. Although Federal investigative personnel can, under certain guidelines, compel government personnel testimony, no one is empowered to compel testimony or admissions in criminal matters from persons suspected of or involved in criminal conduct except as specifically authorized by law. **UNDER NO CIRCUMSTANCES CAN ABUSE OR COERCION BE JUSTIFIED. AVOID HARASSING THE INTERVIEWEE INTO GIVING INFORMATION.**

### **PART TWO - PREPARATION FOR THE INTERVIEW**

#### **0814 OVERVIEW.**

There is no substitute for detailed planning and preparation. Know what you are talking about; know what information you want; and keep in mind the who, what, when, where, why, and how of the case. The investigator must have sufficient background knowledge about the witness to select the correct approach to questioning, to assess the witness's truthfulness, and to demonstrate the thoroughness of the investigation.

#### **0815 DEVELOP AN INTERVIEW PLAN.**

It is imperative that IG investigators are well prepared before beginning an interview. Factors in planning should include the biographical or background data for the witnesses, and the objectives of the interview for each witness. This is generally accomplished by preparing an outline that should cover every topic you wish to discuss. This outline should be informal and provide a clear-cut goal or objective for your efforts. As a rule, the items outlined will indicate the topic to be resolved, but will not cover the individual questions that must be asked.

**0816 OBTAIN BACKGROUND INFORMATION.**

Prior to an interview, obtain as much information as possible on the details of the case and the background, character and habits of the persons involved. This will help the investigator to determine the most effective interviewing procedures applicable to that particular individual. Where possible, gather information from organizations outside of the interviewee's work (e.g. the finance office may be able to give you information concerning an individual's leave or TAD for a certain period). This may have less negative impact than going directly to the command to find out. Individual biographies and personnel records will also assist in knowing the background, experience and dates of assignments of the witness.

**0817 ESTABLISH A WITNESS LIST.**

The minimum number of witnesses necessary to substantiate the facts in the case works best and means fewer people are aware of the case. The investigator should keep in mind that all important facts should be verified and do not assume something is true just because someone of a higher rank says it is so. At a minimum, the IG investigator should have at least one person or document that verifies or corroborates a fact. Always appreciate the impact of talking to someone about allegations against someone else, especially someone in his/her command. The complainant, if known, may be able to provide you names of witnesses. However, do not limit the witness list to what the complainants provide. The investigator will need to develop his/her own witness list since the complainant is not likely to give the names of people who could give another side of the story.

**0818 ESTABLISH AN INTERVIEW SEQUENCE.**

The sequence of the interviews will vary based on the nature of the allegations and on the availability of the complainants, witnesses, subjects or suspects. Consider the following:

a. **COMPLAINANT/WITNESS/SUBJECT SEQUENCE.** Experience has shown that complainants should be interviewed first, followed by witnesses and experts, then subjects, and finally by witnesses for the subject. Interviewing the complainant, witnesses, and experts first enables the following to happen when interviewing the subject:

1. Gives the investigator the information needed to ask the right questions the first time.
2. Enhances truth telling (people are more likely to be truthful if they know the investigator has done the necessary research).
3. Enables the investigator to challenge statements which are inconsistent with other evidence or otherwise appear untrue.
4. Allows the investigator to advise subjects of all prejudicial information against them and allows them an opportunity to comment.
5. Saves time.
6. Ensures rights protections are afforded.

b. **COMPLAINANT/SUBJECT/WITNESSES SEQUENCE.** Under certain circumstances, the aforementioned interview sequence may be inappropriate. Resist the temptation to go directly to the person against whom the allegations were

made unless there are no other witnesses or documents to support one side or the other of the allegations. In this case consider interviewing the complainant first, followed by the subject, and then witnesses and experts. The reasons for this sequence are:

1. The investigator has vague, anonymous allegations and cannot identify other witnesses.
2. The investigator has vague, anonymous allegations which the subject can clarify.
3. The subject has information not readily available elsewhere.
4. The subject is about to move to a distant location.
5. You believe the need for speed justifies the risk.

**0819 DETERMINE THE TYPE INTERVIEW TO BE CONDUCTED.**

Depending on the nature of the allegations, sensitivity of the case, and location of witnesses, the interview may be anything from a very informal telephone call (documented with a memorandum for record) to a formal taped interview using the investigation read-ins as guides. Before going into an interview, an investigator should know what evidence he or she expects to gain out of the interview. If the purpose of the interview is merely to develop background information, then a lot of preparation may not be necessary. However, if the witness is a primary witness then the investigator should, prior to the interview, determine what information that witness may possess and what line of questioning will result in obtaining that information. Consider the following:

- a. Most interviews in an inquiry will be informal. In an inquiry, formal, taped interviews are not the rule, but in certain situations, they may be a good way to proceed. Generally, the more serious the issues and ramifications of the issues, the more formality is appropriate.
- b. Sworn taped interviews are useful in situations in which you have a conflict in evidence from different sources or in which the allegations and issues are complicated and the taped recording provides an accurate record of the proceedings. Sworn taped interviews will most likely be obtained during IG investigations.

**0820 DETERMINE THE LOCATION OF THE INTERVIEW.**

Make sure the location of the interview is compatible with the dignity and confidentiality of an IG investigation or inquiry. Conduct interviews in a location that preclude witnesses from being seen or heard by others. The investigator should always attempt to interview witness in his/her office or an interview room. The atmosphere of privacy helps place the witness at ease and make him or her more willing to provide information. The following options should be considered:

- a. **IG Office.** With rare exception, your IG office is often the best place to conduct an interview. The IG office has several advantages to capitalize on:
  1. Time. Requires no travel so time can be used to plan and conduct other business. IGs may find it more cost effective in terms of time and money to bring a witness to the IG's location for the interview.

2. Resources. Equipment (tape recorders, etc.) is readily available there and, if necessary, other IG personnel are available for assistance.

3. Control Privacy. The situation and access to the interview can be easily controlled. This will better protect confidentiality and diminish rumor by removing the interviewee from his/her office environment.

b. **Interviewee's Office**. The advantage is that the interviewee may be more at ease and more willing to share his/her information. The investigator's willingness to come to the witness's location may also help establish a rapport with a reluctant or defensive witness. The interviewee may also have ready access to information, records or documents. The disadvantages are that the interviewee's coworkers may find out that you are there, which may result in rumors. Further, you have little control over privacy and will probably not be able to prevent unwanted interruptions. A subject may also want to interview in his/her office because he/she feels more in control.

c. **Neutral Location**. There will be times when the investigator may need to travel, and the interviews may have to be conducted at a neutral location, such as a hotel. This can be done effectively if the IG investigator plans ahead. Having a partner while interviewing in these situations becomes more important and provides everyone involved with a measure of protection from possible allegations of wrongdoing. When notifying someone that you will interview him/her at a hotel, set up an initial meeting in a public place such as the lobby. There you can properly identify yourself and make the interviewee more at ease.

d. **Other Command/Activity (or another IG) Office**. Ask the command point of contact to set aside an appropriate interview location and ensure they are aware of any special needs.

e. **Interviewee's Home**. On rare occasion, the investigator may interview a witness (usually a civilian) at the witness' home. This is the least desirable location because you may lack control of the interview and proper planning becomes more critical to provide to all individuals concerned the necessary protection from allegations of wrongdoing, real or perceived. If this option is necessary, work with another investigator as a team.

#### **0821 FORMULATE ADVANCE QUESTIONS.**

A well thought out interrogatory (list of questions and anticipated answers) is the key to a successful interview. The interrogatory is basic to planning the interviews and it provides a road map for the interview and ensures that the investigator covers all important points. Therefore, the investigator should:

a. Develop a list of questions for each witness on separate sheets of paper (in some cases, the interrogatory will be the same) including all the questions you want to ask of the interviewee. The interrogatory should also include the anticipated answers. If the answers can not be anticipated, the investigator must be ready to follow-up with other preplanned questions.

b. Consider the specific sequencing of the questions in order to optimize the interview time and obtain the most information. Questions should be sequenced from general to the specific:

1. General questions elicit a narrative response type of answer that provides the who, what, where, why, when and how. Questions starting with "tell me ..." also are likely to a narrative response. Questions requiring a narrative response are open-ended questions that encourage the interviewee to talk and allow the interviewer to obtain the "big picture" of what the interviewee may know.

2. Specific questions call for a specific or precise answer. The specific question should be used to extract more detailed information or to clarify information after a narrative response question is asked. These type questions should not be used until a number of open-ended questions have been asked and answered.

#### **0822 OTHER INTERVIEW PLANNING CONSIDERATIONS.**

Some other important elements to consider when planning the interview are the length of time for the interview, location, list of questions, how to establish rapport, and who is going to be present other than the investigator and the interviewee.

a. **Time.** When determining how much time to allow for interviews, consider the need for ample time to ask all questions and answers, rapport building, follow-on questions, time to allow one witness to leave and another to arrive without violating confidentiality and time for the investigator to compare notes with his/her partner, prepare for the next interview, and take care of personal needs.

b. **Witness Availability.** The commander's directive provides the IG investigator the authority to require the presence of military and DoN civilian witnesses within your command. The best way to assure witness availability is by being able to secure their cooperation. If unsuccessful, the investigator should seek the assistance of the witness' commander or immediate supervisor. The individual can then be ordered or directed to cooperate. When this becomes necessary, it should be directed by a member of the individual's chain of command.

c. **Identify Others to be Present at the Interview.** In addition to complainants, witnesses, subjects and investigative personnel, other personnel may be present during and interview. Possible participants include:

1) **Legal or Union Representation.** See Chapter 9 Sections 0917 through 0920 for further discussion.

2) **Court Reporter.** If a court reporter not assigned to your IG office is used to record testimony, instruct the reporter on his/her duties. Caution the reporter about the confidential nature of the investigation. Provide instruction for taking the testimony, and direct the reporter to make a verbatim record of the testimony. Also, require the reporter to save notes and give them to you with the verbatim transcripts. At the beginning of the investigation, administer the following oath to the reporter, but do not repeat it for each witness:

*"Do you, \_\_\_\_\_, SOLEMNLY SWEAR (or affirm) that the testimony taken in the case under investigation will be truly taken and correctly transcribed to the best of your ability; and that all knowledge of the case coming to you will be held in confidence; that all stenographic notes, carbon paper, spoiled sheets of testimony, or other papers, and all transcriptions thereof,*

*will be carefully safeguarded and delivered into my hands, or otherwise disposed of as I may direct, SO HELP YOU GOD?"*

3) **Interpreter.** If an interpreter is required, caution them on the confidential nature of the inquiry or investigation. Administer the following oath at the beginning of the investigation, but do not repeat it for each witness:

*"Do you, \_\_\_\_\_, SOLEMNLY SWEAR (or affirm) that you will interpret truly the testimony you are called upon to interpret, you do solemnly swear/ SO HELP YOU GOD?"*

### **PART THREE - CONDUCTING THE INTERVIEW**

#### **0823 BASIC RULES.**

Regardless of category of participant being interviewed certain basic rules apply to the conduct of the interview. Five fundamental rules are as follows:

a. **Two Interviewer Rule.** Whenever possible two investigators should conduct an IG investigative interview. One investigator assumes the role of primary interviewer (generally the responsible case agent) and takes the major role in the interview. The primary interviewer makes the introductions, states the purpose, establishes rapport, and asks the first series of questions. The primary interviewer is responsible for setting the tone of the interview, setting the parameters (if any), initiating the interview and observing the interviewee via all modes of communication. The primary also ensures that the secondary interviewer knows exactly what is required of him/her. The secondary interviewer generally takes notes, makes observations and asks questions not asked by the primary interviewer. It is an accepted rule that the primary and secondary interviewers **DO NOT** interrupt each other.

b. **Establish Rapport.** Rapport building is one of the most important aspects of any interview process. There is little chance of a successful interview unless the interviewee can be induced to talk. Most people resist giving information to a stranger; therefore, attempt to establish a sincere and trusting attitude with the interviewee to enlist his/her full cooperation. It may be nothing more than a handshake, smile, professional demeanor, the way the purpose is stated, or more involved discussion of some matter important to the interviewee. IGs build rapport by explaining the IG mission and role, striking a balance between professionalism and being relaxed and casual, being up-front as much as possible (without violating confidence of sources), and presenting themselves as impartial, unbiased and nonjudgmental. Rapport building is a process that should be continuous throughout the interview.

c. **Be an Active Listener.** Probably the most important way to improve communication skills is to work at active listening. This means more than simply concentrating on what the other person is saying. It includes letting interviewees know you have heard them. It means keeping your talking to a minimum and keeping the speaker at ease. This requires reacting appropriately to disclosures and information provided and, above all, concentration to hear what the interviewee is saying. To do this you must avoid making assumptions and arguing mentally, both of which are distracting. You are obligated to listen for the main points and supporting evidence and share in the responsibility for the communication. Questioning should be used for clarification and feedback. The basic skill involved in active listening is paraphrasing or putting into your own words what the other person seems to be

communicating to you. This gives interviewees a way to know whether or not their point is getting through to you or whether you have missed the point and further clarification is needed.

d. **Be Observant.** It is important that the interviewer also "actively listen" to nonverbal communication processes throughout the interview. The interviewer must read clusters of behavior and not rely on a single observation. When analyzing behaviors, you must first determine what the "normal" behaviors are for the interviewee. Look for changes/ variations in this norm. Be aware of cultural differences. Evaluate for timing and consistency; to be reliable indicators of truth or deception, behavioral changes should occur immediately in response to a question or simultaneously with the interviewee's response. The investigator's observations are of value when developing follow-on questions and may be of value when weighing the evidence or creditability of a witness. Hesitation, evasiveness, body movements, and fidgeting may indicate the witness is not telling the truth or is concealing information. Or it may mean only that the witness is nervous with the interview process. This is where the investigator's ability to put the witness at ease is very important. When appropriate, write an MFR which describes physical mannerisms. Use caution in interpreting physical mannerisms, and avoid attaching undue or unfounded significance to them.

e. **Be Aware of Language Differences.** The IG investigator should give careful consideration to regional and cultural differences in word selection. Language problems are often encountered during questioning portions of the interview. The two people involved may think they use a common language, but the meanings associated with that language are often quite different. The interviewer must discriminate between message and meaning. Semantic barriers can be overcome to a great extent and communication accuracy can be increased by an appropriate choice of words, varying your voice and using silence, or a pause, to your advantage.

#### **0824 PHASES OF THE INTERVIEW.**

The conduct of the actual interview consists of four distinct phases as follows:

##### **a. PHASE I - THE INTRODUCTION.**

The ultimate success or failure of the interview is often determined during your initial contact with the witness. Every interview starts with a three part introduction: The greeting, the pre-tape briefing, and the formal read in:

1. Greeting. During this initial portion of the interview, the IG investigator greets the person to be interviewed, attempts to establish rapport, and defines the purpose of the interview. Introduce yourself (as well as your partner, if appropriate) and identify the organization you represent. Establishing rapport with the interviewee is an important and continuous part of the interview process. See 0823 of this Chapter for further discussion of this subject. When appropriate, the IG investigator should clearly define or state the purpose of the interview, and advise the interviewee why you find it necessary to speak to him or her. The statement of purpose is not meant to reveal detailed facts of the case, but consists of an overview of what is to come.

2. Pre-Tape Briefing. The purpose of having a standardized pre-tape briefing is to put witnesses at ease by explaining IG procedures and the interview process. The IG investigator accomplishes this by fully

explaining to the interviewee what is going to take place. The standardization helps to ensure that each witness gets the same information and that your presentation is smooth and confident. For standardization, use the read-in/out scripts (Appendix A) for most interviews. The legal wording (designed to protect everyone involved) of these scripts tends to make witnesses uncomfortable and inhibit communications. The investigator can help put the witness at ease by covering the following points before starting the questioning phase:

a) Explain that the interview will be conducted in four parts (the introduction (pre-tape briefing and read-in, questions and answers, summary and closure/read-out) and explain that the procedures are standard for IG investigations and inquiries.

b) Explain your confidential fact-finding role, and that both hearsay and opinion can be accepted as testimony;

c) Explain how the IG system protects the confidentiality of the witness, but that law or regulation may in some instances result in the ultimate release of any testimony (e.g. a court may order the release of an IG record). Remember, **do not guarantee confidentiality.**

d) State that the interview will be conducted while the witness is under oath or affirmation and if it will be recorded. Don't ask the interviewee whether he/she wants to record or take the oath. If the question is raised by the interviewee, deal with it then.

e) Explain that a prepared script for read-in is read to make sure the witness's rights are explained as required by law and regulation. Read-in and read-out scripts are at Appendix A.

f) Explain that you will ask questions and give the witness time to respond.

g) Explain that at the end of the interview you will again read from a prepared script and the witness will be given an opportunity to present yet uncovered material which pertains to the investigation.

h) Caution the witness to discuss classified information only if necessary and to identify any classified information given. The investigator may request that the witness ask to turn off the tape recorder prior to discussing classified information so the investigator can determine whether the information is necessary to the case and needed in the transcript. If any portion of the tape contains classified information, then the tape must be classified. If any classified information is used in the report, it also must be classified and protected as appropriate. If a court reporter is used, make sure the appropriate clearance is held.

i) Explain that the final product of the IG inquiry or investigation will be a report to the directing authority.

j) Generally explain what the Freedom of Information Act (FOIA) is and how it allows members of the public access to records which include the transcript of the interview or the report of this investigation. Explain that IG records (testimony and any information extracted from

testimony included in the ROI) can be protected from a FOIA release if the witness wants it protected. At the end of the interview, as part of the read-out script, the witness will be asked whether he/she consents to release or not.

k) Provide the witness a copy of the Privacy Act statement (Appendix A) and allow him/her to read it. Ask if there are any questions. This will save time after you start the interview. If there are questions, tell him/her that the purpose of providing this form is to show that the investigator has the authority to request personal information and use it for a system of records. This statement is not a consent to release to a third party and does not have to be signed. It will be referred to in the read-in.

l) If the interview is recorded, tell the witness that because the interview is recorded, all responses must be oral; not to speak while anyone else is speaking; and to avoid actions, such as tapping on the table, which might obliterate words in the recording. Explain that you can turn off the recording devices and discuss points off tape, but that everything said is considered on the record and may be used in the investigation.

3. Formal Read-in. When the informal discussion is completed, advise the witness you are beginning the formal interview. If taping the interview, turn on the recording equipment and read VERBATIM the appropriate read-in script. Both the read-in and read-out scripts are sound, legally correct documents which contain essential information. There will be times when you will not use the oath such as during an unsworn telephone interview. At other times, you might need to add the oath for a recall interview. See Appendix A.

**b. PHASE II - QUESTIONING PHASE.**

Questions and answers are the body and purpose of the interview. Whether recording the interview or not, keep in mind the question sequencing (general to specific) and the phraseology (who, what, where, when, why and how) of the questions. Some general guidelines during this phase follow:

1. Questions should be asked in a conversational manner whenever possible using terms familiar to the interviewee. After the interviewee's response, incorporate a short pause to greatly enhance the flow of information.

2. Put the witness at ease by asking background questions first in order to establish rapport, but word the questions so the information comes from the witness. Avoid questions which can be answered by yes or no. For example, if you want to know if the witness was at a certain place on a particular day, do not ask him if he or she was there, but rather, where was he or she that day. Rephrase the question if the answer is incomplete.

3. Use simple, direct questions to elicit information, especially when the witness is hostile and reluctant. Ask one question at a time, then patiently wait for the answer. If the witness hesitates, don't immediately start rephrasing the question because he/she may need time to think. In many instances, witnesses start to answer a question and one or both investigators interrupt with another question or clarification before the witness has completed answering the original question. Make a note, and ask the question

when the witness finishes the answer. Usually if a witness does not understand a question, he/she will ask.

4. Listen attentively, evaluate the information received, and resolve inconsistencies with follow-up questions. The investigators should agree, prior to the interview, as to who will concentrate on the prepared interrogatory and who will listen for unsuspected leads and answers. This agreement also lessens the chance of one investigator unnecessarily interrupting the other and possibly changing the thrust of the original question.

5. Maintain control of the interview. Allow discussions of unrelated matters to place witnesses at ease, but never allow a witness to take the initiative. Guide the talkative witness to the issue and pertinent answers. Allow the witness to give testimony freely and without fear, but don't permit him/her to give flippant, evasive or argumentative answers.

6. Get to the point at the appropriate time during the interview. The investigator needs to establish background information and put the witness at ease before getting into difficult areas which could cause the witness to become defensive and not want to answer. Waiting too long can appear to be "beating around the bush" or "fishing" which can be just as bad. The best approach is usually to first ask background questions which are pertinent, but not controversial, then work the witness toward the more difficult subject. Determine the source of hearsay so direct evidence may be obtained.

7. Ask the "hard questions" which concern the witness' specific role in what has been alleged. Do not allude to the subject matter, but be specific. If the hard question is not asked, it most likely will go unanswered. Often the questions can be embarrassing or sensitive to you and the witness. Preparation will make you comfortable, and your comfort will put the witness at ease with the "hard" questions.

8. Pursue the issue when an answer, tone of voice, or nonverbal signal indicates the witness has additional information. Continue to question a witness who avoids answering questions by saying, "I don't remember." Point out that she/he may be failing to remember facts that persons would normally recall. Appeal to military witness' sense of duty to overcome his or her normal reluctance to make adverse statements about superiors. Persuade civilian witnesses by appealing to their patriotism or desire to see justice done.

9. Use skill and tact to confirm or deny suspicions that a witness is untruthful. Confront the untruthful witness with proof of his or her falsehood in order to elicit a change in his or her testimony. Experience has shown that it is best to read the witness advisement concerning false swearing as a last resort, however, if the investigator suspects the service member witness has made a false official statement, they must be advised of their rights under Article 31, UCMJ. Remember it is not necessary that the investigator have a subject admit his/her wrongdoing. If the investigator has the preponderance of evidence that substantiates an allegation, the only purpose for talking to the subject is to get his/her side of the story (administrative due process right). The fact that a witness has lied during a case can be as important as the original allegations and should be addressed in your report.

10. Determine the basis for the witness' opinion. Although the investigator's main concern is the collection of facts, investigators have discovered that a wealth of information may be revealed when a question is asked dealing with the opinion of the interviewee. In many instances the victim or witnesses will have much more information about how a transgression may have happened and who may have done it. Also, in many instances when a witness is asked for an opinion regarding wrongdoing or administrative problems within his organization, he/she may know exactly who did or is doing things improperly, and where the organization is most vulnerable.

11. Ask questions for clarification when answers contain trade names, technical wording, acronyms, slang, or colloquial expressions. However, do not interrupt by asking how to spell a name or to obtain other identifying data. This interruption of the witness' train of thought often causes loss of the thought. Make a note, and ask the question after the witness finished the answer or at the end of the interview.

12. Ask yourself, have all pertinent points been covered? Are the answers complete? If you have any doubt as to what the witness is saying, ask, "What I hear you saying is..." or "Do you mean by that..?", then repeat your understanding to the witness.

13. If during the interview, the witness suggests personal criminal involvement, the witness must be advised of his/her rights using the Rights Warning Procedure/Waiver Statement (Appendix D). Unless rights are waived, the interview ceases. If during the interview you believe the witness has become a subject, advise him/her that he/she need not make any statement which may tend to incriminate him/her. **Note:** Should the investigator or the witness have to take a break for any reason while conducting recorded testimony, state for the record the circumstances and time before shutting off the recorders. When ready to resume the interview, turn on the recorders, state the time and whether the people in attendance are the same or not. If someone has departed or someone new is present, give their names and briefly explain the reason for the change.

**c. PHASE III - THE SUMMARY.**

The summary is an important part of the interview, especially in the one-interviewer interview, because it allows the investigator to be sure he/she has obtained all the information. Just prior to the end of the interview, the investigator may want to summarize important answers with such statements as "I understand that what you have testified to is this: one, two, three.. A,B,C.." This technique is specifically applicable when it concerns an element of essential information. Often the interviewee will clarify or add to previously given information during this phase. In the two-person interview, the secondary interviewer usually summarizes from notes just taken and may ask any questions not asked by the primary interviewer. To be accurate, the investigator must also be careful during this phase for a witness may believe and agree with whatever you say even if incorrect. This is especially true when the witness feels overwhelmed and nervous about the interview process or really wants to please the investigator.

**d. PHASE IV - THE CLOSE and FORMAL READ-OUT.**

The final phase of the interview is the close, which includes the formal read-out. The close is the continuation of the rapport and courtesy to ensure that the door is left open for future contact. During this important phase the IG investigator:

1. Gives the interviewee the opportunity to present information concerning matters not specifically covered during the interview.

2. Obtains any additional identifying data you require and how and when to contact the interviewee again if necessary and ensures the interviewee knows how to contact the interviewer if he/she remembers or obtains additional information.

3. Reassures the interviewee about any concerns he/she may have raised regarding the interview or information provided. Also, if the investigator senses that the witness fears retribution for cooperating with the IG, the witness is informed to contact the IG office if he/she becomes the target of reprisal. Don't guarantee that IG materials will not be used for adverse action.

4. Thanks the interviewee for his/her cooperation.

5. Specifically asks the witness whether he/she consents to release of his/her testimony in response to unofficial requests for his/her information or the report of investigation or inquiry. Remember, don't guarantee the witness confidentiality.

6. Closes out with some type of statement that allows the individual to know what to expect, which depending on the situation, might be nothing. Be candid. If you do not think you will ever contact the witness again, tell him/her so.

7. If the interview is recorded, the IG investigator closes out the interview by using the appropriate read-out script (See Appendix A).

#### **0825 USE OF THE RIGHTS WARNING CERTIFICATE THREE BASIC QUESTIONING TECHNIQUES.**

Consult your SJA concerning the proper use of this certificate (See Appendix D). When taking recorded testimony, you may turn off the recorder while executing this form. The general procedures are to read a duplicate copy to the subject while they read the original and have the subject initial each section to indicate they understand their rights as they were presented/read to them. The subject will then sign the bottom line to further signify they understand their rights. The investigator will also sign the report as a witness, and final verification that the subject was read their rights before questioning began. Should the investigator have to execute this form during a witness interview and is not sure what to put as the charge(s), they should take a break and call the SJA. If the SJA is unavailable, a general description of the charge(s), in the investigator's own words (e.g. failure to follow a regulation or misuse of government equipment) will suffice. The original copy of this form should be included with the subject's testimony in the ROI.

#### **0826 THREE BASIC QUESTIONING TECHNIQUES.**

There are three basic questioning techniques conducive to obtaining information, any or all may be used in an interview:

a. **Free Narrative.** An orderly, continuous account of an event or incident given with or without prompting. It is used to get a quick resume of what the interviewee knows or is willing to tell about the matter. Usually, it can be initiated by requesting the interviewee to tell what he knows about the matter. The investigator must be sure to specifically designate the

occurrence to be discussed and encourage the interviewee to give the free text or "tell the story."

b. **Direct Examination.** This is systematic questioning designed to bring out a connected account of an event or an incident. The direct examination uses who, what, when, where, why, and how questions. Its purpose is to elicit new information or to fill in details omitted during the free narrative. To effectively accomplish the direct examination the investigator:

1. Begins by asking questions that will not elicit hostility;
2. Asks questions in a manner to develop the facts in some systematic order;
3. Asks one question at a time that only requires one answer;
4. Asks straight forward and frank questions;
5. Gives the interviewee ample time to answer;
6. Tries to help the interviewee remember, but does not suggest answers;
7. Repeats or re-phrases questions several times to get the desired facts;
8. Is sure answers are understood;
9. Gives the interviewee the opportunity to clarify answers;
10. Separates facts from inferences;
11. Has the interviewee give comparisons;
12. Gets all the facts;
13. Asks questions about every topic discussed;
14. Asks the interviewee to summarize.

c. **Cross Examination.** Cross examination is exploratory questioning conducted for the purpose of testing the reliability of or breaking down the previous assertions of subjects or witnesses. It is useful for testing previous testimony for correctness, resolving conflicting information, determining completeness, filling in evaded details, evaluating the judgment of witnesses, and undermining the confidence of those who lie. The IG investigator should evaluate and check previous testimony against known or readily available information. This will give clues to portions of testimony that should be further explored during cross examination, such as attempts to evade answers, vague or inconsistent answers, information conflicts, and apparent falsehoods. Have the interviewee repeat testimony about a particular event or occurrence several or more times. Attempt to keep expanding on details at random without a definite order or sequence. This is usually best accomplished by asking about the event in a different manner from time to time. The investigator should occasionally inject a different context or relationship of details. It is permissible to use suggestive questions and applications during cross examination. Ask about known information as if it were unknown, or ask about unknown information as if it were known. Specifically explore vague or evaded sections of testimony. Always point out conflicts and require the interviewee to explain inconsistencies. Particular attention should be paid to body language during a cross examination session.

Summarize the known facts and compare them with the interviewee's statements. Ask the interviewee to explain each item of damaging evidence; then point out any illogical answers.

#### **0827 TYPE OF QUESTIONS TO AVOID.**

There are four types of questions that should be avoided:

a. **Leading Questions.** This type of question is phrased in such a way that it suggests the desired answer. The question can generally be answered with a "yes" or a "no" and tends to contaminate the information obtained. However, there are two exceptions when the leading question may be of benefit. The first is to enhance recall and possibly obtain more information when the interviewee cannot remember specifics such as color, height, distance, etc. The investigator can phrase the question in a way that is leading, but makes a comparison and offers a choice. Second, the leading question may be used effectively to test whether an interviewee's prior statement is true or false.

b. **Negatively Phrased Questions.** Negatively phrased questions are a common problem, even among very experienced investigators. The negatively phrased question not only suggests that the response is to be "no," but also states that no is the right answer.

c. **Compound Questions.** Compound questions (i.e., several questions in one sentence) should be avoided because, at best, they confuse the interviewee and, at worst, can cause information to be missed or overlooked. Use of compound questions also tends to show a lack of experience on the investigator's part and may also indicate when the investigator is excited, tense, or lost. In many instances, when faced with multiple questions, the interviewee will answer only the question or questions they remember or are the least threatening to them. The answers to the other questions are most often lost. For the subject, the compound question offers an out because they may be able to get away with answering only the questions that are the least incriminating and create the least amount of stress. This person can conceal information while appearing to be most forthcoming and cooperative.

d. **Complex Questions.** Complex questions are complicated, not easily understood, and cover more than one topic. Complex questions tend to confuse the interviewee and lead to an "I don't know" or an unintended false answer.

#### **0828 COMMON ERRORS TO AVOID DURING AN INTERVIEW.**

There are many errors that an interviewer can make during an interview. Some of the most blatant DON'Ts are:

- DON'T browbeat, mislead, threaten, or intimidate.
- DON'T interview more than one witness at a time.
- DON'T make promises you can't keep.
- DON'T advise or counsel.
- DON'T guarantee that testimony cannot be used for adverse action.
- DON'T lose your temper or patience.
- DON'T argue or make snide remarks.
- DON'T hurry.
- DON'T make assumptions.
- DON'T jump to conclusions.
- DON'T degrade the interviewee.
- DON'T place too much value on minor inconsistencies.
- DON'T bluff.

- DON'T lie to get a truth.
- DON'T try to solve the problem during the interview.
- DON'T let the interviewee interview you.
- DON'T ask long, multiple, or involved questions.
- DON'T try to impress the interviewee.
- DON'T unnecessarily reveal the identities of the other witnesses.
- DON'T prejudge or underestimate the interviewee.

#### **PART FOUR - TELEPHONIC INTERVIEWS**

##### **0829 GENERAL.**

An alternative to the preferred face to face method of interviewing a witness is the telephone interview. The telephonic interview allows the investigator to gather and exchange facts and information at a savings of both time and money. However, to the maximum extent possible, telephone interviews are to be avoided, especially in the case of subjects and important witnesses. Complainant interviews done in-person are also preferred, but are often times not possible. This is because many complaints come via the telephone hotline and provide no means of follow-up. Try to limit telephone interviews to witnesses who only provide background information, and to use as a follow-up technique after the primary interview has been conducted.

##### **0830 DISADVANTAGES OF A TELEPHONE INTERVIEW.**

The most obvious disadvantage of a telephone interview is that you cannot see the person you are talking to. In fact, the investigator may not even be sure he/she is talking to the person they claim to be. The investigator must be careful to ask questions that would ensure reasonable belief that the person you are talking to is the person they claim to be. Other difficulties that arise are: location, time (due to different time zones), lack of observation and the inability to interpret body language, feeling, and voice inflections. The person you are talking to on the telephone may have total anonymity which makes establishing rapport more difficult. It is a good idea to always ask if you may call the individual back due to the length and expense of the call. This will give you a telephone number that can be used to determine where the call originated from, if required. If they respond that they are calling from a government telephone, then you can ask for the number "in the event we are cut off for some reason," you can re-contact them immediately. Paragraph 0832 of this Chapter provides several suggestions for avoiding these problems.

##### **0831 TAPED TELEPHONE INTERVIEWS.**

The IG office can also purchase simple devices designed to allow your tape recorder to adapt to recording telephone conversations. However, if you record a telephone interview, you must inform all parties that the call is being recorded. Taping telephone conversations without the knowledge of all parties violates Federal law. The investigator does not have to use the 12-18 second beep-tone, but it is desirable if the equipment is available. The investigator is not required to ask whether a witness consents to a taped telephone interview, he must simply advise them that it is being taped. Military and DoN civilians must cooperate. A civilian not connected with the military is not required to cooperate; therefore, he/she may decline being recorded just as he/she may decline the interview altogether.

##### **0832 ALTERNATIVE TELEPHONIC INTERVIEW TECHNIQUES.**

Consider these alternative techniques for conducting telephone interviews:

a. **Cooperative Interview.** In this method of interview the primary investigator actually conducts the questioning phase of the telephone

interview with the assistance of an IG at the witness' location. The assisting IG contacts the witness and sets a time for the interview. Just prior to calling the assisted IG, the assisting IG reads to the witness while taping the appropriate Read-in script (see Appendix A). Once the call is placed, the assisting IG verifies the witness' identity and the fact that the witness has been properly sworn and advised of his or her rights. In some cases, the primary investigator may want the assisting IG at the witness's location to remain in the room or even on the telephone with the witness. The assisting IG can later provide feedback on the nonverbal reaction of the witness. In other cases, the assisting IG may give the witness complete privacy for the interview.

b. **Interviews by Others.** The IG investigator may also consider providing interview questions to an IG from another command or at another location to conduct an interview for you. While this method is not preferred, it is more desirable than not getting any testimony. To accomplish this, provide the assisting IG with a copy of the directive, a detailed interrogatory, and, if possible, the anticipated answers. Also, provide the assisting IG the necessary background information such as the witness's role in the case and other insights that would aid him/her in questioning the witness. After the interview is conducted, the assisting IG provides the assisted IG the magnetic tapes or a copy of the transcript. After the assisted IG acknowledges receipt of the testimony, the assisting IG destroys his or her file material.

#### **PART FIVE - SWORN TAPED TESTIMONY**

##### **0833 AUTHORITY TO ADMINISTER OATHS.**

The authority for IGMC/IG investigators to administer oaths is set forth in SECNAVINST 5430.57F.

##### **0834 IGMC POLICY.**

It is IGMC policy to take sworn-taped testimony for primary witness (complainants, subjects, witnesses) interviews involved in an IGMC investigation. Taking sworn-taped testimony during IG inquiries is authorized, but not required. Interviews are taped to ensure an accurate record. A transcript of a taped interview is not susceptible to the argument from a witness that the investigator "misinterpreted" the witness' remarks. It is IGMC policy that all witnesses who are being taped will acknowledge on the record that they are being taped. When the taped interview begins, part of the introductory information must include an acknowledgment or statement by the witness that the interview is being taped. Telephone interviews may also be taped.

##### **0835 TAPING PROCEDURES.**

The following general procedures should be used during the conduct of a tape recorded interview:

a. **Tape/Digital Recorder.** Before beginning the interview, the IG investigator should run a test of the recorder to ensure that it is in good working condition. During the interview, set the volume of the recorder in the medium range and place it in close proximity of the witness. Place the recorder as inconspicuously as possible, but do not hide the equipment from the interviewee. The witness will often feel more comfortable and talk more freely if the tape recorder is to the side. Doing so encourages the witness to speak directly to the investigator, rather than speaking to the recorder. Ask the witness to speak loudly and clearly. If the witness makes a nonverbal

gesture such as head nods or hand movements, direct the witness to provide an audible response.

b. **Preliminary information.** Do not ask the witness for permission to record the interview. Explain that it is IGMC policy to conduct interviews in this matter. Begin the recorded interview by introducing all parties present, noting the date, time, place of the interview. When administering the oath, ask the witness to raise his or her right hand and then recite the oath:

**"Do you swear that the testimony you are about to give in this inquiry will be the truth, the whole truth and nothing but the truth, so help you God?"**

If the witness refuses to swear the oath, substitute the word "affirm" for "swear." If the witness refuses to swear or affirm to his or her testimony, note the refusal on the tape and proceed. The next step is to ask the witness to declare his or her full name, rank or position, and current duty assignment. Also, if the witness was informed that a copy of the transcribed tape of the interview would be provided, confirm this for the record at this time.

c. **Make a Good Record.** Explain any acronyms by the witness and spell out any questionable words or names. Explain verbally any documents that are introduced during the interview and refer to them by name and date, page and paragraph number. If necessary, mark or number the document (e.g. "Document #1"), and have the witness refer to the document identifier while testifying about the document. Again, ensure all witness responses are audible.

d. **Turning off the Tape/Digital Recorder.** On occasion, witnesses may desire to make statements "off-tape/unrecorded" during the course of an otherwise tape-recorded interview. This is permissible, especially where classified information is about to be divulged. The witness should be cautioned that going off tape does not constitute going "*off the record*." In these cases, the investigator will state on the tape that he or she is turning off the tape/digital recorder and provide the time of day when the recorded testimony is resumed. It must be emphasized that the tape/digital file represents the best record of the witness' testimony. If the witness asks to go off tape and, while off tape, presents relevant information, the investigator should insert those statements onto the tape/digital file when resuming recorded testimony. This may be done by posing specific questions to the witness while on tape to elicit relevant information, or by summarizing off-tape comments when resuming the recorded testimony and then asking the witness to verify them.

1. If unrecorded comments are not suitable for taping (e.g., highly classified information), the testimony should be summarized in a written statement signed by the witness.

2. Classified comments may be recorded. However, discussion of classified information should take place in a secure location and the tape/digital record must be safeguarded in accordance with established security regulations.

3. It may be necessary to stop the recording during the interview for breaks, or to change tapes. Explain the break for the record when recording resumes. If a second tape is required, repeat the witness's name and the time at the beginning of the tape. At the conclusion of the interview, state the time of termination.

e. **Transcription.** At the conclusion of the interview, mark each tape/digital file with the witness's name, the date, and case number. Make a determination whether or not the interview needs to be transcribed or can be summarized, in a memorandum for record. To assist the transcribers, provide them with unfamiliar names, acronyms, words, etc. Send a copy of the transcribed interview to the witness for editing if deemed appropriate. Upon the receipt of the edited copy from the witness, mark the edited copy "Record Copy" and maintain both the original of the transcript and the Record Copy for the case file.

**0836 SURREPTITIOUS TAPING.**

IG investigators will not secretly record conversations or telephone calls. Violations of this policy may form the basis for appropriate disciplinary or administrative action.

Surreptitious tape recording of telephone conversations may constitute a violation of the Federal Wiretap Act.

**0837 RECORDING THIRD PARTY TELEPHONE CONVERSATIONS.**

IG investigators will not record telephone conversations in which the investigator is not one of the callers. Such "wiretapping" is illegal without authorization from a judge. If a need for such surveillance is determined necessary, the matter in question is out of the scope of the IG investigator.

**0838 PROVIDING A TRANSCRIPT OF THE INTERVIEW.**

Witnesses may be provided a copy of the transcribed interview upon request. IG investigators should inform the witness the transcript is provided for edit and mark-up, and that the witness may retain a copy. Instruct the witness that after marking up a copy of the transcript, the witness should sign it, and return it to the investigator so the witness' comments may be used in fact-finding effort.

**0839 CHALLENGES TO TAPING PROCEDURES.**

The taping of the interview may cause witnesses to be uncomfortable. When challenges are raised, explain that it is IGMC policy to conduct sworn-taped interviews for administrative investigations and that it is the normal practice or procedure. Tell the witness that a verbatim transcript will be provided upon request, and that tape recording the interview is in the best interests of all concerned because it eliminates any possibility of investigator error. Inform the witness that they may make corrections to the copy of the transcript provided. If the witness continues to challenge the procedure, the IG investigator should inform the witness that the interview may be canceled if the witness refuses to cooperate and that officials in their chain of command would be notified.

## CHAPTER 9 RIGHTS AND RESPONSIBILITIES OF PARTICIPANTS

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### **0901 INTRODUCTION.**

The participants in an IG investigation or inquiry may be divided into the following categories: responsible authorities; subject command organization; complainants; witnesses; subjects; suspects; and investigators. These participants usually have different perceptions of the nature, scope, and purpose of an IG investigation or inquiry. Furthermore, their rights and responsibilities also vary with their duty status (e.g., active, reserve, retired, civilian). On occasion, these rights and responsibilities may impact the manner in which the investigation is conducted, its results, or the action that may be taken in response to the investigation.

### **0902 OVERVIEW.**

This chapter identifies the principal parties to an IG investigation or inquiry and discusses matters that concern them, including their general rights and responsibilities. It then examines in more detail some of the specific rights, responsibilities, and expectations parties may have during the conduct of IG investigations.

## **PART ONE - CATEGORIES OF PARTICIPANTS**

### **0903 RESPONSIBLE AUTHORITIES.**

Responsible authorities are those who have the authority to take or direct corrective, remedial, or disciplinary action in response to an IG investigation or inquiry. They are the people for whom the investigation is to be performed, whether or not they actually requested the inquiry or investigation. In some cases, the commanding officer of the subject organization in an IG investigation or inquiry may act as the responsible authority. When the commander's impartiality is subject to question, a senior commander should be identified.

a. When the responsible authority did not request the investigation or inquiry, (ie., hotline complaint), the responsible authority should be notified promptly upon commencement of an investigation. The exception would be if there is good reason to believe the investigation would be compromised by doing so.

b. Because responsible authorities are required to take appropriate actions, the investigation or inquiry should provide them sufficient information to make informed decisions about these matters.

c. Responsible authorities have the obligation to ensure their subordinates cooperate with, and do not impede, the IG investigation or inquiry. Should a subordinate with authority to carry out responsibilities described in Section 0904b below prove unwilling or unable to do so, the responsible authority must be prepared to direct that action so as to ensure the integrity of the investigation.

d. Responsible authorities have the obligation to ensure the investigation is complete and impartial, in appearance and in fact. It is proper for the responsible authority who tasks an investigation to set forth the scope of the investigation. However, subsequent changes to the scope of the investigation must be considered in light of the appearance, as well as the fact. This will help dispel potential concerns that the responsible authority is attempting to divert the course of the investigation for improper reasons. Should such an issue arise during the course of an investigation or inquiry, the IG organization doing the investigation should discuss the matter with the responsible authority.

### **0904 SUBJECT COMMANDS.**

Subject commands are those organizations in which the matter under investigation or inquiry is alleged to have occurred.

a. The subject command has the right to be notified of the existence and general nature of the IG investigation or inquiry. However, premature notice that would compromise the investigation should be avoided. The subject command should be also notified before the conduct of any on-site interviews.

b. Notifying the subject command at the earliest practical time is important because of its responsibility to cooperate with the investigation or inquiry. The subject command's cooperation is important to a successful investigation. Depending on the needs and specific requests of the investigators, this may include:

1. Making a general announcement regarding the existence of the IG investigation or inquiry in order to limit speculation and inform members of the command of their duty to cooperate with investigators.

2. Directing uncooperative witnesses to answer questions and disciplining those who continue to refuse to cooperate.

3. Taking effective action to preclude or remedy reprisal for cooperating with the investigators.

4. Directing personnel within the command to assist the investigation by such actions as gathering evidentiary materials requested by the investigators, and adjusting personal schedules in order to be available, when needed.

c. Cooperation requires the subject command not take any action that could be construed as interference with the investigation.

d. Allegations may reflect adversely on the subject command. Accordingly, in most cases, the commander of the subject command should be given an opportunity to make an official "institutional" comment on, response to, or rebuttal of the allegations. Similarly, the subject command has the right to know, at least in general terms, the results of the IG investigation. Unless there is a good reason not to do so in specific cases (i.e. likelihood of reprisal), the subject command should be provided a copy of the final investigative report.

#### **0905 COMPLAINANTS.**

Complainants are those who present the initial allegations that trigger a decision to conduct an IG investigation or inquiry.

a. Some complainants choose to remain anonymous. Others may identify themselves to an IG, but request confidentiality. Others have no objection to disclosure of their identities.

b. Complainants have different reasons for making allegations. While their motive is not directly pertinent to an investigation, the investigator who is aware of the motivation may be in a better position to evaluate the statements of the complainant and witnesses.

c. When complainants have firsthand knowledge of facts related to the allegation, they are subject to witness interviews. Complainants who admit wrongdoing or who are implicated during the course of the investigation may become subjects of this or follow-on investigation.

d. Because complainants voluntarily present information concerning wrongdoing, there is a burden on the DoN in general, and the IG community in particular, to ensure complainants are not subject to reprisal.

e. Complainants have the right to be told whether the IG has decided to initiate an investigation of their complaints. They also have the right to be told whether their allegations were substantiated. They may be told, in general terms, whether corrective, remedial, or disciplinary action was taken. However, they do not have the right to know what specific action was taken.

f. Complainants have the responsibility to present allegations of wrongdoing in good faith.

#### **0906 WITNESSES.**

A witness is a person who saw, heard, knows, or has something relevant to the issues being investigated and who is not a subject or suspect. Witnesses are those people investigators select to interview because they may have information that tends to support or refute an allegation, or information that may lead to the discovery of such information.

a. People are selected as witnesses because they may have direct, firsthand knowledge of the facts surrounding an allegation. Some witnesses may be able to provide firsthand, indirect, or circumstantial evidence. Subject matter experts are occasionally consulted during an IG investigation or inquiry in order to obtain their expert opinions or conclusions.

b. Witnesses are sometimes divided into two categories for the purpose of selecting appropriate interviewing techniques. Cooperating witnesses are those who are willing to assist the investigator's attempts to develop pertinent facts. Hostile witnesses are reluctant or unwilling to cooperate with the investigator.

c. Witnesses may become subjects during the course of an investigation. The IG investigator must be alert to ensure their rights are protected if that happens.

#### **0907 SUBJECTS.**

Subjects are those people against whom allegations of non-criminal wrongdoing have been made. In addition to their rights and responsibilities as witnesses, they may have special rights of consultation:

a. Most IG investigations or inquiries concern military and civilian subjects, not suspects. Potential criminal cases are referred to the NCIS or CID for review and determination of investigative jurisdiction. If NCIS or CID decline a case, the IG investigation or inquiry may continue. For IG purposes, the term "criminal" refers to crimes identified in the Federal Criminal Code found in Title 18, USC or those serious crimes that are not purely military in nature. These include rape, burglary, assault and battery, larceny, and etc. Military only offenses punishable under the UCMJ normally are not referred to a criminal investigative agency.

b. When dealing with military personnel who are subjects, investigators must be familiar with the UCMJ and be sensitive to the development of facts that would constitute one or more UCMJ violations. This is important even where NCIS has indicated it has no interest in conducting an investigation, because the convening authority may still wish to refer the military subject to UCMJ disciplinary proceedings.

c. When conduct that may be criminal or subject to prosecution under the UCMJ is discovered during the course of an investigation, the investigator must reevaluate the case and the manner in which it will be handled before proceeding.

d. A subject has the right to notified of the allegation and be given an opportunity to respond to it.

#### **0908 SUSPECTS.**

Suspects are people against whom allegations of wrongdoing (violation of either state or federal criminal laws or violations of the UCMJ) are made, and there is sufficient evidence to believe the allegations have merit. They

have Constitutional rights that must be protected. In most criminal cases, an IG investigation or inquiry will be initiated against a person who is alleged to have engaged in such activity only after a decision has been made that NCIS or CID will not investigate. However, as discussed in Sections 0914 and 0915 of this Chapter, military subjects who may be considered for discipline under the UCMJ should be afforded the same rights as suspects, if there is evidence of wrongdoing. IG investigations or inquiries should be conducted in such a manner as to not unnecessarily create difficulties for any potential prosecution should a convening authority subsequently elect to take further action under the UCMJ.

#### **0909 INVESTIGATORS.**

Investigators, both military and civilian, are those individuals authorized to conduct a specific IG investigation or inquiry, whether or not they are working in an investigator's billet or position at the time of investigation. Investigators have the responsibility to ensure that the rights of all other parties to an investigation discussed in the preceding paragraphs are properly addressed during the investigation. In order to obtain the facts necessary to permit the responsible authority to make appropriate decisions while also addressing the rights of those involved, the investigator has the authority to conduct interviews, administer oaths, and collect documents. Any Marine Corps officer, eligible to conduct investigations or inquiries under the authority of the Manual for courts-martial, may assist in the conduct of an IGMC referral request for inquiry or investigation.

### **PART TWO - SPECIFIC RIGHTS**

#### **0910 GENERAL.**

Issues concerning the perceived and actual rights of participants arise in almost every IG investigation or inquiry. They include such matters as: privacy and protection of reputation; reprisal; anonymity or confidentiality; how information disclosed during an interview may be used by others; assistance from counsel or others prior to and during an interview; recording interviews or reviewing investigator's notes concerning the interview; obtaining copies of one's own written or sworn statements to an investigator, or the statements of others; the opportunity to comment on allegations of wrongdoing; and the opportunity to review or receive a copy of the investigative report. The information contained in the following addresses these general concerns.

#### **0911 PRIVACY AND REPUTATION.**

Allegations that lead to IG investigations or inquiries usually involve sensitive issues, impact the subject command, are against people in positions of responsibility and trust, and are derogatory in nature. In fact, the mere existence of an allegation may constitute an invasion of privacy, harm the reputation and careers of individuals, and tarnish the image of a command.

a. Most DoN IG organizations maintain investigative files in such manner that they are retrievable by the name of complainants, subjects, suspects, and occasionally witnesses. Pursuant to SECNAVINST 5211.5D (DoN Privacy Act Program), files retrievable by personal identifiers such as names constitute Privacy Act systems of records.

b. Complainants, witnesses, and subjects who are interviewed by investigators should be informed that the information they provide will be maintained in files used for official purposes, including the investigation itself and any prosecution or disciplinary action that may result, and that

access to the information within DoD will be on a "need to know" basis. In addition, the information may be used to respond to complaints or requests for information from Congress and other government agencies, including state and local law enforcement agencies.

c. Pursuant to SECNAVINST 5211.5D, people who provide information about themselves for a Privacy Act system of records must be provided a Privacy Act Statement (Appendix A). The statement should be read to people who are interviewed by telephone, and a copy mailed to them upon request. IG investigators should provide Privacy Act Statements to all interviewees unless they have reason to believe the interviewee would become uncooperative. In that case, they should consult with their superiors and counsel. Should an interviewee decline to sign a copy for the file, the investigator should document the declination for the file.

#### **0912 EXPECTATIONS OF CONFIDENTIALITY OR ANONYMITY.**

Many people who participate in IG investigations think their identity and the nature of their contact will be maintained in strict confidence. In fact, there is no absolute right to confidentiality, and the responsibilities of an IG occasionally require the disclosure of sources of information. Therefore, although it is appropriate to "grant" confidentiality in some situations, *IG investigators must never state or imply that confidentiality is an "absolute" or "unqualified" right that will be protected under all conditions.* Such a promise is misleading because disclosure may be compelled by law in certain cases. The following considerations apply:

a. Confidentiality creates a dilemma for any IG organization. On the one hand, an expectation of confidentiality increases the likelihood complainants will come to the IG in the first place, and makes witnesses more willing to cooperate with an IG investigation. On the other hand, as the information an IG is able to provide responsible authorities about the source of facts decreases, so does the credibility of the presentation and the likelihood that action will be taken in response to the investigation.

b. IG organizations have decided to strike the balance in favor of protecting confidentiality. It is DoN policy that DoN IG organizations shall protect confidentiality specifically requested and granted to the maximum extent possible; the identity of an IG source that has been granted confidentiality shall not be revealed outside of the IG chain except with the prior approval of the NAVINSGEN/IGMC. In most cases, such approval will not be granted unless required by law. This means that in those cases where taking disciplinary action would require revealing the identity of a confidential source who refuses to consent to disclosure, the investigating DoN IG organization may be required to inform the responsible authority that it is unable to develop sufficient grounds for disciplinary action even though, in its opinion, the adverse allegations have been substantiated.

c. The confidentiality, or anonymity desires of complainants merit more consideration than those of ordinary witnesses. A witness is selected by the IG for interview and may be ordered (by appropriate command personnel) to respond to the investigator's questions, whether or not confidentiality is granted.

d. IG investigators should consider extending complainant requests for confidentiality or anonymity to all information provided during an interview as long as the request is made at any point during the course of the initial interview.

e. Other individuals who request confidentiality should be informed that it is normal practice to disclose the names of sources within IG channels for investigative purposes.

f. Many letters or telephone calls to a DoN hotline do not identify the complainant. These are truly "anonymous" complaints. However, complainants who reveal their identity in letters, phone conversations, or interviews may also request anonymity. Since they have already identified themselves this actually becomes a request for confidentiality. Unless impractical, this request for confidentiality should be granted, especially in cases where there is a concern of reprisal.

g. Should it become necessary to release an individual's name over their objection, as, for example, pursuant to a court order, they should be notified before the information is released.

#### **0913 THE RIGHT TO FREEDOM FROM REPRISAL.**

The right to communicate with either an IG or appropriate command officials, free from fear of reprisal, is essential to the successful accomplishment of both a command's and an IG's mission. This right should be discussed with complainants and witnesses who express concerns about confidentiality.

a. Some complainants and witnesses have a statutory right to be free from reprisal for disclosing information or otherwise cooperating with an IG investigation or inquiry. Most federal civilian employees have been protected from reprisal for "whistleblowing activities" since enactment of the Civil Service Reform Act of 1978. The Inspector General Act of 1978 contains similar provisions. Additionally, military personnel, non-appropriated fund employees, and employees of some of the larger defense contractors enjoy some degree of statutory whistleblower protection. For additional information see Chapter 11 of this Manual.

b. Whistleblower statutes contain limitations on the type of information for which disclosure may be covered, the persons to whom a protected disclosure may be made, and the type of conduct that constitutes reprisal.

c. Because military and civilian personnel are encouraged to report suspected misconduct to chain of command authorities, it is DoN policy that persons who make good faith disclosures of suspected misconduct to persons or organizations who are "proper authorities" under the U.S. Navy Regulations shall be protected from reprisal of any kind.

d. The Inspector General Act of 1978 states that whistleblower protection does not extend to employees who disclosed information "with the knowledge that it was false or with willful disregard for its truth or falsity."

e. IG investigators who become aware of threats or acts that could constitute reprisal against personnel cooperating in an IG investigation or inquiry should immediately document such information and advise their superiors in the IG chain.

#### **0914 RIGHTS DURING THE INTERVIEW PROCESS.**

Witnesses and subjects have certain rights they may invoke during the interview process. In some cases, the investigator is required to warn them

of these rights before or during the interview. Failure to conform to these requirements could possibly create a situation where the interviewee's testimony and all information derived solely from leads obtained from such an interview could be disallowed in subsequent administrative and/or disciplinary action directed by a responsible authority.

a. Investigators are not required to advise witnesses or subjects of their right to consult with counsel unless they ask about it, because they are not suspected of criminal activity or UCMJ violations. If witnesses or subjects refuse to answer a specific question or proceed further with an interview until they consult counsel, the IG investigator may remind them of their general duty to cooperate with an IG investigation and attempt to persuade them to continue. However, civilian investigators do not have the authority to order them to answer questions, and military investigators should not order military personnel to do so (the preferred method in either case is to request the supervisor or superior officer within the chain of command to issue the order).

b. Civilian subjects must be advised of their right to consult with counsel (and other rights discussed below) before being questioned in a custodial setting. Military subjects must be given this advice whether or not the interview takes place in a custodial setting (IG investigations are generally not custodial).

c. If, during an interview, a complainant, witness, or subject says something that gives IG investigators reason to suspect the interviewee has committed a criminal offense, that person becomes a suspect and must be advised of the right to consult with counsel (and other "Miranda" or "Article 31(b)" rights discussed in Section 0915 of this Chapter below) before investigators pursue that line of questioning.

d. Investigators who fail to provide Miranda or Article 31(b) rights when they are required may, in effect, be granting "testimonial immunity to the interviewee, whose statements made under such circumstances could potentially be barred from use during a subsequent court-martial or other criminal proceeding. de facto

e. For the purpose of an IG investigation, a custodial setting exists whenever interviewees have cause to believe they have been deprived of their freedom of action in any significant way. This may occur, for example, when a superior directs the employee to submit to an interview and/or answer the investigator's questions. Under those circumstances, employees may believe they face the choice of making incriminating statements or being fired for refusing to cooperate with the investigation. To avoid the appearance of a custodial setting, some IG investigators start an interview by telling witnesses that they may terminate the interview whenever they like.

#### **0915 MIRANDA AND ARTICLE 31(B) WARNINGS.**

In order to preserve the government's right to initiate criminal prosecution, civilian or military personnel who may be subject to criminal prosecution in civilian courts must be provided a "Miranda" warning when interviewed in a custodial setting. In addition, military personnel who may be subject to prosecution under the UCMJ must also be provided their rights under Article 31(b) of the UCMJ if the government's right to prosecute under the UCMJ is to be preserved, in any interview context. These warnings are quite similar. Their purpose is to advise interviewees that they have such rights as:

- a. To have counsel appointed without charge under certain circumstances.
- b. To consult with counsel before being interviewed.
- c. To refuse to be interviewed at all.
- d. To have counsel present during an interview.
- e. To refuse to answer those specific questions that would tend to incriminate them.
- f. To ask that an interview be suspended in order to consult counsel.
- g. To terminate an interview at any time.

**0916 THE RIGHT AGAINST SELF-INCRIMINATION.**

The Fifth Amendment to the Constitution guarantees, in part, that no person "shall be compelled in a criminal case to be a witness against himself." Its application extends to investigations that may furnish leads on which a criminal prosecution could be based. The law generally requires that a person in custody be advised of his right to refuse to answer incriminating questions. Thus, questions asked in the context of an IG investigation or inquiry must be considered in light of the right against self-incrimination.

a. **Military Members.** Military members, subject to the UCMJ, must be advised of their rights if they are suspected of an offense, even if not in custody. If military members suspected of violations of the UCMJ are questioned without warnings, any incriminating information they provide is not admissible in a prosecution. If, during an IG investigation or inquiry, the investigator develops a belief that a military member may have committed an offense under the UCMJ, he should either terminate questioning, in order to get a decision on the appropriate course, or give Article 31, UCMJ warnings to the suspect before further questioning.

1. Rule for Courts- Martial (R.C.M.) 301(b) of the Manual for Courts-Martial, United States, 1984, requires that ordinarily, any military authority who receives a report of an offense shall forward as soon as practical the report and any accompanying information to the immediate commander of the suspect.

2. R.C.M. 303 then requires that upon receipt of information that a member of the command is accused or suspected of committing an offense or offenses punishable by court-martial, the immediate commander shall make or cause to be made a preliminary inquiry into the charges or suspected offenses.

b. **Civilian Government Employees.** For civilians, advice as to the right against answering incriminating questions is not required unless the questioning is done in a custodial setting. Custody can constitute any situation where the person's freedom of movement has been curtailed. By the nature of most IG investigations or inquiries, the issue of custody is unlikely to arise. However, when questioning a civilian government employee regarding the performance of his duties, a rights warning may be necessary. A civilian employee who refuses to cooperate, by, for example, not answering questions, is subject to disciplinary action up to and including removal from their job. Caution must be exercised in the case of an individual who may

have committed a criminal offense. If they answers questions, to avoid the charge of non-cooperation, they may incriminate himself and expose himself to criminal prosecution. The government cannot put the employee in this dilemma. If the employee refuses to cooperate, they must be advised (the advice is called a Kalkines warning) that they has an obligation to answer questions, that refusal to answer can subject them to disciplinary action, up to and including discharge from government employment, but that any statements they makes, under such constraint, cannot be used against them in any criminal proceeding. If you are questioning a civilian employee, and they refuses to answer, the preferred procedure is to suspend the interview, and consult with a government attorney. The decision to pursue questioning and forego use of the answers for prosecution can be made only after consultation with the local U.S. Attorney.

**0917 RIGHT TO CONSULT WITH COUNSEL.**

Witnesses, subjects, and suspects have the right to consult with an attorney if they desire, whether or not the IG investigator believes the person being interviewed may have engaged in wrongdoing.

**0918 RIGHT TO HAVE COUNSEL PRESENT.**

Military suspects are entitled to have counsel present during the interview; civilian suspects have that right only during custodial interviews. Complainants, witnesses, and subjects do not have this right, but investigators may permit counsel to attend the interview. In some cases, this makes the interviewee more comfortable and cooperative, and therefore, may be of assistance to the investigators. However, the investigator must make certain that counsel understands that presence is on a not-to-interfere basis only.

**0919 RIGHT TO HAVE UNION REPRESENTATIVE PRESENT.**

Those civilian employees subject to a union contract have the right to request to have a union representative present during an interview if the employee reasonably believes that the interview may result in disciplinary action against them. The right to union representation extends to all federal employees who are members of the bargaining unit, whether or not they are members of the union itself. See Title 5 USC 7114.

a. This right exists whether the IG investigator regards the employee as a complainant, witness, subject, or suspect, and is in addition to the interviewee's right to have counsel present. In appropriate cases, both counsel and a union representative may be present during the interview.

b. The union representative serves only as an advisor to the employee at the interview and may not ask or answer questions for the employee.

c. The union has no right to have a representative present in the absence of a request from the employee.

d. If the union, having been given the opportunity to be represented, does not send a representative for the employee, the interview may proceed as scheduled.

e. The IG investigator is not required to advise employees of this right unless the specific union contract involved requires it. Investigators may consult with the cognizant personnel office in advance of conducting interviews to determine if this may be the case. To ensure the terms of a local contract are not violated, investigators may ask employees if they are

members of a local bargaining unit and, if so, whether they would like a union representative present.

**0920 PROPER ROLE OF COUNSEL AND UNION REPRESENTATIVE.**

During the course of the interview, the interviewee may ask the counsel and/or union representative for advice before answering a specific question. However, these advisors do not have the right to provide unsolicited advice and/or comments. While counsel does have the obligation to object to certain questions, and to their client answering those questions, they **do not have the right to answer questions for the interviewee**, to invoke the right against self-incrimination on behalf of the interviewee (it is appropriate to require the interviewee to make the assertion), or to direct that the interviewee refuse to answer a question. This advice must be solicited by the witness. Therefore, it is important for the investigator to take control from the outset by explaining what is, and is not, permitted.

**0921 RIGHT TO HAVE OTHERS PRESENT.**

Sometimes interviewees may ask to have a third party (friend or family member) present during the interview. Although there is no right to have such person present, the IG investigator may permit this only if it would appear to facilitate the interview. However, the investigator must be especially careful to ensure the privacy of third parties will not be permitted.

**0922 RIGHT TO REFUSE TO ANSWER QUESTIONS.**

Interviewees have the constitutional right to refuse to answer questions when they believe the answer may tend to incriminate them or involve certain privileged communications. In criminal cases, interviewees may also refuse to answer a question that would compel them to make a statement, not material to the investigation, or that was degrading to them. In most cases, this applies only to suspects, and not to complainants, witnesses, or subjects. However, the investigator should remember that a complainant, witness, or subject may become a suspect during the course of an interview and/or investigation/inquiry. Interviewees may invoke the right whenever they have a reasonable basis to believe what they say may be used against them in a criminal proceeding, whether or not the investigator intends to use the information that way. Thus, although witnesses and subjects who are Federal civilian employees generally have a duty to answer questions and may be disciplined for refusing to do so, they can not be forced to chose between subjecting themselves to criminal prosecution by answering a question or facing adverse disciplinary action for refusing to answer. Interviewees who are Federal civilian employees, therefore, have the right to know how the information they provide may be used.

**0923 RIGHT TO FAIR WARNING OF INTENDED USE.**

Persons to be interviewed have the right to know whether, and if so how, their answers may be used against them. In the case of suspects, this right flows from the Constitution; they must be warned that their statements may be used against them in a criminal proceeding. If they are not properly warned, self-incriminating statements may not be used in such a proceeding, although they still may be used in an adverse action that is not criminal in nature (e.g., administrative action). Interviewees who are not in danger of criminal prosecution may be compelled to answer questions that may be used to take disciplinary action, including removal, against them. If they refuse to answer such questions, they may be subject to disciplinary action, including removal, for their failure to answer them.

**0924 RIGHT TO AN INTERPRETER.**

A witness' request that an interpreter be present will be granted if the witness has a better grasp of the matter in his or her native language. IG investigators are responsible for obtaining an interpreter and will not rely on the witness to obtain one.

**0925 RIGHT TO KNOW RESULTS OF INVESTIGATION AND TO REVIEW INVESTIGATIVE REPORT.**

Complainants, witnesses, subjects and suspects have no inherent right to know the outcome of an investigation or to review any final investigation or to review any final investigative report that may be issued pursuant to an investigation. However, it is DON policy to appraise complainants of the general results of an investigation. Fairness dictates that subjects and suspects be afforded the same courtesy.

**0926 RIGHT TO COMMENT ON ADVERSE INFORMATION.**

During the course of the IG investigation or inquiry, subjects and suspects have no specific right to comment or rebut adverse information about them, or even to be informed of the existence of an investigation. However, considerations of fairness and prudence may lead the IG investigator to consider providing them this opportunity. In practice, it is not necessary to make all unfavorable allegations or information known to them. Generally, allegations not deemed worthy of investigation would normally not be revealed. When provided the opportunity, subjects and suspects would normally be required to limit their comments/rebuttal to substantiated or partially substantiated allegations. In this circumstance, subjects and suspects would also be informed of, and permitted to comment upon, any other derogatory information that will be maintained in the investigative file or other official record. Subjects and suspects may provide the following type of information as comment/rebuttal:

- a. Explanation and/or clarification of oral responses made during the course of an interview.
- b. Sworn or unsworn written statements.
- c. Submission of new documents or physical evidence not previously available to the investigator.
- d. Request for investigators to interview others, not previously interviewed, that the subject asserts may have pertinent information the investigator should consider.

**Note:** In most cases, subjects or suspects should be interviewed near the end of the investigation, after all adverse information has been developed. Under certain conditions, it may be advisable to interview them at an early stage of the investigation, as they may be the only source of certain information necessary in the preliminary stages of an investigation.

**0927 RIGHT TO ENSURE INVESTIGATIVE ACCURACY.**

The IG investigator's paramount duty is to ensure the accuracy of the facts used in the investigative report. A necessary corollary is the ability to convince others those facts are accurate when they come under challenge after the investigative report is issued. The most likely source of such challenge is the interviewee who claims the investigator did not accurately record what the interviewee said. Before, during, and after the interview, interviewees who are likely to raise such challenges may express concern over their

ability to ensure the investigator accurately records the information they provide. At times, they may request to make a tape recording of the interview, to review the notes investigators take during the interview, or to read the investigator's report of investigation. Interviewees have no right to do any of these things. However, the prudent investigator can use the interviewee's concern as a tool to preclude subsequent challenge. Therefore, to insure accuracy, IG investigators should consider:

a. Reviewing their notes with the interviewee before completing the interview.

b. Asking interviewees to read and comment upon a draft results of interview report.

c. Asking the interviewee to provide a sworn or unsworn written statement.

d. Preparing the results of interview report or witness statement and obtaining the interviewee's signature before completing the interview.

### **PART THREE - IMMUNITY**

#### **0928 GRANTING IMMUNITY.**

There is a formal process of conferring immunity on a person in exchange for information and testimony. R.C.M. 704 allows a General Courts Martial Convening Authority (GCMCA) to grant either testimonial or transactional immunity to a person subject to the UCMJ for an offense punishable under the UCMJ. The rule also allows the GCMCA to grant immunity for Federal civil offenses to both military members and civilians, if done with the approval of the Department of Justice pursuant to 18 USC Section 6004.

#### **0929 TYPES OF IMMUNITY.**

There are two types of immunity: testimonial, immunity and transactional immunity.

a. Testimonial immunity (sometimes referred to as "use" immunity) is the more commonly granted type, and the one with which IG investigators are most likely to work. When granted, testimonial immunity provides that the government may not use the statements of a person, or information developed from those statements, in a court-martial or criminal prosecution of that person. However, the government may still prosecute that person for commission of the crime in question if it has independent sources of information sufficient to support the case.

b. Transactional immunity is an agreement by the government not to prosecute a person for the underlying crime or transaction that individual is suspected of having committed, regardless of the source of information available for use in such proceeding. **IG investigators do not have the authority to make a formal grant of immunity.** A proper, or formal, grant of immunity is in writing and must come from the person who would be authorized to decide whether or not to initiate prosecution, as discussed in the following paragraphs.

**0930 GRANTING IMMUNITY TO CIVILIAN PERSONNEL.**

Kalkines warnings, also known as administrative warnings, are used in those cases where a decision is made that federal civilian employees who may have engaged in criminal activity will be subject to adverse administrative action instead of criminal prosecution. **A Kalkines warning is, in effect, a grant of immunity from criminal prosecution and must be approved by the US Attorney who has authority to decide whether to prosecute before it is used.** Once this immunity is granted, the employee is no longer entitled to receive Miranda warnings, and may be ordered to answer questions that may be used as the basis for adverse disciplinary action. Refusal to answer the questions also may result in adverse action.

**0931 GRANTING IMMUNITY TO MILITARY PERSONNEL.**

The convening authority who decides whether to refer a military member to a court-martial also has the authority to grant that person immunity from prosecution under the UCMJ. As in the case of civilians, military personnel who receive immunity may be ordered to answer an investigator's questions or face discipline for refusal to obey a lawful order. Their answers may be used against them in non-judicial punishment or other administrative proceedings. Investigators who are military officers do have the authority to order lower ranking military personnel to answer their questions, but before doing so should consider whether the interview would be easier to conduct and more productive if another officer were to issue such an order.

## CHAPTER 10 IG RECORDS MANAGEMENT

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### **1001 IG RECORDS.**

IG records include, but are not limited to: correspondence; documents received from a witness or complainant; IG reports of inspection, inquiry and/ or investigation; transcriptions of interviews; written statements; photographs and other physical property; computer files, data, and forms. IG files may also contain documents that were not prepared by IGMC personnel or local inspectors.

- a. All IG records including those pertaining to other services or agencies, are the property of the Secretary of the Navy, and are maintained on by the IGMC and/ or designated inspectors.
- b. IG records contain sensitive information and advice. Unauthorized use or release of IG records could seriously compromise the effectiveness of the IG as a trusted advisor and may improperly breach IG confidentiality.
- c. IG reports of inspection, inquiry, and investigations are pre-decisional consultative memoranda prepared solely for the use of the directing authority, the commander, or the IGMC. When an IG report is approved, conclusions or recommendations contained in the report neither constitute a commander's decision nor an explanation of the decision unless the commander or the IGMC specifically adopts it as such in writing.

### **1002 CASE FILE MANAGEMENT DURING THE INVESTIGATION.**

Since the purpose of an IG investigation is to gather facts sufficient to enable responsible authorities to take appropriate action, the investigator usually collects or creates many documents during the course of an investigation. These include, but are not limited to: complaints; tasking letters; legal opinions; investigative and interview plans; investigator notes; route sheets; notes of phone conversations; investigator time, travel

and expense reports; complainant, witness and subject statements; memos; letters; contracts; and the investigative reports with endorsements.

- a. The key to good file management is to eliminate extraneous material while ensuring that all documents necessary to conduct a complete and thorough investigation are maintained and readily accessible.
- b. Documents must be organized in a manner that enables investigators to locate key documents quickly and easily, and facilitates supervisory review. Materials should be organized so that another investigator could take over the case and be able to determine what has been done to date. No single method of organization is best in all circumstances. However, organization of similar materials into logical groupings, bound together in properly indexed folders usually is the minimum necessary to permit supervisory review and case reassignment.
- c. Drafts should be clearly labeled and dated as "draft" or "working copy". Hard copies of documents and drafts created by the investigator on a computer should include the computer file name. CD backups of documents should be maintained in the case file, or the case file should state where they are kept in the investigator's work area.
- d. As an investigation progresses, it occasionally becomes evident that some documents that been collected or created are no longer pertinent. However, until the investigation is completed and accepted by the tasking and responsible authorities, it is impossible to be certain about the need for documents. Therefore, if there is any doubt as to the continuing need for a document, it should be retained at least until the case is closed.
- e. The investigator's original notes taken during interviews must be retained until the tasking and responsible authorities accept the investigation, and it is certain that no criminal prosecution will be undertaken as a result of the investigation. When in doubt, retain the notes.

### **1003 CASE FILE MANAGEMENT UPON COMPLETION OF THE INVESTIGATION.**

When the investigation has been completed and accepted by the tasking and responsible authorities, the file should be reviewed to eliminate unnecessary documents in preparation for storage. Only those documents necessary to establish the scope and completeness of the investigation need to be kept. All extraneous materials should be removed from the file. When in doubt, consult with legal counsel.

- a. Documents that should be retained include: the complaint and tasking or forwarding letters; the completed investigation report and all supporting documents; all endorsements indicating acceptance of the report and action taken; the investigative plan; pertinent documents collected during the investigation; sworn and unsworn statements of all persons interviewed; transcripts of recorded testimony; legal opinions; the investigator's interview notes; and notification documents.
- b. In most cases, the investigator collects many documents from the subject command, such as command instruction, policy statements, telephone logs and organizational manuals, that are useful during the investigation but have no value thereafter (unless retained as part of a separate "library" of similar documents for reference in future

cases). Other documents the investigator may collect or generate include travel and expense records, maps, directions, notes of phone calls not pertinent to the investigative report, time logs, and the like. These extraneous documents should be removed from the file.

- c. SECNAVINST 5212.5C, Navy and Marine Corps Records Disposition, and HQO P5212.3, Headquarters Records Disposal Manual govern the maintenance and disposition of IGMC records and all Base and Command Inspector documents.

- 1. Reports of Investigation.

- a) Investigations: These are considered permanent records and should be maintained in the offices of the IGMC for 4 years and then transferred to the Washington Naval Records Center (WNRC). SOI reports are maintained at IGMC permanently.
- b) Hotlines: Hotlines are considered permanent records and should be maintained in the offices of the IGMC for 4 years then transferred to WNRC.
- c) Military Whistleblower Reprisal: These are considered permanent records and should be transferred to WNRC when 4 years old.

- 2. Assistance Cases: Should be maintained at IGMC for 2 years before destruction.

- 3. All IGMC files are subject to possible release pursuant to either the Freedom of Information Act (FOIA) or the Privacy Act (PA). Every document that is retained in the closed file must be reviewed to determine if it should be released pursuant to FOIA/PA.

- 4. Due to the serious consequences of destroying documents that are required to be retained, legal advice should be sought to ensure compliance with the governing directives.

- 5. Any records that reference medical condition, individual counseling, or enrollment in any weight or Substance Abuse Prevention/ Control, or related program requires additional protection. IG records may contain information concerning an individual's identity, diagnosis, prognosis, or treatment in a drug or alcohol rehabilitation program. Stringent protections prohibit the disclosure of such information without the written consent of the individual concerned. A request for such information from IG records must be evaluated under provisions of existing Marine Corps Orders and this Manual. Consultation with the local SJA is advised.

#### **1004 PROTECTION OF IG RECORDS.**

Unclassified IG records will be marked "For Official Use Only" and dissemination is prohibited except as authorized by applicable SECNAV instructions. The markings should be on the footer of the pages of a ROI.

- a. Classified IG records will be marked per applicable regulations and will also be marked "when declassified, document becomes For Official Use Only". Dissemination is prohibited except as authorized by applicable SECNAVINST or MCO.

- b. Original copies of IG correspondence designed to leave IG control, such as replies to complainants or subjects, are not given protective markings and treatment. However, file copies of such correspondence should be protectively marked if they leave IG channels.
- c. Internal management documents designed to circulate within an IG office and govern routine matters do not require protective markings.

**1005 PROHIBITION ON THE USE OF IG RECORDS.**

IG records will not be used as the basis for adverse action against individuals by commanders except when specifically authorized by the Inspector General of the Marine Corps.

- a. When an IG record is used as a basis for adverse action, the individual concerned may become entitled to additional due process rights that will breach the confidentiality of witnesses, IG opinions, conclusions, and recommendations. Commanders must consider this impact when deciding whether to request use of an IG record for adverse action.
- b. When use of IG records as the basis for adverse action is contemplated, a written request will be sent to the IGMC describing precisely which portions of the IG records are requested and why. Assistance in determining whether an action is deemed adverse may be obtained from the local SJA office. The IG will also encourage consultation between the commander concerned and the servicing legal office about the need for IG records as the basis for the action contemplated and the availability of other evidence to serve the same purpose.
- c. When IG records are approved for use as the basis for adverse action, only the minimum amount of evidence necessary from the record will be used, preferably from documentary evidence and testimony for which consent to release was obtained. IG opinions, conclusions, and recommendations should normally not be used as a basis for adverse action.

**1006 ACCESS TO IG RECORDS (GENERAL).**

Access to certain IG records is authorized, subject to restriction, under the provisions of the Freedom of Information Act (FOIA) and the Privacy Act of 1974. Sections 1007 - 1018 detail processing requests for IG records based on the status of the requester.

**1007 OFFICIAL USE OF IG RECORDS WITHIN THE MARINE CORPS.**

Subject to restrictions stated below, applicable portions of IG records may be provided to individuals, commands, or agencies within the Marine Corps with a need for these records in the official performance of their duties. Distribution should be restricted to the absolute minimum consistent with the effect management of the Marine Corps or the local command. The IGMC has authority to act on requests for IG records that are within the provisions of this paragraph. This authority **does not** include:

- a. Authority to discuss or release contents of IG reports of investigation or inquiry to suspects, subjects, or witnesses named in the report (except a witness' own testimony).

- b. Authority to convert an IG record to a personal use not related to official duties. Personal use includes any use relating to objecting to an adverse action or the contents of the IG record.
- c. Authority for commanders to use information acquired by IGs at any level to compare commands or commanders.
- d. Authority for rating officials and supervisors to cite IG inspection findings, inquiry or investigative results, or other IG information in an efficiency report, performance appraisal, award recommendation or other evaluation which is maintained in official personnel records. Even though a rating or recommendation is not adverse, disagreements over the rating or award may lead to appeals and resultant disclosure of Inspector information in a public forum.
- e. IG reports on any investigation containing confidential and sensitive information. When provided for official use, IG reports on an investigation will be strictly controlled. Review of IG reports will be restricted to the absolute minimum number of people with a strict need to review the report in the performance of official Marine Corps duties in order to make a recommendation and decision on appropriate action.

#### **1008 RELEASE OF IG RECORDS PURSUANT TO FOIA AND PA REQUESTS.**

The PA permits individuals to have access to government records that contain information about them in order to ascertain what the records contain, and to seek the correction of erroneous information. The information must be "personal" in nature, must be maintained in a "system of records," and "must be routinely retrieved by use of personal identifiers, such as names or social security numbers," before a person may invoke the PA to obtain access to the information. The FOIA is a general release statute that may be invoked by virtually anyone, whether the information sought is personal or not. DoD and DoN policy state that persons requesting information about themselves are entitled to have their request reviewed under both the PA and the FOIA, and that the information will be released under whichever standard would result in the greater release of information.

- a. DoD Directive 5400.7-R governs the Department of Defense Freedom of Information Act Program and SECNAVINST 5720.42E governs the Department of the Navy Freedom of Information Act (FOIA) Program. SECNAVINST 5211.5D governs the DON Privacy Act Program.
- b. Case files maintained in an IG organization constitute a "system of records," and much of the information in IG files is considered "personal" in nature. IGMC logs case files under the names of subjects, not complainants or witnesses. Thus, for cases investigated or tasked by IGMC, subjects may invoke the PA, but complainants and witnesses may not. Subjects are entitled to have their requests reviewed under PA standards, even if they do not specifically refer to it, or if they cite the FOIA in their request. The rights of people making requests to other DoN IG organizations will depend on the extent to which the comply with DoN Federal Register Notice N04385-1, discussed below.
- c. DON IG organizations that maintain their records consistent with DoN Federal Register Notice N04385-1, which covers IG reports, may invoke PA exemption K2. By virtue of that notice, until such time as subjects or complainants have been denied a "right, privilege or benefit," their rights to obtain information under the PA are, in practice, no greater than the rights of a member of the public who makes a FOIA request.

However, once a subject has been denied a "right, privilege or benefit" (the likely result of disciplinary action), then the subject becomes entitled to review everything in the investigative file relied upon to take the action except for information provided by, or revealing the identity of, someone who was given an express grant of confidentiality.

- d. Under the FOIA, the rights of a subject and complainant are no greater than those of third parties. The FOIA enables a person to obtain information in government records (absent an exemption withhold the information).
- e. IGMC serves as the release and initial denial authority for all investigations it has conducted or tasked to other IG organizations (Command Inspectors).

#### **1009 REQUESTS FOR IG RECORDS FROM DoN SOURCES.**

Persons and agencies within the DoN may obtain IG records for official use by contacting the local IG office of record, stating the reason they need the IG records to accomplish their duties. The local IG may require a written request stating the reasons in order to better relate those needs to IGMC in the event that a final determination necessary.

- a. SECNAV auditors may review IG records at the IG office of record. Requests from SECNAV or Naval Audit Service auditors for copies of IG records will be coordinated telephonically with the IGMC except for IG records related to the audit resolution process.
- b. IG records may be provided to NCIS investigators per the provisions of Marine Corps Order P5211.2.
- c. The following restrictions apply to IG records requested for official use by individuals, commands or agencies within the Marine Corps.
  - 1. IG records will not be reproduced or disseminated without specific permission of the IGMC. The IG office of record may provide permission in the transmittal letter, if appropriate.
  - 2. Use or attachment of IG records as exhibits or enclosures to other records of Marine Corps offices or agencies is not authorized without prior written approval of IGMC.
  - 3. IG records provided to DoN sources will be returned to the IGMC or IG office of record when the records have served the purpose for which requested. Such records are only "on loan" to the DoN source and remain under the control of the IG. IG records do not become part of the requesting agency's system of records.
  - 4. Requests for IG records from an accused or defense counsel, or from a respondent or appellant in an administrative action (e.g., performance evaluation report appeal, relief for cause appeal, Board for Correction of Naval Records (BCNR) petition), are not requests for official use within the Marine Corps (see section 1007).

#### **1010 PROCEDURES FOR RELEASE OF IG RECORDS OUTSIDE THE MARINE CORPS.**

Release and use of IG records outside the Marine Corps, including release to Marine Corps personnel for unofficial or personal use, will be processed under the provisions of the Freedom of Information Act (FOIA) and/ or the Privacy Act (PA) of 1974.

- a. Requests for IG records may be responded to directly by the local inspector; for example, a FOIA request seeking information concerning a hotline case initially received and processed by a local inspector. If the IG DoD, NAVINSGEN or IGMC is not the controlling authority in that particular case, the local inspector may make the release determination without prior coordination. Telephonic coordination with the IGMC is necessary in cases of extreme sensitivity and importance to the Marine Corps.
- b. If the local inspector receives a FOIA/PA request concerning a case controlled by other than the local inspector, coordination will be made with the IGMC. In most cases, the local inspector will be tasked to forward the requested records to the IGMC for processing. This entails forwarding two collated copies (not the originals) of the requested records (including enclosures if specifically requested) and a copy of the acknowledgment. In the forwarding memorandum, the inspector office of record will state the date the request was received and describe how the record was retrieved from local files (whether by name, investigation title, military organization, numerical sequence, cross reference file, or other). Also state any local concerns or recommendations about the request. Telephone coordination with the IGMC is encouraged before copying and forwarding voluminous exhibits to a requested record.
- c. Information may be extracted from IG records to respond to requests for assistance, advice or information, and to answer complaints. Personal information may be used in responses only when the individual to whom the information pertains has given written consent to the use, or when it is determined that release will not result in an unwarranted invasion of personal privacy or improper breach of IG confidentiality.
- d. In determining if personal information should be released, the privacy interests of the individual must be balanced against the public's right to know. Some examples of personal information pertaining to military personnel that normally is released without an unwarranted invasion of privacy are as follows: name, grade, date of birth, date of rank, salary, present and past duty assignments, future duty assignments which have been approved, unit or office address and telephone number, source of commission, military and civilian education level, and lineal number. Some examples of personal information pertaining to Marine Corps civilian employees that is normally released without an unwarranted invasion of privacy include name, present and past position titles, grade, salary, duty station, and duty telephone number.
- e. If any doubt exists about an unwarranted invasion of privacy or improper breach of IG confidentiality, the personal information will not be used in the response unless the person to whom the information pertains consents.

#### **1011 REQUESTS FOR IG RECORDS BY OTHER GOVERNMENT AGENCIES.**

In accordance with DoD 5400.7-R, and subject to DoD 5200.1-R applicable to classified information, DoD Directive 5400.11 applicable to personal privacy, or other applicable laws, records exempt from release under statutory exemptions may be authenticated and released to U.S. government officials requesting them on behalf of Federal government bodies, whether legislative, executive, or judicial, as delineated below.

- a. To Members of Congress, see Section 1110 of this Chapter for further discussion.
- b. To the Federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice.
- c. To other Federal Agencies, as determined by the head of a DoD Component or designee.
- d. As a limited exception, Inspectors may permit investigative personnel from the IG DoD, DIS, GAO, OSC, and MSBP to review records in the Inspector's office having possession of records relevant to an ongoing agency investigation or audit.
- e. DoD agencies shall inform other government officials receiving records under the provisions of subparagraph 5-103b of DoD 5400.7-R (DoD FOIA Program) that those records are exempt from public release under the FOIA and are privileged. DoD agencies shall also advise these officials of any special handling instructions. Requests from outside agencies for copies of IG records will be in writing and will clearly state the reasons for the request. Release of copies of IG records to outside agencies requires IGMC approval. Forward requests of this nature to the IGMC with two collated copies of the requested records.

**1012 REQUESTS FOR IG RECORDS BY DEFENSE COUNSEL, ACCUSED IN COURTS-MARTIAL, APPELLANTS, RESPONDENTS, LITIGANTS, AND THEIR REPRESENTATIVES.**

Requests for use of IG records by defense counsel, accused Marines or sailors facing courts-martial, persons appealing adverse administrative actions, and persons litigating against the Marine Corps are treated as requests for use outside the Marine Corps, even if the individual requesting the record is a Marine, sailor, or a civilian employee of the Marine Corps.

- a. IG records will not be made available to individuals or their counsel to be used in administrative and military justice actions or appeals unless the individual has a right of access under minimum due process because the IG records are the basis for the action taken against the individual. The IGMC will be alerted immediately concerning any request for IG records based on a due process claim. The request, the related adverse action, and a copy of the requested IG record will be forwarded promptly to the IGMC for processing. The Military Rule of Evidence 506, Manual for Courts-Martial, United States, 1995, provides a procedure to seek to have IG records excluded from courts-martial proceedings.
- b. IG records requested in relation to an appeal of an adverse administrative action, evaluation report, or petition for correction of records, where no due process right of access exists, will be provided to a review or appeal board for consideration upon the request of the board, as an official use within the Marine Corps. Appellants may be informed of their right to ask the board to request IG records for review, or they may request the records themselves under FOIA/PA.
- c. Other requests for IG records by counsel, accused, appellants, respondents, and litigants will be processed under the provisions listed in paragraphs 1008 and 1013 of this chapter.

**1013 RELEASE OF IG RECORDS UNDER SUBPOENAS AND SIMILAR COURT.**

DoD policy is that factual official information should generally be made reasonably available for use in Federal and State courts and by other governmental bodies. The exception is if the information is classified, privileged, or otherwise protected from public disclosure. IG records are, however, the property of the Secretary of the Navy (SECNAV) and are maintained by IGMC and/or local Inspectors as designated by IGMC. Thus, local Inspectors may not disclose any official information from IG files or any information acquired during performance of Inspector duties without IGMC prior written approval.

- a. IGMC and local Inspectors are encouraged to treat such request for documents under the FOIA/PA if the requester invokes them either explicitly or by fair implication.
- b. When an IG activity receives a subpoena, court order, or request for attendance at a judicial, or quasi-judicial proceeding, or a request for an interview that the activity reasonably believes is related to actual or potential litigation, and the information sought is from IG files or is known to be the result of official duties, the IG activity should immediately notify IGMC. A subpoena must never be ignored.
- c. The individual seeking the information should be informed that the request must be set forth in writing with specificity (the nature and relevance of the official information sought). Only IGMC or higher authority within DoN or DoD may authorize release of IG records. These requests should be processed in accordance with SECNAVINST 5820.8B. This instruction does not apply to the release of official information or testimony by DoN personnel before courts-martial or under administrative proceedings conducted by, or on behalf of, the Equal Employment Opportunity Commission, Merit Systems Protection Board or the Federal Labor Relations Board.

**1014 USE OF IG RECORDS IN RESPONSE TO REQUESTS FROM THE WHITE HOUSE AND MEMBERS OF CONGRESS.**

Information contained in IG records may be furnished to Members of Congress or the White House by the directing authority when the information is the primary source available for answering complaints or responding to requests for assistance, advice, or information addressed to the command. The Office of Legislative Affairs - Correspondence (OLA-C), processes responses to congressional inquiries. Replies will be fully responsive, but will be limited to the immediate scope of the inquiry by the Member of Congress. No congressional request may be fully denied without prior approval of IGMC and/or the Secretary of the Navy. If the directing authority believes that the requested information should not be released, the request with all relevant information and the recommendations of the directing authority will be forwarded to the IGMC.

- a. When responding to a Congressional inquiry made on behalf of a constituent, by whose identifier the record is retrieved, there is no need to verify that the individual has authorized the disclosure to the Member of Congress.
  1. The oral or written statement of a Congressional staff member is sufficient to establish that a request has been received from the individual to whom the record pertains.

2. If the constituent inquiry is made on behalf of an individual other than the record subject, provide the Member of Congress only that information releasable under 5 USC 552 (FOIA). Advise the Member of Congress that the written consent of the record subject is required before additional information may be disclosed.
- b. IG records to respond to requests for information from Congressional committees and subcommittees will be forwarded to the IGMC and processed FOUO in accordance with DoD Directive 5400.4. When a record is disclosed, without the consent of the individual, to a committee, subcommittee or joint committee of Congress, the disclosure must pertain to a matter within the legislative or investigative jurisdiction of that committee. (32 CFR 310. 41) Paragraph I 505 of DoD 5400.7-R states that when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. (See also SECNAVINST 5211.5D)

#### **1015 USE OF IG RECORDS TO RESPOND TO REQUESTS FROM THE NEWS MEDIA.**

IGs are not authorized to discuss a specific inspection, assistance cases, inquiries or investigations with media representatives. Media inquiries should be referred to either the local or Marine Corps Public Affairs Office. IGs will neither confirm nor deny that a specific subject or topic is or has been under investigation or inquiry. There is no prohibition against an IG discussing the general functioning of the IG system, and IGs may discuss the general and functional aspects of their positions. IGs should not answer questions concerning hypothetical situations that might occur in performing their duties. Media representatives requesting IG records should be referred to the local FOIA/PA office.

#### **1016 REQUESTS FOR IG RECORDS BY LABOR ORGANIZATIONS.**

Title 5 USC 7114(b)(4) requires agencies to furnish labor organizations with information related to collective bargaining. This right of access includes IG records that meet the criteria listed in the statute. This statutory right to agency information is in addition to rights under the FOIA. There are no exemptions in Title 5 USC 7114 (b)(4) to protect portions of the records from release. However, IG records that do not pertain to subjects within the scope of collective bargaining will not be released. Requests for IG records by labor organizations will be acknowledged in writing within 20 working days by the office receiving the request. The requests, a copy of the acknowledgment, two collated copies of the requested records, and a copy of the applicable collective bargaining agreement will be forwarded within 20 working days to the IGMC. Telephone coordination with the IGMC is encouraged, particularly before copying and forwarding voluminous IG records.

#### **1017 RELEASE OF IG RECORDS TO CRIMINAL INVESTIGATORS.**

Criminal investigators, including those performing law enforcement or other criminal investigations under Navy regulations and outside IG channels, such as Naval Criminal Investigative Service (NCIS) and Criminal Investigation Division (CID), are entitled to certain IG information, described below, when relevant to an authorized investigation. No other IG information will be provided without approval of the IGMC, or higher authority.

- a. An IG may orally brief the investigator on the nature of the allegations or matters which the IG office examined being careful not to be judgmental about the allegation or to reveal any IG findings, opinions, conclusions, or recommendations.

- b. An IG may release documentary evidence that is readily available to any NCIS or CID investigator and that was not received by the IG in confidence. This includes finance and personnel records, travel vouchers, motel and restaurant receipts, etc. "Readily available" includes documents which would be readily available from the source, but have been lost, destroyed, retired, or altered after being obtained by the IG.
- c. An IG may identify by name those witnesses who have information relevant to the investigation and explain how they are relevant with a brief oral synopsis of their testimony. Where possible, the IG will not reveal which witness is the complainant. Written statements, transcripts, and recorded tapes taken by the IG will not be released without the express permission of the IGMC after advice from legal counsel.

**1018 RELEASE OF IG WITNESS STATEMENTS TO INDIVIDUALS.**

On request to the IG office of record, a person will be allowed to read his or her transcribed or summarized statements in the IG office that conducted the interview. On written request to the IG, office of record, an individual will be furnished a copy of his or her transcribed or summarized statement after the Report of Investigation or inquiry has been approved by the directing authority and all implementing action has been completed.

**1019 AMENDMENT OF IG RECORDS.**

To ensure an individual's rights to investigative accuracy, procedures have been established for to request corrections to IG records. The procedures for requesting correction or amendment to IG records are contained in SECNAVINST 5211.5D, and are outlined below.

- a. Persons may direct requests for amendment of IG records to the authority that directed the record be made. The request must concern a factual portion of the investigation. Requests for amendment to IG records will be forwarded to the IGMC, when the request concerns matters of IG opinion, judgment or conclusion in the record.
- b. Requests to amend factual portions of agency records are made under provisions of the Privacy Act, Title 5 USC 552, and applicable Marine Corps Orders. As the Access and Amendment Refusal Authority, the IGMC is the first official who can deny requests to amend IGMC records. The directing authority may approve amendment of factual portions of IG records as discussed below:
  - 1. Upon request, an individual (or authorized representative) may have any document under IGMC/IG custody that pertains to the individual amended by correction, addition, deletion, or otherwise, if such record is not accurate (as a determination of fact rather than judgment), relevant, timely, or complete. An individual desiring amendment will submit a request in writing to the official (if other than the IGMC) who directed the record. Sufficient information will be provided to permit identification and location of the record, description of the item or portion for which amendment is requested, reasons why amendment is requested, and, if appropriate, documentary evidence supporting the requested amendment. The burden of proof is on the individual

to demonstrate the propriety of amendment. The individual will also provide verification of identity.

2. The requester will be notified in writing within 10 working days that the request has been received. If referral to the IGMC is required, the requester will be so notified.
3. Officials may amend personal information on individuals that is contained in the record they have directed to be made, provided the request is adequately supported by documentary evidence. This amendment authority is limited to those portions of the record containing facts. It does not include authority to amend those portions containing opinions, judgments, or conclusions.
4. Amendment requests for which the directing authority recommends denial will be forwarded to the IGMC.
5. All requests for amendment of IG records concerning matters of opinion, judgment, or conclusion will be referred to the IGMC. Included will be a collated copy of the record to which amendment is sought, any documents in support of or related to the disputed record, acknowledgment to the requester, and recommendations concerning whether the amendment should be granted or refused, with supporting rationale. However, since the determination to review a request for amendment of judgmental matters under IG control is not subject to the requirements of the Privacy Act, the decision to amend is solely within IGMC discretion.

CHAPTER 11 SPECIAL CATEGORY CASES

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**1101 OVERVIEW.**

Certain investigative efforts require special handling based on the sensitivity of the subject matter or on the provisions of Public Law. These "Special Category" cases will normally involve additional investigative, or reporting requirements. Therefore, the basic investigative techniques and procedures addressed in the preceding chapters remain valid in Special Category Cases as well.

**Table 1101.1 Processing Special Interest Complaints**

1. This table explains special processing instructions when a complainant makes allegations against Senior Officials or allegations of a special nature.

	<b>If the complainant makes allegation(s):</b>	<b>Then Immediately:</b>
1.	Against a Senior Official (General Officer or Senior Executive Service)	Report and transfer the allegations to the Inspector General of the Marine Corps (IGMC)
2.	Against a Brigadier General (select)	Report and transfer the allegations to the Inspector General of the Marine Corps (IGMC)
3.	Against a Command Inspector or member of his staff	Report and transfer the allegations to the Inspector General of the Marine Corps (IGMC)
4.	That a military member was reprimanded against for making a protected disclosure	Advise complainants of their right for Whistleblower Protection under 10 U.S.C. 1034. Report the allegations to the Inspector General of the Marine Corps (IGMC). IGMC will provide assistance for determining investigative agency.
5.	That a military member was improperly referred for a Mental Health evaluation	Report the allegations to the Inspector General of the Marine Corps (IGMC)
6.	Of violations of the Military Equal Opportunity	Immediately refer the complainant to the Military Equal Opportunity office for a complaint clarification
7.	Of fraud, espionage, sabotage, treason, subversion, disloyal statements, disaffection or other criminal offenses	Immediately consult with the SJA and local NCIS offices to determine whether the allegations should be handled through the criminal or Inspector General/ Command Inspector channels.

**PART ONE - WHISTLEBLOWER PROTECTION**

**1102 GENERAL.**

This section discusses whistleblower protection for civilian government (appropriated fund) employees, military personnel, non-appropriated fund employees, and contractor employees. It further discusses IGMC/IG actions and limitations in responding to such allegations.

**1103 INTRODUCTION.**

Whistleblowing is the making of a protected communication to a Member of Congress, an IG, a member of their chain of command, or a member of an audit, inspection, investigation or law enforcement organization within DoD. A protected disclosure is defined as the disclosure of information which the complainant reasonably believes evidences a violation of any law, rule or regulation, or mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

**1104 DoD INVESTIGATIVE GUIDANCE.**

The DoD IG has published a guide that details the procedure to follow when investigating allegations of reprisal against military personnel. Its use is mandatory for investigations into allegations of reprisal presented by military members. The manual is IGDG 7050.6DI, Guide to Military Reprisal Investigations, dated 6 February 1996.

#### **1105 BACKGROUND.**

The passage of the Whistleblower Protection Act of 1989 resulted in IGs receiving more allegations of reprisal for whistleblowing activities. Service IGs do not inquire into or investigate all allegations of reprisal because in some cases Federal Law and/or the DoD IG limit Service IG involvement. The status of the individual claiming reprisal determines which agency has the investigative responsibility. The following paragraphs provide guidelines for Marine Corps IGs in accepting reprisal type complaints.

#### **1106 CIVILIAN GOVERNMENT EMPLOYEES.**

Protections for the whistleblowing activities of civilian employees (appropriated fund (AF)) are established in the Civil Service Reform Act of 1978 and codified in 5 USC Sections 1212 - 1215 and 2302. The protected disclosure may be made to virtually anyone in order to invoke the protection of the statutes. In fact, providing allegations of fraud, waste or mismanagement to any supervisor in the chain of command are protected under the statute. The Office of Special Counsel (OSC) has overall jurisdiction for investigating complaints of reprisal made by appropriated fund employees. If a complaint is made to DoD IG, they may investigate, or they may refer the complainant to the OSC. **The IGMC and field IGs have no authority to investigate complaints of reprisal made by appropriated fund employees unless requested by OSC.** If a complaint of reprisal is received, refer the complainant directly to the OSC or the DoDIG. Notify the IGMC of the referral.

a. Complaints should be sent to: Office of the Special Counsel, Complaints Examining Unit, 1730 M Street NW, Suite 216, Washington, D.C. 20036-4505. Complainants may also call the Whistleblower Hotline at commercial (202) 653-9125 or Toll free (800) 872-9855.

b. The Labor and Employment Law Office of the Office of the Judge Advocate Division (SJA) at HQMC is the Marine Corps point of contact for appropriated fund employee cases and liaison with OSC. Complainants should not be referred to this IGMC.

#### **1107 NONAPPROPRIATED FUND (NAF) EMPLOYEES.**

10 USC Section 1587 provides whistleblower protection to civilian employees who are paid from non-appropriated funds. Per the provisions of DoD Directive 1401.3, Employment Protection for Certain Nonappropriated Fund Instrumentality Employees/ Applicants, all complaints of reprisal received from NAF employees will be referred to the DoD IG for appropriate investigation. The IGMC and field IGs have no authority to investigate complaints of reprisal made by NAF employees unless requested by DoD IG. If a complaint of reprisal is received, refer the complainant directly to the DoD IG. Notify the IGMC of the referral.

#### **1108 CONTRACTOR EMPLOYEES.**

10 USC Section 2409 provides whistleblower protection to employees of defense contractors. The statute establishes that a person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of an agency. Unless the Inspector General determines that the complaint is frivolous, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of findings to the person, the contractor concerned, and the head of the agency. The IGMC and field IGs have no authority to investigate complaints of reprisal made by contractor employees

unless requested by DoD IG or NAVINSGEN. If a complaint of reprisal is received refer the complainant directly to the DoD IG. Field IGs should notify the IGMC of any referral.

**1109 MILITARY PERSONNEL (GENERAL INFORMATION).**

The Military Whistleblower Protection Act, 10 USC Section 1034, as implemented by DoDD 7050.6, prohibits interference by anyone with the right of a member of the armed forces to make a lawful communication to a member of Congress; an Inspector General of a DoD Component; a member of a DoD audit, inspection, investigation, or law enforcement agency; or any other person or organization (including chain of command) designated under component regulations or other established administrative procedures to receive such communications. The Act prohibits taking, or threatening to take, an unfavorable personnel action (or withholding or threatening to withhold a favorable personnel action) in reprisal against a military member who makes or is preparing to make a communication to a member of Congress or an Inspector General that the member reasonably believes constitutes evidence of: a violation of law or regulation, or mismanagement, gross waste of funds, abuse of authority, or danger to public health or safety.

a. It is a violation of Article 92, UCMJ, for any military member to take an unfavorable personnel action or fail to take a favorable personnel action as reprisal for whistleblowing. Disciplinary action can be recommended against a person who is determined to have committed the reprisal.

b. The Act requires the DoD IG to investigate all allegations of reprisal for such communication. It requires the boards for correction of military records to consider such investigations, and hold hearings when appropriate, in connection with any application to correct the record of a member who alleges an improper personnel action.

**1110 IGMC/IG ACTION ON COMPLAINTS OF REPRISAL.**

The Military Whistleblower Protection Act makes it a criminal offense under the UCMJ to take reprisal action against a military member for making protected disclosures. When a complaint of reprisal is submitted more than 60 days after the Marine became aware of the personnel action that is the subject of the allegation, no investigation is required, but as a matter of policy, this requirement is not strictly enforced. While general investigative responsibilities and procedures remain constant, reporting requirements differ based on who initially receives and acts upon the complaint. In any event the following pertains:

a. **DoDIG.** If a complaint of reprisal is made to the DoD IG, they may investigate or refer the matter to the Service IG for investigation. In most cases, the matter will be referred to the IGMC for investigation.

b. **IGMC.** If a complaint of reprisal is made to the IGMC, the matter may be investigated or referred to the respective field commander for investigation. In most cases, the IGMC will refer such cases to the responsible field commander (Attn: Command Inspector) for appropriate investigation. However, the complainant must be advised in writing that to obtain full protection of the statute and consideration under DoDD 7050.6, complaints of reprisal must be made to DoD IG. (See DoDD 7050.6 para E.3 for guidance)

c. **Field Commands.** If a complaint of reprisal is made to the field commander (or IG), contact the IGMC (Attn: AI Division) to bring the case

under IGMC control, then continue with the inquiry/investigation, providing the results to IGMC. Should the responsible commander determine the case inappropriate for an IG investigation, it is incumbent upon the local IG to ensure that whoever conducts the investigation, answers the four major questions. See paragraph 1110.

**1111 REPORTING REQUIREMENTS FOR MILITARY REPRISAL CASES.**

Per the provisions of DoD Directive 7050.6, those reprisal investigations originated by the DoD IG are to be completed within 90 days of receipt of the allegation. In such cases, the report of investigation must include a thorough review of the facts and circumstances relevant to the allegation(s), the germane documents acquired during the investigation, and summaries of interviews conducted. Two copies of the report must be returned to the DoDIG: one unredacted and one redacted under the provisions of the Freedom of Information Act (FOIA) for the complainant. These procedures remain in force for matters referred to field commands by the IGMC, as well.

**PART TWO - EQUAL OPPORTUNITY (EO), DISCRIMINATION AND SEXUAL HARASSMENT COMPLAINTS**

**1112 GENERAL.**

This section provides an overview of IG and command responsibilities when presented with equal opportunity, discrimination, and sexual harassment complaints by military members. The procedures and responsibilities vary somewhat based on an individual's employment status. For civilian employees of the Federal government, a system of redress is established outside the "normal chain of command".

**1113 MARINE CORPS EQUAL OPPORTUNITY (EO) POLICY.**

Marine Corps policy is to provide equal opportunity and treatment to Marines and their families without regard to race, color, religion, gender, or national origin and to provide an environment free of sexual harassment. For further discussion of this policy see MCO P5354.1B.

**1114 RESPONSIBILITY FOR EO MATTERS.**

EO is a responsibility of leadership and a function of command. As such, the chain of command is the primary channel for correcting discriminatory practices and for communicating on EO matters. ALMAR 130/98 establishes timelines and procedures for processing and reporting sexual harassment complaints as they relate to command responsibility in EO matters.

**1115 FILING INDIVIDUAL COMPLAINTS.**

Military members should present EO complaints to the chain of command, an IG, or EO Advisors. Primarily, individual Marines should be encouraged to use the command channels for the redress of such grievances. Procedures for filing such grievances are to be in writing and displayed at all times where all unit Marines have access to them.

**1116 INVESTIGATIVE JURISDICTION.**

The question of who should inquire into or investigate EO and racial or sexual harassment complaints must be answered by the commander. The EO Advisor and the IG advise the commander based on the merits of the case. If the preliminary analysis indicates the allegation may be substantiated and punitive action is possible, the IG recommendation would likely be to conduct an Art 32, JAGMAN investigation or commander's inquiry. If more information is required to make that determination, either the Command or the IG (not the

EO Advisor) should conduct the preliminary inquiry, per para 2000.9 MCO P5354.1C.

**1117 IG INVESTIGATIVE RESPONSIBILITY IN EO MATTERS.**

The IG has no primary responsibility for investigating such complaints unless the allegation is against an O-7, GS/GM-16, or member of the Senior Executive Service (SES) (MCO 5800.13). Complaints of IG interest often involve allegations that the cognizant command was not responsive to the complainant's concerns. In most cases, IG involvement is limited to that of ensuring the responsible commander fulfills his or her responsibilities for investigating and adjudicating such matters. For a more detailed discussion of this topic refer to the handbook entitled Processing Equal Opportunity and Equal Employment Opportunity Complaints, A Commander's Handbook, published by the Equal Opportunity Branch, at HQMC.

**PART THREE - NONSUPPORT REQUESTS**

**1118 GENERAL.**

In general, compliance with the provisions of MCO 5800.8 (LEGADINMAN) is a command responsibility. IGs have no inherent responsibility in nonsupport matters other than assisting the lawful commander in executing his responsibilities. While the actual action the IG takes in a particular matter will vary with the circumstances of the case, the IGs basic responsibilities are as follows:

a. Determine if the Marine's spouse (or other dependent) has forwarded a complaint through command channels informing the Marine's commander of the problem. If not, offer assistance in formulating and properly routing the complaint.

b. If the requester has corresponded with the commander and has not received a satisfactory response, or is unwilling to address the problem with the command, the requester should be referred to the DEERS/ Dependency Determination Section (MHP-20) at HQMC. The telephone number for that section is (703)696-2055. FAX'd complaints will also be received at (703)696-2075.

**1119 COMMANDER'S/MARINE'S ACTIONS AND RESPONSIBILITIES IN NONSUPPORT MATTERS.**

MCO P5800.8, the Legal Admin Manual clearly outlines the Commander's and Marine's individual and collective action and responsibilities regarding nonsupport matters.

**1120 USE OF IG CHANNELS IN NONSUPPORT MATTERS.**

Limit the referral of nonsupport cases to IG channels to circumstances where the commander's response is not satisfactory (or no response has been received). Beyond this, the complainant has the responsibility of communicating nonsupport problems through command channels to the Marine's commander. An IG may offer assistance in formulating and routing the complaint. However, the IG must remember that compliance with MCO 5800.8 is a command responsibility.

**1121 USMC NONSUPPORT PROPONENT.**

The cognizant staff code at Headquarters Marine Corps for nonsupport matters is CMC (Code MHP-20) at DSN 226-2055 or commercial (703) 696-2055. This office can assist by interpreting policy and providing guidance on unresolved or complex cases.

**1122 CHILD SUPPORT ENFORCEMENT AGENCY HANDBOOK.**

Kids, They're Worth Every Penny can be obtained from the U.S. Department of Health and Human Services, Office of Child Support Enforcement. This handbook is a "how-to" guide for getting child support payments owed to a parent. There is another book titled Paternity Establishment which may help a complainant who has paternity questions. Refer the complainant to the Office of Child Support Enforcement, telephone (202) 401-9382. Their address is in the Handbook on Child Support Enforcement.

**1123 GARNISHMENT.**

Military and Federal Civil Service pay (and retired pay) may be garnished for payment of alimony and child support. The federal statutory authority is Section 659 of Title 42 United States Code. Its procedures are set forth at Section 584.8 of Title 32 Code of Federal Regulations.

**1124 INVOLUNTARY ALLOTMENT.**

Military pay and military retired pay can be diverted by involuntary allotment when court ordered support is two months in arrears. The procedures are similar to, but slightly different from, the garnishment procedure. The federal statutory authority is Section 665 of Title 42 United States Code. Its procedures are found in Title 32 Code of Federal Regulations, at Part 54 and Section 584.9 and MCO P7220.31, Chapter 7. As in garnishment action, the federal procedures must be scrupulously followed.

**PART FOUR - CIVILIAN PERSONNEL ASSISTANCE REQUESTS**

**1125 GENERAL.**

This section provides basic information concerning the processing of civilian personnel assistance requests. Generally, the Federal Personnel Manual (FPM), Marine Corps regulations, and local collective bargaining agreements include procedures for the processing of grievances, appeals, and equal employment opportunity (EEO) complaints made by civilian employees. The majority of these cases are not appropriate for IG action. The role of the IG in these cases usually involves determining the nature of the complaint, where the person should present their complaint for action, and ensuring the complainant's administrative due process rights are protected.

**1126 LIMITS TO IG ACTION ON CIVILIAN ASSISTANCE REQUESTS.**

The role of the IG is somewhat limited by law and regulation when dealing with civilian government employees complaints or requests for assistance. In any event, the IG will analyze the complaint on receipt to determine the category and review for IG appropriateness. After review, the following pertains:

a. If the request is a grievance or appeal, the IG will either refer the employee to the local Human Resource Office (HRO) for information and assistance or advise the employee of the procedures and time lines provided by regulations for filing such complaints.

b. If the request pertains to a complaint based on discrimination or allegations or reprisal, harassment, or intimidation for filing such a complaint, the IG will not accept the complaint and will advise the complainant to contact the EEO counselor for information and assistance in processing the complaint.

c. If the complainant alleges retaliation or reprisal for lawful disclosure of information of reprisal for whistleblowing, refer the employee to either the OSC or DoD IG. See Sections 1202 through 1211 of this Chapter for further discussion. (See also 5 USC 2301 & 2302)

d. If the complainant (understanding due process and presenting valid reasons for not exercising the employee grievance channel) insists on IG involvement, the IG may, as an exception to policy, accept the request and process it. Such a request should be in writing and should specify the reason presenting the matter through the established grievance procedure would be inappropriate. If a local negotiated grievance procedure exists, it must be used. Be careful in making the decision to grant an exception to policy. You may inadvertently deprive an employee of his/her right to due process. **NOTE: An IG inquiry or investigation can only determine the facts of the case. Subsequent correction of the record or change of a personnel action may still require submission of an administrative action by the civilian to the appropriate agency.**

#### **PART FIVE - OTHER SPECIAL CATEGORY CASES**

##### **1127 SENIOR OFFICIAL INVESTIGATIONS.**

DoD Directive 5505.6, SECNAVINST 5800.12A, and MCO 5800.13 provide governing guidelines for matters involving investigation of allegations directed against senior officials. A senior official is defined as an active duty, retired, or reserve military officer in, or selected for, the grade of brigadier general or higher; current or former civilians in the grade of GS/GM-16 or above; current or former civilian in the Senior Executive Service (SES). General Officer (GO) or Senior Executive Service (SES) official. This definition includes selected and retired officials. SECNAV Policy letter of 21 March 1991 assigns the investigative responsibility for such cases exclusively to the NAVINSGEN and IGMC. Such cases will not be further referred to field commanders for investigation. The following pertains:

a. The scope and investigative procedures employed by IGMC investigators conducting senior official investigations are no different from other investigations.

b. Per the provisions of DoD Directive 5505.6, the DoD IG must be notified of allegations directed against senior officials within five working days of receipt of the allegation. Similarly, SECNAVINST 5800.12A requires the Secretary of the Navy be notified of such allegations within two working days of receipt. Interim status reports are required if the senior official investigation is not completed within 90 days of receipt and every 60 days thereafter. A complete copy of the IGMC investigative report is forwarded to the DoD IG for review.

##### **1128 TRAINING AND FRATRICIDE DEATHS.**

The IGMC has no specific responsibility for investigating training and fratricide deaths.

However, when reasons exist to believe an investigative effort may have been flawed in any respect, the IGMC may conduct an oversight review of the investigation. The following pertains:

a. **Commanding Officers.** Per the JAGMAN, cognizant commanders are required to assign an officer to investigate training accidents resulting in injury or death and fratricide (friendly fire) incidents. These

investigations are considered secondary investigations for the express purpose of preserving the administrative facts of the case only.

b. **DCIO/MCIO.** NCIS will investigate all deaths occurring on a naval vessel or Navy/Marine Corps aircraft or installation. SECNAVINST 5520.3B requires commanders to notify the NCIS of any member's death except when the death is medically attributed to disease or natural cause. During deployment/contingency operations ashore, the Fleet Marine Force (FMF) commander's Criminal Investigations Division (CID) will assume the peacetime criminal investigative jurisdiction of the NCIS requirement. Though the CID has no primary responsibility for investigating training or fratricide deaths, the cognizant commander will direct the CID to investigate such incidents when criminality is suspected.

APPENDIX A PROCESS OF THE IG INVESTIGATION

ACTION REQUEST FORM

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see next page for form.

<b>ACTION REQUEST INSPECTOR GENERAL/ COMMAND INSPECTOR</b>						Case #:			
<p><b>AUTHORITY:</b> SECNAVINST 5430.57_ and SECNAVINST 5370.5_  <b>PRINCIPAL PURPOSE(S):</b> To register a personal complaint relating to individual injustices or suspected Fraud, Waste and Abuse.  <b>ROUTINE USE(S):</b> Data provided are furnished to supervisors, commanders or inspectors in response to queries for resolution of complaints and to eliminate conditions considered detrimental to the efficiency or reputation of the United States Marine Corps or Naval Services .  <b>DISCLOSURE:</b> Disclosure of your identity is voluntary and not required. Failure to provide the information will not adversely affect the resolution of your complaint but may delay the investigating officer in resolving the issue.</p>									
<b>Section I- TO BE COMPLETED BY COMPLAINANT:</b>									
NAME (Last, First, Middle initial) (optional):									
Grade:	Organization:	Sex: male / female	Have you asked your immediate commander/ supervisor for assistance with this problem?	<b>Yes</b>	<b>No</b>				
ADDRESS (Where response to this complaint will be sent.)			Is this a request for Assistance?	<b>Yes</b>	<b>No</b>				
			Are you making a HOTLINE Complaint?	<b>Yes</b>	<b>No</b>				
Email:  Home Telephone Number:      Work Telephone Number:  Description of Complaint or Issues that require Assistance or Inquiry: (Please detail the nature of the problem or issue and include who, what, where, when, and how. Continue on reverse)			NAMES AND/OR POSITIONS OF OFFICIALS YOU HAVE CONTACTED (or others having knowledge of your complaint.)						
			1.						
			2.						
			3.						
			4.						
5.									
What exactly do you want the Inspector General/Command Inspector to do for you to resolve this complaint?									
<b>Section II- To be completed by IG/Inspector Receiving Request:</b>									
Official Receiving Request		Telephone#:		Investigating Official/Agency:		Telephone #:			
Date Opened:	Date Closed:	Office Symbol/Command:		Are there other similar complaints regarding this issue?		Yes No			
<b>Complainant status:</b>				<b>Special Interest Complaints:</b>					
Active Duty		Civilian Government Employee		WB Reprisal		Senior Official			
Reserve		Dependent/Relative		Mental Health		FWA			

	Midshipmen/Candidate		Civilian		<b>Grievance Channel:</b>				
	Retired Military		Other Service:	USN USAF	USA USCG	IG	Congressional	CMC	
<b>Complainant's Command:</b>		<b>Subject's Command:</b>				DoD HOTLINE	USMC HOTLINE		
					<b>Most Significant Complaints/Allegations:</b>				
IGMC Complaint Registration Form/version(1) dtd March 2004 <b>ACTION:</b>					Complaint:		Finding Codes:		Code :
	Assist		Referred for Info				R= Resolved S = substantiated NS=not-substantiated I = inconclusive		
	Transferred for Action		Transferred to External Agency						
	IGMC Investigation		Command Inspector Investigation						
Referred /Transferred/ Tasked to:									

**PERSONAL AND FRAUD, WASTE & ABUSE COMPLAINT REGISTRATION FORM (Continued):**

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**PRIVACY ACT INFORMATION**

Data Required by the Privacy Act of 1974 PRIVACY ACT STATEMENT For Personal Information Taken During Inspector General Interviews

AUTHORITY: Title 10 US Code, Sections 5014 and 5020.

PURPOSE: To determine the facts and circumstances surrounding allegations or complaints against Navy/Marine Corps personnel and/or activities. To present findings, conclusions and recommendations developed from investigations and other inquiries to the Secretary of the Navy, CNO, CMC, or other appropriate commanders. Disclosure of Social Security Account Number is voluntary, and if requested, is used to further identify the individual providing the information.

ROUTINE USES: The information is used for the purpose set forth above and may be:

- a. forwarded to federal, state or local law enforcement agencies for their use;
- b. used as a basis for summaries, briefings or responses to Members of Congress or other agencies in the Executive Branch of the Federal Government;
- c. provided to Congress or other federal, state and local agencies, when determined necessary.

**MANDATORY OR VOLUNTARY DISCLOSURE AND EFFECT ON INDIVIDUAL NOT PROVIDING INFORMATION:**

For Military Personnel: Disclosure of personal information is mandatory and failure to do so may subject the individual to disciplinary action.

For Department of the Navy Civilians: Failure to disclose personal information in relation to your position responsibilities may subject the individual to adverse personnel action.

For All Other Personnel: Disclosure of personal information is voluntary and no adverse action can be taken against individuals for refusing to provide information about themselves.

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**ACKNOWLEDGMENT**

I understand the provisions of the Privacy Act of 1974 as related to me through the foregoing statement.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

SUBJECT NOTIFICATION CONTACT FORMAT

To (Rank and Name): \_\_\_\_\_

Position/Organization: \_\_\_\_\_

Phone (DSN/Comm): \_\_\_\_\_ (CHECK WHEN DONE)

1. (Title) \_\_\_\_\_, this is \_\_\_\_\_ from the \_\_\_\_\_ (IG office) \_\_\_\_\_. We have been directed by (directing authority) to investigate allegations that you: (state allegations).

2. It will be necessary to interview you regarding these matters (Choose [a] or [b] below):

a. You will be contacted by (IG[s]) to make necessary arrangements; or

b. We want to interview you at (time) on (date) at (location). Our telephone number is \_\_\_\_\_.

3. You are a subject in this investigation. Although the allegation(s) against you is/are non-criminal, you do not have to answer questions that may tend to incriminate you. The investigator(s) will give you an opportunity to respond to the allegation(s). You have the right to consult with an attorney before being questioned, but you do not have the right to have an attorney present during the interview.

4. (Subject's Commander) has been notified of this investigation.

5. To help protect the confidentiality and the rights, privacy, and reputations of all parties involved in IG Investigations, we ask each party not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone except your attorney, if you choose to consult one.

6. (Subject) was (telephonically/ personally) notified of the above at (time) on (date).

\_\_\_\_\_  
(Signature of Notifying Official)

**WITNESS CONTACT FORMAT**

To (Rank and Name): \_\_\_\_\_

Position/Organization: \_\_\_\_\_

Phone (DSN/Comm): \_\_\_\_\_ (CHECK WHEN DONE)

1. \_\_\_\_\_, this is \_\_\_\_\_ from the (IG Office). We have been directed by (directing authority) to investigate the allegations of: (as stated in directive)\*.

\*Note: Use the general wording from the directive. If you need to be more specific, use the wording from the action memorandum.

2. You are not suspected of wrongdoing in this matter, but we believe you have information relevant to the investigation and we need to interview you as a witness. We would like to interview you at (time) on (date) at (location). The investigator(s) is/are \_\_\_\_\_ and \_\_\_\_\_. Our telephone number is \_\_\_\_\_.

3. (Witness' Commander/Supervisor) has been notified of the investigation. (Note: omit for non-DoD civilians.)

4. To protect the confidentiality and the rights, privacy, and reputations of all parties involved in IG Investigations, we ask each party not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone except your attorney, if you choose to consult one.

5. (Witness) was (telephonically/personally) notified of the above at (time) on (date).

\_\_\_\_\_  
(Signature of Notifying Official)

COMMAND NOTIFICATION FORMAT

To (Rank and Name): \_\_\_\_\_

Position/Organization: \_\_\_\_\_

Phone (DSN/Comm): \_\_\_\_\_ (CHECK WHEN DONE)

1. \_\_\_\_\_, this is \_\_\_\_\_ from the  
(IG Office). I am calling to inform you that (directing authority) has  
directed this office to investigate allegations that (See action memo)\*:

\_\_\_\_\_ .

\* Note: Commanders should normally be made aware of exactly what is being investigated.

2. It may be necessary to interview members of your organization regarding this/these matter(s). (IG Name) from this office will arrange the witness interviews.

3. (You may)/(I will) notify intermediate commander(s)/ supervisor(s) of this investigation.

4. To protect the confidentiality and the rights, privacy, and reputations of all parties involved in IG Investigations, we ask each party not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone.

5. (Command Official) was (telephonically/ personally) notified of the above at (time) on (date).

\_\_\_\_\_  
(Signature of Notifying Official)

**INTERVIEW GUIDE WITNESS READ-IN**

1. The time is \_\_\_\_\_. This recorded interview is being conducted on (date), at (location; if telephonic, state both locations). Persons present are the witness (name); the investigating officer(s) \_\_\_\_\_; (court reporters, attorney, union representative, others) .

This (investigation/inquiry) has been directed by \_\_\_\_\_ concerning allegations that (as stated in directive): \_\_\_\_\_.

Note: Inform witness to identify classified material and that the report will be properly classified. Advise the witness of the security clearances held by IG personnel.

2. An inspector general is an impartial fact finder for the commander. Testimony taken by an IG and reports based on the testimony may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons may be required by law or regulation, or may be directed by proper authority. Upon completion of this interview, I will ask you whether you consent to the release of your testimony if requested by members of the public pursuant to the Freedom of Information Act.

3. Since I will ask you to provide your social security number to help identify you as the person testifying, I am providing you a Privacy Act Statement. (If telephonic, it may be necessary to read the Privacy Act Statement.) Do you understand it?

4. You are not suspected of any criminal offense and are not the subject of any unfavorable information.

5. Before we continue, I want to remind you of the importance of presenting truthful testimony. It is a violation of Federal law to knowingly make a false statement under oath. Do you have any questions before we begin? Please raise your right hand so I may administer the oath.

Do you swear (or affirm) that the testimony you are about to give shall be the truth, the whole truth and nothing but the truth so help you God?

Note: The witness should audibly answer, "yes" or "I do." The phrase "so help me God" may be omitted.

6. Please state your (as applicable):  
Name  
Rank (Active/Reserve/Retired)  
Grade/Position  
Organization  
Social security number (voluntary)  
Address (home or office)

(QUESTIONING)

7. Question the witness. See Chapter 9 (Interviewing) of the IGMC Assistance & Investigations Manual.

a. If during this interview the witness suggests personal criminal involvement, the witness must be advised of his/her rights using the Rights Warning Procedure/Waiver Statement (Appendix D). Unless rights are waived, the interview ceases. If during the interview you believe the witness has become a subject, advise him/her that he/she need not make any statement which may incriminate him/her.

b. If, during the interview, it becomes necessary to advise a witness about making false statements or other false representations, read the following statement to the witness, as applicable.

1. Active duty personnel or USMCR subject to UCMJ. "I consider it my duty to advise you that any person subject to the UCMJ who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, may be subject to action under the provisions of UCMJ, Art. 107. Additionally, under the provisions of UCMJ, Art. 134, any person subject to the UCMJ who makes a false statement, oral or written, under oath, believing the statement to be untrue, may be punished as a court-martial may direct." Do you understand?

2. Civilian/personnel not subject to UCMJ. "I consider if my duty to advise you that under the provisions of section 1001, United States Code, whoever in any matter within the jurisdiction of nay department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by a trick, scheme, or device, a material fact, or makes any false, fictitious, or fraudulent statement or representation, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both. Additionally, any person who willfully and contrary to his/her oath testifies falsely while under oath may be punished for perjury under the provisions of Title 18, US Code Section 1621." Do you understand?

(READ-OUT)

8. Do you have anything else you wish to present?

9. Who else do you think we should talk to, and why?

10. To protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them, we ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone except your attorney, if you choose to consult one. Note: Others present should also be advised against disclosing information.

11. Your testimony may be made part of an official inspector general record. Earlier, I advised you that while access is normally restricted to persons who clearly need the information to perform their official duties, your testimony may be released outside official channels. Individual members of the public who do not have an official need to know may request a copy of this record, to include your testimony. If there is such a request, do you consent to the release of your testimony outside official channels (Witness must state "yes" or "no.")

12. Do you have any questions? The time is \_\_\_\_\_ , and the interview is concluded. Thank you.

**INTERVIEW GUIDE SUBJECT READ IN**

1. The time is \_\_\_\_\_. This recorded interview is being conducted on (DATE), at (location; if telephonic, state both locations). Persons present are the subject (name) ; the investigating officer(s) \_\_\_\_\_; and (court reporters, attorney, union representative, others). This (investigation/inquiry) has been directed by \_\_\_\_\_ concerning allegations that (as stated in directive):  
\_\_\_\_\_ .

Note: Inform the subject to identify classified material and that the report will be properly classified. Advise the subject of the security clearances held by IG personnel.

2. An Inspector General is an impartial fact finder for the commander. Testimony taken by an IG and reports based on the testimony may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons may be required by law or regulation, or may be directed by proper authority. Upon completion of this interview, I will ask you whether you consent to the release of your testimony if requested by members of the public pursuant to the Freedom of Information Act.

3. Since I will ask you to provide your social security number to help identify you as the person testifying, I am providing you a Privacy Act Statement. (If telephonic, it may be necessary to read the Privacy Act Statement.) Do you understand it?

4. While you are not suspected of a criminal offense, we have information which may be unfavorable to you. We are required to give you the opportunity to comment on these matters. However, you do not have to answer any question that may tend to incriminate you. The information is that:  
\_\_\_\_\_ .

5. Before we continue, I want to remind you of the importance of presenting truthful testimony. It is a violation of Federal law to knowingly make a false statement under oath. Do you have any questions before we begin? Please raise your right hand so I may administer the oath. Do you swear (or affirm) that the testimony you are about to give shall be the truth, the whole truth and nothing but the truth so help you God? Note: The subject should audibly answer, "yes" or "I do." The phrase "so help me God" may be omitted.

6. Please state your (as applicable):

Name  
Rank (Active/Reserve/Retired)  
Grade/Position  
Organization  
Social security number (voluntary)  
Address (home or office)

(Questioning)

7. Question the subject. See Chapter 9 (Interviewing) of the IGMC Assistance & Investigations Manual.

a. If during this interview the subject suggests personal criminal involvement, the individual must be advised of his/her rights using the

Rights Warning Procedure/Waiver Statement (Appendix D). Unless rights are waived, the interview ceases.

b. If, during the interview, it becomes necessary to advise the subject about making false statements or other false representations, read the following statement to the subject, as applicable.

1. (For active duty personnel or USMCR subject to UCMJ). "I consider it my duty to advise you that any person subject to the UCMJ who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, may be subject to action under the provisions of UCMJ, Art. 107. Additionally, under the provisions of UCMJ, Art. 134, any person subject to the UCMJ who makes a false statement, oral or written, under oath, believing the statement to be untrue, may be punished as a court-martial may direct." Do you understand?

2. (For civilian/personnel not subject to UCMJ). "I consider if my duty to advise you that under the provisions of section 1001, United States Code, whoever in any matter within the jurisdiction of nay department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by a trick, scheme, or device, a material fact, or makes any false, fictitious, or fraudulent statement or representation, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both. Additionally, any person who willfully and contrary to his/her oath testifies falsely while under oath may be punished for perjury under the provisions of Title 18, US Code Section 1621." Do you understand?

(READ-OUT)

8. Do you have anything else you wish to present?

9. Who else do you think we should talk to, and why?

10. To protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them, we ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone except your attorney, if you choose to consult one. Note: Others present should also be advised against disclosing information.

11. Your testimony may be made part of an official inspector general record. Earlier, I advised you that while access is normally restricted to persons who clearly need the information to perform their official duties, your testimony may be released outside official channels. Individual members of the public who do not have an official need to know may request a copy of this record, to include your testimony. If there is such a request, do you consent to the release of your testimony outside official channels (Witness must state "yes" or "no.")

12. Do you have any questions? The time is \_\_\_\_\_ , and the interview is concluded. Thank you.

**ARTICLE 31 RIGHTS WARNING FORM SUBJECT (SUSPECTED OF WRONGDOING)**

This form is issued to Rank, Name, SSN/MOS Component as part of IGMC Investigation into alleged: \_\_\_\_\_

Rights Warning

\_\_\_\_\_ 1. You are suspected of violating Article ( ), UCMJ, ..... , in that, ..... .

\_\_\_\_\_ 2. You have the right to remain silent.

\_\_\_\_\_ 3. Any statement you make may be used against you in a trial by court-martial.

\_\_\_\_\_ 4. You have the right to consult with a lawyer before any questioning. The lawyer may be a civilian lawyer retained by you at your own expense, a military lawyer appointed to act as your lawyer without cost to you, or both.

\_\_\_\_\_ 5. You have the right to have such a retained civilian lawyer and/or appointed military lawyer present during this interview.

\_\_\_\_\_ 6. If you decide to answer questions now, without a lawyer present, you have the right to stop this interview at any time. You also have the right to stop answering questions at any time in order to obtain a lawyer.

Rights Waiver

1. Do you want a lawyer? Yes\_\_\_\_\_ No\_\_\_\_\_

If yes, provide the lawyers name and have them provide their signature to verify you spoke to them prior to answering any questions.

Lawyer Name \_\_\_\_\_

Lawyer Signature\_\_\_\_\_

2. Do you understand that if you should decide to answer questions, you may stop answering at any time?

Yes\_\_\_\_\_ No\_\_\_\_\_

3. Do you want to answer questions and provide a statement?

Yes\_\_\_\_\_ No\_\_\_\_\_

Date:

Name (print)\_\_\_\_\_ Signature\_\_\_\_\_

Rank\_\_\_\_\_ SSN\_\_\_\_\_

**ARTICLE 31 RIGHTS WARNING FORM SUBJECT (NOT SUSPECTED OF WRONGDOING)**

This form is issued to Rank, Name, SSN/MOS, Component as part of IGMC Investigation into allegations that: \_\_\_\_\_  
You are the Subject of this investigation, however, you are not suspected of wrongdoing at this time.

Rights Warning

- \_\_\_\_\_ 1. Although you are not suspected of committing a criminal offense, or violating the UCMJ, the information you provide during your testimony may be unfavorable towards you.
- \_\_\_\_\_ 2. You have the right to remain silent.
- \_\_\_\_\_ 3. Any statement you make may be used against you in a trial by court-martial.
- \_\_\_\_\_ 4. You have the right to consult with a lawyer before any questioning. The lawyer may be a civilian lawyer retained by you at your own expense, a military lawyer appointed to act as your lawyer without cost to you, or both.
- \_\_\_\_\_ 5. You have the right to have such a retained civilian lawyer and/or appointed military lawyer present during this interview.
- \_\_\_\_\_ 6. If you decide to answer questions now, without a lawyer present, you have the right to stop this interview at any time. You also have the right to stop answering questions at any time in order to obtain a lawyer.

Rights Waiver

1. Do you want a lawyer? Yes\_\_\_\_\_ No\_\_\_\_\_

If yes, provide the lawyers name and have them provide their signature to verify you spoke to them prior to answering any questions.

Lawyer Name \_\_\_\_\_

Lawyer Signature\_\_\_\_\_

2. Do you understand that if you should decide to answer questions, you may stop answering at any time?  
Yes\_\_\_\_\_ No\_\_\_\_\_

3. Do you want to answer questions and provide a statement?  
Yes\_\_\_\_\_ No\_\_\_\_\_

Date:

Name (print)\_\_\_\_\_ Signature\_\_\_\_\_

Rank\_\_\_\_\_ SSN\_\_\_\_\_

**ARTICLE 31 RIGHTS WARNING FORM WITNESS (POTENTIAL WRONGDOING)**

This form is issued to Rank, Name, SSN/MOS, Component as part of DNIGMC Investigation into allegations that: \_\_\_\_\_

Rights Warning

\_\_\_\_\_ 1. Although you are not suspected of committing a criminal offense, or violating the UCMJ, the information you provide during your testimony may be unfavorable towards you.

\_\_\_\_\_ 2. You have the right to remain silent.

\_\_\_\_\_ 3. Any statement you make may be used against you in a trial by court-martial.

\_\_\_\_\_ 4. You have the right to consult with a lawyer before any questioning. The lawyer may be a civilian lawyer retained by you at your own expense, a military lawyer appointed to act as your lawyer without cost to you, or both.

\_\_\_\_\_ 5. You have the right to have such a retained civilian lawyer and/or appointed military lawyer present during this interview.

\_\_\_\_\_ 6. If you decide to answer questions now, without a lawyer present, you have the right to stop this interview at any time. You also have the right to stop answering questions at any time in order to obtain a lawyer.

Rights Waiver

1. Do you want a lawyer? Yes\_\_\_\_\_ No\_\_\_\_\_

If yes, provide the lawyers name and have them provide their signature to verify you spoke to them prior to answering any questions.

Lawyer Name \_\_\_\_\_

Lawyer Signature\_\_\_\_\_

2. Do you understand that if you should decide to answer questions, you may stop answering at any time?

Yes\_\_\_\_\_ No\_\_\_\_\_

3. Do you want to answer questions and provide a statement?

Yes\_\_\_\_\_ No\_\_\_\_\_

Date:

Name (print)\_\_\_\_\_ Signature\_\_\_\_\_

Rank\_\_\_\_\_ SSN\_\_\_\_\_

**INTERVIEW FORM WITNESS**

1. This interview is required as part of an Inspector General Investigation/Inquiry into allegations of . . .

2. The official conducting this inquiry is a credentialed assistant inspector general for investigations. A credentialed investigator is an impartial fact finder for the Secretary of the Navy, Commandant of the Marine Corps, or Deputy Naval Inspector General for Marine Corps Matters. Testimony taken for Inspector General reports may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons may be required by law or regulation, or may be directed by proper authority.

**2. You are not suspected of any criminal offense or violation of the UCMJ, and are not the subject of any unfavorable information.** However, you must be reminded of the importance of presenting truthful testimony and that it is a violation of the UCMJ to knowingly make a false official statement. You must also be reminded it is your duty to truthfully answer the questions presented to you.

3. Please provide your: (as applicable)

Name Rank

Organization \_\_\_\_\_

Address (home or office) \_\_\_\_\_

Phone number

4. In answering the questions of the investigator remember to provide the following specific information:

a. Do you have any first hand knowledge?

b. Do you know of anyone else who may have information?

c. If you have knowledge provide a complete description of the event to include the Who, What, When, Where and Why type answers.

5. Questions:

6. Please provide any additional information you wish to present and the names of anyone else you think who should be interviewed.

7. The Inspector General is required to protect the confidentiality of Inspector General investigations/inquiries and the rights, privacy, and reputations of all people involved in them. You are requested not to discuss or reveal matters under investigation or inquiry. Accordingly, we ask that you not discuss this matter with anyone except your attorney, if you choose to consult one, without permission of the inquiry officer.

8. Please fill out this interview form including your signature and date. In addition, your responses to questions should be provided on a separate sheet(s) of paper dated and signed. Return this interview form and your answer sheets to the DNIGMC in the envelope provided.

\_\_\_\_\_ (Date) \_\_\_\_\_ (Signature of interviewee)

**APPENDIX B SAMPLE LETTER FORMATS**

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TASKING INVESTIGATION TO USMC COMMAND

[letterhead]

5000  
IGA  
[date]

From: Inspector General of the Marine Corps  
To: Commanding General, [name and address of receiving Command]  
(Attn: Inspector)

Subj: [USMC, NAVY, DOD] HOTLINE COMPLAINT [Complaint #]

Ref: (a) SECNAVINST 5370.5A  
(b) IGMC Investigations Manual ([www.hqmc.usmc.mil/ig/ig.nsf](http://www.hqmc.usmc.mil/ig/ig.nsf))  
(c) [applicable standard(s) that apply to the allegations]  
(d) [other references as required]

Encl: (1) Hotline Complaint [Complaint Number]

1. In accordance with reference (a), the enclosure is forwarded as a matter under your cognizance. At a minimum, the following allegations must be investigated: [Describe the allegations here, verbiage must include: who did what, to whom, in violation of what standard, and when did the violation occur. For multiple allegations, break out each allegation in the same format (i.e. Who did what to whom in violation of what, when? Number all allegations.).].

2. Appendix C, of reference (b), outlines the format for a Hotline Completion report (HCR). Provide Headquarters Marine Corps (Code IGMC) a command HCR by [due date, normally 30 days]. Requests for an extension should clearly identify the specific reason(s) for the request and the projected completion date.

3. Upon completion of the investigation, pursuant to paragraph 0551, reference (b), a command endorsement expressing concurrence or non-concurrence with the investigating officer's conclusions and recommendations should be forwarded with the HCR to IGMC. The command endorsement must include actions taken (if any) in relation to the issue(s). If command actions are not complete by the due date of the report, the report may be submitted noting the expected completion of the actions. When command action is subsequently complete, IGMC must be notified, by letter, of those completed actions (if any) in order to close out the HOTLINE Complaint. The report must receive legal review prior to submission to IGMC as described in paragraph 0319 of reference (b).

4. If the matter is referred to the Naval Criminal Investigative Service or the Criminal Investigative Division, advise IGMC of the NCIS/CID case control number.

5. The point of contact for inquiries related to this Hotline is: [enter the name, telephone #, email address of the action officer at IGMC].

[Signing official]  
By direction

REFER CASE TO ANOTHER SERVICE INSPECTOR

[DNIGMC LETTERHEAD]

5000  
IGA  
[date]

From: Inspector General of the Marine Corps  
To: Inspector General of the [*name and address of Service IG*]  
Subj: [*USMC, NAVY, DOD*] HOTLINE COMPLAINT [*Complaint #*]  
Ref: (a) SECNAVINST 5370.5A  
Encl: (1) [*Original Complaint or tasking letter*]  
(2) [other material concerning the case, i.e. copy of the Preliminary Inquiry, etc.]

1. A preliminary inquiry was conducted by this office into the issues detailed in enclosure (a).
2. The Deputy Naval Inspector General for Marine Corps' (DNIGMC) preliminary inquiry indicated that [*reason why the matter is being referred out, i.e.: the subject is not or no longer within the Marine Corps chain of command*]. Therefore, the DNIGMC recommends this matter be readdressed to [*appropriate service*] Inspector General for action.
3. The point of contact for inquiries related to this matter is: [*enter the name, telephone #, email address of the action officer at IGMC*].

[*Signing official*]  
By direction

REFER MATTER TO UNIT COMMANDER WITH NO ACTION REQUIRED

5800  
IGA  
[Date]

From: Inspector General of the Marine Corps  
To: Commanding General, [*name and address of receiving Command*]  
(Attn: Inspector)  
  
Subj: [*USMC, NAVY, DOD*] HOTLINE COMPLAINT [*Complaint #*]  
  
Ref: (a) SECNAVINST 5370.5A  
(b) IGMC Investigations Manual ([www.hqmc.usmc.mil/ig/ig.nsf](http://www.hqmc.usmc.mil/ig/ig.nsf))  
(c) [*other references as required*]  
  
Encl: (1) [*Original Complaint or tasking letter*]

1. In accordance with the reference, enclosure (1) is forwarded to your command for information or action as you deem appropriate.

2. If formal action is taken please provide this office with a complete report for inclusion in our official file.

5. The point of contact for inquiries related to this Hotline is: [*enter the name, telephone #, email address of the action officer at IGMC*].

[*Signing official*]  
By direction

REQUEST COMMAND UPDATE IGMC ON SPECIAL INTEREST CASE

5800  
IGA  
[Date]

From: Inspector General of the Marine Corps  
To: Commanding General, [name and address of receiving Command]  
(Attn: Inspector)  
  
Subj: [USMC, NAVY, DOD] HOTLINE COMPLAINT [Complaint #]  
  
Ref: (a) SECNAVINST 5370.5A  
(b) IGMC Investigations Manual ([www.hqmc.usmc.mil/ig/ig.nsf](http://www.hqmc.usmc.mil/ig/ig.nsf))  
(c) [other references as required]  
  
Encl: (1) [Original Complaint or tasking letter]

1. In accordance with the reference, enclosure (1) is forwarded to your command for information or action as you deem appropriate.
2. This matter is of Special Interest to the Inspector General of the Marine Corps, therefore continued updates on the status of the matter and final resolution or actions by your command is requested.
3. It is requested that written updates be provided [note frequency here, normally weekly], and a description of the final closeout actions, in writing, be forwarded to this office for our records.
4. The point of contact for inquiries related to this Hotline is: [enter the name, telephone #, email address of the action officer at IGMC].

[Signing official]

By direction

**SAMPLE ACKNOWLEDGMENT LETTER**

*[letterhead]*

*[Date]*

*[Name and Address of Complainant  
]*

Dear *[Complainant]*:

This is in reply to your *[date of correspondence]* letter to *[the Commandant of the Marine Corps/Inspector General of the Marine Corps, etc.]* concerning *[issue/complaint raised]*. The Inspector General of the Marine Corps received a copy of your letter on *[date]*. This matter is under review and you will be provided a further reply as expeditiously as possible.

*[Signing Official]*  
By direction

SAMPLE CLOSURE LETTERS TO COMPLAINANT [SUBSTANTIATED ALLEGATIONS]

[*letterhead*]

[*Date*]

[*Name and Address of Complainant*  
]

Dear [*Complainant*]:

This is in reply to your [*date and type of correspondence*] forwarded to the Inspector General of the Marine Corps with your concerns relating to [*issue/complaint raised*].

[*Broad details on the investigation- to include: what agency and under what authority conducted the investigation, the dates and location of the investigation. E.g.: The Commander, MARFORLANT appointed an investigating officer to conduct a thorough inquiry into the allegations raised by your letter. The investigation was conducted during January 2004 at Camp Lejune, NC.*]

As a result of the inquiry, we are able to substantiate your allegations. In addition, we have also been informed by [*appropriate command authority*] that appropriate disciplinary action has been taken in this matter. Thank you for bringing this matter to our attention.

[*Signing Official and title*]

SAMPLE CLOSURE LETTER TO COMPLAINANT [NOT SUBSTANTIATED/UNFOUNDED  
ALLEGATIONS]

[*letterhead*]

[*Date*]

[*Name and Address of Complainant*  
]

Dear [*Complainant*]:

This is in reply to your [*date and type of correspondence*] forwarded to the Inspector General of the Marine Corps with your concerns relating to [*issue/complaint raised*].

[*Broad details on the investigation- to include: what agency and under what authority conducted the investigation, the dates and location of the investigation. E.g.: The Commander, MARFORLANT appointed an investigating officer to conduct a thorough inquiry into the allegations raised by your letter. The investigation was conducted during January 2004 at Camp Lejune, NC.*] As a result of the inquiry, we are unable to substantiate your allegations.

Extensive and exhaustive interviews were conducted, both with the personnel you identified and others that the investigators identified in the course of the inquiry. We also received and reviewed numerous documents relative to this matter. While I fully understand this is not the response you were seeking, I can assure you that an objective and detailed investigation was conducted regarding the issues you presented.

[*Briefly discuss any extenuating and/or mitigating circumstances, i.e.: poor-communication, misunderstanding, unfamiliarity with regulations, commander was acting within authority and regulation, etc. that would better explain why the allegations were unsubstantiated, if available.*]

[*Signing Official and title*]

SAMPLE CLOSURE LETTER [FORWARDING REPORT OF INVESTIGATION TO COURT MARTIAL  
AUTHORITY]  
[DNIGMC LETTERHEAD]

5000  
IGA  
[date]

From: Inspector General of the Marine Corps  
To: [Subject's Commanding General] (Attn: Inspector)  
Subj: RESULTS OF INSPECTOR GENERAL INVESTIGATION INTO[USMC, NAVY, DOD]  
HOTLINE COMPLAINT [Complaint #]  
Ref: (a) SECNAVINST 5370.5A  
Encl: (1) [Original Complaint or tasking letter]  
(2) IGMC ROI dtd dd mmm yy w/encl  
(3) [other material concerning the case.]

1. Enclosure(1) reported allegations of misconduct to the [agency receiving complaint] which were forwarded to the Inspector General of the Marine Corps (IGMC) for action. On [date], the IGMC directed a thorough and impartial inquiry into the allegations raised by the reference. Enclosure (2) is the report of investigation which documents substantiated allegations of misconduct by a [Sailor/Marine] in your chain of command.

2. Please review the enclosure and notify this Headquarters of the results of any corrective action taken (if any) in this matter. Closure of the case at our level requires documentation of command action. If no action was taken, so state in your response to IGMC.

3. Point of contact at this Headquarters is:[name, phone, email of AO].

[Signing official]  
By direction

APPENDIX C INVESTIGATIVE REPORT FORMATS

FORMAL REPORT OF INVESTIGATION

[Letterhead]

5800  
IGA  
[DATE]

From: [Investigator]  
To: Inspector General of the Marine Corps  
Via: Director, Assistance and Investigations Division  
  
Subj: INVESTIGATIONS INTO ALLEGATIONS AGAINST [Subject], [Case#]  
  
Ref: (a) SECNAVINST 5430.57\_ (Missions and Functions of the Navy Inspector General)  
(b) SECNAVINST 5800.12\_  
(c) IGMC Assistance and Investigations Manual dtd March 04, 2004  
(d) [other applicable standards]

**Executive Summary.** [Required for all reports requiring IG Signature/review See Chapter 6, Section 0604.]

**1. Authority and Scope.**

a. 10 USC 5014 and 5020 establishes the Naval Inspector General (NAVINSGEN) and places the performance of the Inspector General (IG) function with in the Office of The Secretary of the Navy (SECNAV). 10 USC 5042 stipulates that under the authority, direction, and control of the SECNAV, the Headquarters Marine Corps shall investigate and report upon the efficiency of the Marine Corps and its preparation to support military operations. To fulfill this inspector general functional support to the CMC, SECNAV has created within the Office of NAVINSGEN a Deputy Naval Inspector General for Marine Corps Matters/Inspector General of the Marine Corps (DNIGMC/IGMC) in accordance with reference (a).

**b. Details on Assignment of Investigator.**

(1) Identify the Directing Authority for this case and the date of the tasking.  
(2) Identify the Investigation Official's grade, name and organization.  
(3) Identify the complainant's grade, name and organization.  
(4) The investigation was conducted from (date) to (date) at (location(s)).

c. **Complaint Origination:** Explain how the investigation was initiated (command request, Marine Corps Hotline, DoDIG, etc.)

**2. Introduction.**

**a. Background.**

(1) Details of the circumstances surrounding the case (including other inquiries/ investigations pertaining to case, if applicable).  
(2) List the rank/ grade, name, billet/ job description, and duty station of each witness.  
(3) Discussion of applicable standards.  
(4) Describe difficulties encountered during investigation (if any).

For Official Use Only

Subj: INVESTIGATION INTO ALLEGATIONS AGAINST [Subject], [Case#]

**b. Allegations.**

(1) List and number sequentially all allegations addressed in this report.

(2) Address allegations that were not investigated and why.

**3. Findings, Analysis, and Conclusions.** [List for each allegation in paragraph (2.b.(1))]

**a. Allegation #1:**

(1) Findings of Fact

(2) Analysis: Analysis to support your conclusion

(3) Conclusions

(a) Restatement of Allegation

(b) Finding (NS, S, or UN)

(c) Discussion of Finding

(d) Mitigating/ Extenuating Circumstances (if any)

**b. Allegations #2:**

(1) Findings of Fact

(2) Analysis: Analysis to support your conclusion

(3) Conclusions

(a) Restatement of Allegation

(b) Finding (NS, S, or UN)

(c) Discussion of Finding

(d) Mitigating/ Extenuating Circumstances (if any)

**c. Allegation #3:**

(1) Etc.

**4. Recommendations.** [List in lettered paragraphs:]

Subj: INVESTIGATIONS INTO ALLEGATIONS AGAINST [Subject], [Case#]

a. Status of Investigation/Inquiry (i.e. 'The Investigator recommends this case be opened/closed/transferred/referred').

b. [Other recommendations, (remedies to make complainant whole, etc)]

c. Last paragraph: Refer matter to [Responsible Authority] for action, as they deem appropriate.

**5. Action:** In order to close the case at the Marine Corps Inspector General level, [Responsible Authority] is directed to report, in writing, action(s) taken, if any, with regard to this matter.

Name of Investigator

Copy to: [list of who will receive copies]

Investigator: Name, Rank, Organization and Telephone#

HOTLINE COMPLETION REPORT

HOTLINE COMPLETION REPORT  
AS OF (APPLICABLE DATE)

1. **Name of Official Conducting Inquiry:**
2. **Rank of Official:** Military/ Civil Service Grade
3. **Duty Position and Telephone Number:** Assistant Inspector General for Investigations: (703) 614-1348/1349/1698
4. **Organization:** Office of the Inspector General of the Marine Corps
5. **Hotline Control Number:**
6. **Scope, Findings of Fact, Conclusions, and Recommendations:**
  - a. Scope.
    - 1) Explain the type of investigation/inquiry, the authority for the investigation/inquiry, applicable directives, and any constraints
    - 2) Identify the allegations:
      - a) ALLEGATION #1: That . . .
      - b) ALLEGATION #2: That . . .
    - 3) Enclosures: Provide a list of documents used to support the findings of fact (FOF) contained in this investigation/ inquiry. When these enclosures include witness statements/ testimonies, it should be annotated how these statements/testimonies were obtained (i.e., personal interview, phone call, questionnaire, and etc.). [These *working papers* need not be physically forwarded with the report but should be identified at this point in the report.]
  - b. Findings of Fact.

Note: The FOFs that follow should pertain to this particular allegation. Every finding must be supported by documentary or other evidence and listed as an enclosure.
  - c. Analysis: Describe the investigator's analysis of the findings of fact that led them to the conclusions.
  - d. Conclusions.

Note: Each allegation must have a finding. Acceptable findings are Substantiated (S), Not substantiated (NS), or Unfounded (UN). [See Appendix F, Glossary under Allegation for definitions of S, NS, and UN.]
7. **Criminal or Regulatory Violations Substantiated:** (Example: None)
8. **Disposition:** Include the results of punitive and/ or administrative sanctions, reprimands, value of property recovered, or other such actions taken to preclude recurrence. [If disposition is not available at the time the report is completed include Note: "To be provided" and submit a HCR update when the information becomes available.]
9. **Security Classification:** Specify security classification of information.

For Official Use Only

For Official Use Only

Subj: INVESTIGATION INTO ALLEGATIONS AGAINST [Subject], [Case#]

10. Location of working papers: (*Example:* Assistance and Investigations Division, Officer of the Inspector General of the Marine Corps)

SIGNATURE BLOCK

**MILITARY WHISTLE BLOWER REPRISAL REPORT FORMAT**

[This outline is provided to assist in the preparation of subject reports. It expounds on, but does not alter the requirements delineated in IGDG 7050.6, "Guide to Investigation Reprisal and Improper Referrals for Mental Health Evaluations", dtd Feb. 06, 1996 (the Green Book).]

[Letterhead]

5800  
IGA  
[DATE]

From: [Investigator]  
To: Inspector General of the Marine Corps  
Via: Director, Assistance and Investigations Division

Subj: MILITARY WHISTLEBLOWER REPRISAL INVESTIGATIONS INTO ALLEGATIONS  
AGAINST [Subject], [Case#]

Ref: (a) SECNAVINST 5430.57\_ (Missions and Functions of the Navy  
Inspector General)  
(b) SECNAVINST 5800.12\_  
(c) IGMC Assistance and Investigations Manual dtd March 04, 2004  
(d) IGDG 7050.6 Guide to Reprisal Investigation and  
Improper Referrals to Mental Health Evaluation  
(e)[other applicable standards]

**Executive Summary.** [Required for all reports requiring IG Signature/review  
See Chapter 6, Section 0604.]

**1. Authority and Scope.**

**a.** 10 USC 5014 and 5020 establishes the Naval Inspector General (NAVINSGEN) and places the performance of the Inspector General (IG) function with in the Office of The Secretary of the Navy (SECNAV). 10 USC 5042 stipulates that under the authority, direction, and control of the SECNAV, the Headquarters Marine Corps shall investigate and report upon the efficiency of the Marine Corps and its preparation to support military operations. To fulfill this inspector general functional support to the CMC, SECNAV has created within the Office of NAVINSGEN a Deputy Naval Inspector General for Marine Corps Matters/Inspector General of the Marine Corps (DNIGMC/IGMC) in accordance with reference (a).

**b. Details on Assignment of Investigator.**

(1) Identify the Directing Authority for this case and the date of the tasking.  
(2) Identify the Investigation Official's grade, name and organization.  
(3) Identify the complainant's grade, name and organization.  
(4) The investigation was conducted from (date) to (date) at (location(s)).

**c. Complaint Origination:** Explain how the investigation was initiated (command request, Marine Corps Hotline, DoDIG, etc.)

For Official Use Only

Subj: INVESTIGATION INTO ALLEGATIONS AGAINST [Subject], [Case#]

**2. Introduction.**

**a. Background.**

(1) Details of the circumstances surrounding the case (including other inquiries/ investigations pertaining to case, if applicable).

(2) List the rank/ grade, name, billet/ job description, and duty station of each witness.

(3) Discussion of applicable standards.

(4) Describe difficulties encountered during investigation (if any).

**b. Allegations.**

(1) List and number sequentially all allegations addressed in this report.

(2) Address allegations that were not investigated and why.

**3. Chronology of Events.**

a. [Briefly outline the facts leading to the adverse action (chronologically).

b. The Chronology section should contain undisputed facts, not analysis.]

**4. Findings, Analysis, and Conclusions.** [List for each allegation in paragraph (2.b.(1))]

**a. Allegation #1:** Restate the Allegation. [Use the 'acid test' to challenge each allegation, referencing the facts contained in the 'Background/Chronology' section to justify the yes or no answer.]

(1) Did the Complainant make a communication protected by statute?

(a) [Present supporting findings of fact]

(b) [etc.]

(2) Was an unfavorable personnel action taken or threatened, or was a favorable action withheld or threatened to be withheld following the protected communication?

(a) [Present supporting findings of fact]

(b) [etc.]

(3) Did the officials responsible for taking; withholding or threatening the personnel actions know about the protected communication?

(a) [Present supporting findings of fact]

(b) [etc.]

(4) Does the evidence establish that the personnel actions would have been taken if the protected communications had not been made?

(a) [Present supporting findings of fact]

(b) [etc.]

(5) **Analysis:** Analysis to support your conclusion

**b. Allegations #2:** [repeat as noted above for each allegation]

**c. Allegation #3:**

(1) Etc.

**5. Recommendations.** [List in lettered paragraphs:]

a. Status of Investigation/Inquiry (i.e. 'The Investigator recommends this case be opened/closed/transferred/referred').

b. [Other recommendations, (remedies to make complainant whole, etc)]

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Subj: INVESTIGATION INTO ALLEGATIONS AGAINST [Subject], [Case#]

c. Last paragraph: Refer matter to [Responsible Authority] for action, as they deem appropriate.

6. **Action:** In order to close the case at the Marine Corps Inspector General level, [Responsible Authority] is directed to report, in writing, action(s), taken, if any, with regard to this matter.

Name of Investigator

Copy to: [list of who will receive copies]

Investigator: Name, Rank, Organization, and Telephone#

**APPENDIX D HOTLINE QUALITY CONTROL CHECKLIST**

**A. INDEPENDENCE**

Note: The Examining Office (EO) is the command tasked to provide information to this Headquarters regarding the Hotline Complaint.

1. Did the EO personally conduct the inquiry or was it referred to a subordinate unit? (Conduct/Referred)

a. If referred, to whom? \_\_\_\_\_ Internal Review Division  
\_\_\_\_\_ Technical Directorate  
\_\_\_\_\_ Subordinate Unit  
\_\_\_\_\_ Other, specify: \_\_\_\_\_

b. If referred, did the EO monitor the investigation? (Yes/No)

c. If referred, did the EO write the Completion Report? (Yes/No)

2. Was the Investigating Official (IO) a full time investigator, auditor or inspector? (Yes/No)

If no, what was their full time assignment? \_\_\_\_\_

3. Was the EO and the IO independent of the specific unit, office, staff, element, operation, etc., in which the complaint was alleged to have occurred? (Yes/No)

**B. DOCUMENTATION**

Note: The extent of the case file documentation is relative to the type of examination/ investigation conducted.

1. If the Completion Report were to be removed from the case file, is the documentation found in the file adequate to support the findings and conclusions reported? (Yes/No)

2. Are work papers available? (Yes/No) If so, do they support the findings and conclusions? (Yes/No)

**C. ADEQUACY**

1. Did the IO have complete/unrestricted access to all records and files? (Yes/No)

2. Did the IO interview all key personnel? (Yes/No)

3. Did the IO ask all relevant questions? (Yes/No)

4. Did the IO examine all relevant documentation? (Yes/No)

5. Did the IO address all of the Hotline allegations? (Yes/o)

6. Was the identity of the complainant protected? (Yes/No)

7. Did the IO go beyond the scope of the Hotline allegations and address any/all systemic problems? (Yes/No)

8. If necessary, were legal opinions or technical expertise requested and obtained? (Yes/No)

9. Are the IO's findings and conclusions accurately expressed in the Completion Report?(Yes/No)

**APPENDIX E CASE FILE FORMATS**

**ASSISTANCE CASES**

LETTER-Sized Folders (Reddish- brown w/ 2 sides)  
Label with Case Number only visible (i.e., A-XXXX)

Left Side:

Intake Form (on top)  
Letterhead correspondence (in chronological order)

Right Side:

All documents used in resolving the matter including e-mails printed out that pertain to substantive issues (in chronological order)

**HOTLINES (TASKED OUT)**

LETTER-Sized Folders (Reddish-brown w/ 6 sides)  
Label with Case Number only visible (i.e., H-XXXX or DoD HL XXXX)

Side 1:

Complaint

Side 2:

Tasking Letter (and extension correspondence)

Side 3:

Correspondence on letterhead (in chronological order)

Side 4:

All e-mails printed out that pertain to substantive issues (in chronological order)

Side 5:

ROI

Side 6:

Closing letter(s) and notifications

SOI/ MWBR/ MHE/ HOTLINES (INVESTIGATED BY IGMC)

Legal size expanding folders  
Label with Case Number only on outside flap

TAB I - ADMINISTRATIVE (RED)

- a) Appointing order/ tasking letter
- b) Letters of Notification and (INITIAL) to Command/ Subject/ Complainant
- c) Privacy Act Releases (if applicable)
- d) Rights Advisory Forms (if applicable)
- e) Letter of Notification (FINAL) to Complainant

TAB II - REPORT OF INVESTIGATION (GREEN)

- a) ROI
- b) Legal Review
- c) First Endorsement
- d) Second Endorsement

TAB III - SUPPORTING DOCUMENTS (YELLOW)

- a) Complaint
- b) Index of supporting documents:
  - 1. - XX. All documents used (previously called Enclosures)

TAB IV- WORKING PAPERS (BLUE)

- a) Legal Review Draft (w/ Supporting Documents identified)
- b) Investigative Plan
- c) Investigator Notes

TAB V - CORRESPONDENCE (ORANGE)

- a) E-mail messages printed out - Administrative Matters (sorted chronologically)
- b) E-mail messages printed out - Substantive Matters (sorted chronologically)
- c) Hard copy correspondence (not listed in any of the above categories)

## APPENDIX F GLOSSARY

The following definitions are provided for Assistance and Investigations purposes only, they may have other meaning in other contexts:

**Abuse** - Intentional improper use of government resources. Examples include misuse of rank, position, authority, resources, or equipment.

**Admission** - A voluntary statement acknowledging involvement.

**Adverse Action** - Any administrative or punitive action that takes away an entitlement, results in an entry or document added to the affected individual's official personnel records which could be considered negative by boards or superiors, or permits the affected individual to rebut or appeal the action. Adverse action includes unfavorable information, personnel action, and disciplinary action.

**Agency Records** - Determining whether documents created by IGs are agency records or personal notes depends on circumstances rather than a precise definition. Agency records have characteristics: created, filed, indexed or destroyed based on office standing operating procedure (SOP); circulated to other agency officials for review or use. Personal notes have these characteristics: used as a memory jogger by the writer only, destroyed at the writer's option, maintained separately from files kept per office SOP or indexing system. Personal notes are not subject to release under the Freedom of Information Act.

**Allegation** - A declaration or assertion made without proof concerning an individual or a detrimental condition. A complete allegation normally includes who the allegation is against; what was done wrong; and what standard it violated. Allegations must be worded in such a way that substantiation presents impropriety. Inserting words like wrongfully and improperly will help. Allegations are based on issues presented by a complainant and are usually written in the past tense. The **findings** that are the result of an inquiry or investigation of allegations are expressed as follows:

a. **Unfounded** (UN) - The evidence conclusively establishes that the allegation had no factual basis. Unfounded is a clear exoneration of the subject.

b. **Not-Substantiated** (NS) - There is insufficient credible evidence to substantiate the allegation. "Ties go to the runner." Not substantiated is not necessarily a clear exoneration of the subject. Not substantiated simply means that sufficient credible evidence that establishes a violation of law, regulation, or other accepted standard could not be gathered. The subject can still be left tainted and reasonable doubt can still exist in the decision makers mind.

c. **Substantiated** (S) - The allegation is supported by the preponderance of credible evidence and shows that there was a violation of law, regulation, or other accepted standard. In other words, the subject did what was proffered in the allegation. [Note: This is the strongest conclusion in support of the complainant.]

**Anonymity** - Nondisclosure by the individual of his or her identity when making a complaint to the IG or chain of command.

**Assistance Function** - The process of receiving, inquiring, recording, and responding to complaints or requests either brought directly to the IG or referred to the IG for action. Usually does not involve misconduct.

**Audit** - An independent appraisal of financial, accounting, and other fiscal operations, as a basis for protective and constructive service to command and management at all levels. Complainant. A person who submits a complaint, allegation, or grievance to an IG.

**Complaint** - An expression of dissatisfaction, resentment, discontent, or grief.

**Conclusion** - A reasoned judgment or inference derived from the information present.

**Confession** - A voluntary statement admitting guilt and providing details of the act.

**Confidentiality** - Nondisclosure by the IG of an individual's identity (normally the complainant), although the identity of the complainant is known to the IG.

**Convening Authority** - A commissioned officer who has authority to convene courts-martial (defined below) of people subject to the UCMJ. Convening authorities may grant immunity from prosecution under the UCMJ.

**Corrective Action** - Action taken to correct systemic problems or rectify a given situation in order to minimize the likelihood of noted undesirable activity to recur. Establishing or augmenting procedures, checks and balances, and training are typical corrective responses.

**Courts-martial** - A military court, convened under authority of government and the UCMJ, for trying and punishing offenses committed by members of the Armed Forces and other persons subject to military law.

There are three types of courts-martial: General courts-martial (GCM), a courts-martial of unlimited jurisdiction, convened by a Flag or General Officer (with a few exceptions); Special courts-martial (SPCM), a court-martial of limited jurisdiction, in terms of the sentence that it can award, convened by a commanding officer; and Summary courts-martial (SCM), a hybrid disciplinary proceeding above NJP but below a SPCM, which is not considered a "criminal" prosecution.

**Custodial Interrogation** - Questioning initiated by a law enforcement officer after a person has been taken into custody or otherwise deprived of freedom of action in a significant way.

**Criminal Prosecution** - The process by which a person charged with violating a criminal provision of the United States Code is taken to trial in a United States District Court.

**Directing Authority** - An official who has authority to direct an IG investigation or inquiry be conducted. Commanders who are authorized Command IGs on their staffs may direct such investigations and inquiry within their command.

**Directive** - A directive defines the scope of an IG investigation or inspection. It is the investigator's authority to investigate specific allegations and the inspector's authority to conduct an inspection.

**Disciplinary Action** - Any action, other than training, counseling, or a performance-based action taken against an individual found to have engaged in wrongdoing. Disciplinary action ranges from letters of caution to criminal prosecution and can include actions such as punitive and non-punitive letters of reprimand or caution, non judicial punishment, suspension, reduction in rank, prosecution under the UCMJ, and removal.

**Discrimination** - Unequal treatment based on prejudice related to race, gender, religion, ethnic background, sex, economic status, or social differences.

**DoN IG Organization** - Every organization formally assigned to perform IG functions on a regular basis within DoN. It includes the NAVINSGEN, IGMC, Command Inspectors/IGs, and any other organization that performs IG functions as part of its normal duties.

**Equal Opportunity** - Equal evaluation, consideration, and treatment based on merit, fitness, and capability without regard to race, national origin, color, religion, or sex.

**Equal Employment Opportunity** - An equal opportunity program (as described above) for DoD civilians.

**Evidence** - Consists of information and objects which are used to prove or disprove matters of alleged fact. In IG investigations, evidence includes testimonial, documentary, and physical evidence.

**Excerpt** - A verbatim quotation taken from an order, directive, or other document pertinent to the inquiry or investigation.

**Fraud** - Any intentional deception designed to unlawfully deprive the United States of something of value or to secure an individual a benefit, privilege, allowance, or consideration to which he or she is not entitled.

**IG Function** - Any task or function that is customarily performed by an IG, including those set forth in SECNAVINST 5430.57F, "Mission and Functions of the Naval Inspector General." However, for the purpose of this Manual, an audit is not an IG function.

**IG/Inspector Channels** - Relationship among IGs throughout the Marine Corps. The IGMC/Inspector relationship is one of a staff relationship vice Command relationship. Connotes a confidential and expeditious channel for passing IG information.

**IG Records** - Reports, or extracts and summaries of them, made by IGs.

**Improper (conduct)** - Refers to conduct found to violate an identifiable directive, instruction, policy, regulation, rule, statute, or other standard applicable to the DoN, without regard to knowledge, motive, or intent. Compare to "inappropriate conduct" and "misconduct" defined below. Appropriate responses to findings of improper conduct include corrective or remedial action, counseling, caution or reprimand that does not become a part of a permanent record, and performance-based actions.

**Impropriety** - An action or statement not in accordance with truth, fact, or lawful regulation.

**Inappropriate (conduct)** - Refers to action a reasonable person would consider likely to erode confidence in the integrity of the DoN, but which does not violate an identifiable directive, instruction, policy, regulation, rule, statute, or other standard applicable to the DoN. Sections 5 and 6 of Chapter 12 of DoD 5700.7-R, "Department of Defense Joint Ethics Regulation," provide guidance for identifying inappropriate conduct.

**Inference** - A conclusion logically derived from facts or premises; implies arriving at a conclusion by reasoning from evidence. Information On Which To Base a Reply. Those facts, judgments, and/or opinions submitted to the requester (usually the IG) which will permit preparation of a comprehensive and responsive reply on the matter of concern to the complainant. The information may be based on an IG investigation; or it may be obtained by more informal means, depending upon the nature of the issue.

**Inquiry** - An informal fact finding process followed by IGs to gather information needed to respond to a requester (assistance function), or resolve allegations or issues, when investigative techniques are appropriate (investigation function), but circumstances do not merit conduct of a formal IG investigation. Typically, investigative inquiries are conducted without a directive; sworn, recorded testimony is not taken; and there is not a prescribed format for reports.

**Interview** - To question informally or formally for the purpose of obtaining and providing information.

**Interrogation** - A demand for information from an unwilling person.

**Interrogatory** - A list of written questions which are used to obtain information from a witness. The interrogatory should be written before an IG conducts a planned interview.

**Investigator** - An IG who has been assigned the responsibility of conducting an IG investigation or inquiry.

**Investigation** - Fact finding investigation by an IG investigator into allegations, issues, or adverse conditions to provide the directing authority a sound basis for decisions and action. IG investigations normally address allegations of wrongdoing by an individual and are authorized by written directive. Conduct of IG investigations involves systematic collection and examination of testimony and documents, and may incorporate physical evidence. The results are reported in a Report of Investigation (ROI).

**JAGMAN Investigation** - A fact finding investigation ordered by a commander pursuant to the Manual of the Judge Advocate General of the Navy.

**Mismanagement** - A collective term covering acts of waste and abuse. Abuse of authority or similar actions that do not involve criminal fraud.

**Misconduct** - Improper conduct undertaken (1) with the knowledge that the conduct violates a standard, or with willful (not negligent) disregard for that possibility; (2) with the intention to harm another; or (3) for the

purpose of personal profit, advantage, or gain. Generally, disciplinary action is an appropriate response to findings of misconduct.

**Off The Record** - IGs are never "off the record". Any discussion between IGs and any person (to include a witness or subject in an IG investigation) may be used as evidence or facts to support an IG record (report of inquiry, investigation, and inspection). It is not unusual for someone to tell an IG that he/she would like to go "off the record." This most often happens during formal, investigative, tape-recorded interviews, but can apply to any informal discussion. In these cases, the individual should be told that IGs are never "off the record" and that anything discussed can be used by the IG.

**Office of Record** - Office of the IG where the requirement to prepare a record was generated through a directive, Congressional inquiry, or other correspondence. The IG office at the highest command level which takes action regarding a record, or making a direct reply to a person outside IG channels. For every IG record, there should be only one office of record, even though more than one IG office may have contributed and may maintain a copy of the record.

Pre decisional Consultative Memoranda. This term relates to the Freedom of Information Act (FOIA). Pre decisional intra-agency memoranda are part of the deliberative process of an agency and are generally exempt from

**FOIA release** - Consultative refers to findings, opinions, conclusions, and recommendations, as opposed to facts. Protecting the deliberative process by which IG findings, opinions, conclusions, and recommendations are formulated is important to preserving an atmosphere in which an IG can feel free to express an honest opinion.

**Prejudice** - A preconceived, usually unfavorable, attitude held by an individual despite facts that contradict it.

**Preliminary Analysis** - An initial review and analysis conducted by an IG of a particular allegation, situation, or condition to determine if the circumstances of the case are of sufficient magnitude, seriousness, or validity to warrant either an IG inquiry or investigation or some other form of action.

**Protected Communication** - Any lawful communication to a Member of Congress or an Inspector General. Any lawful communication to a DOD Audit, inspection, investigation, or law enforcement agencies to report violations of law mismanagement, abuse of authority, waste of funds, or substantial danger to public health and safety.

**Referral** - The process of transferring issues or allegations to another agency or command for resolution. This is normally done in writing.

**Remedial Action** - Refers to the attempt to restore individuals to their prior circumstances when they have been harmed by the wrongdoing of others, or injured by unintended consequences of "the system."

**Reprisal** - Taking, or threatening to take, a negative personnel action; or withholding, or threatening to withhold a positive personnel action, against any military or civilian member of the Department of the Navy for making, or preparing, a protected communication to a Member of

Congress, an Inspector General, a member of a DoD audit, inspection, investigation, or law enforcement organization; or any other person or organization (including any person or organization in the chain of command) designated under component regulations or other established administrative procedures to receive such communications. Request for Assistance. Matter presented to IGs by individuals who are seeking information, advice, or assistance.

**Requester** - Any person or organization submitting a request to an IG for action or assistance. The person can be anyone: a Marine, family member, member of another Service, Government employee, or member of the general public. The organization can be any public or private entity.

**Responsible Authorities** - Those persons who have the authority and responsibility to take corrective, remedial, or disciplinary action based on the findings of an IG action.

**Results of Interview** (Memorandum of Interview) - A written record of what occurred and was said, derived from notes and the memory of the interviewer.

**Sexual Harassment** - The act of influencing, offering to influence, or threatening the career, pay, or job of another person -- woman or man -- in exchange for sexual favors. It is also deliberate or repeated offensive comments, gestures, or physical contact of a sexual nature which can occur at almost any place. It is not limited to the work environment.

**Statement** - A written or oral declaration of facts made to an IG by a witness, subject or suspect. It may be sworn or unsworn.

**Subject** - A person against whom allegations of wrong-doing/misconduct have been made.

**Summarized Testimony/Statement** - A paraphrased version of testimony or a statement. Normally, it includes only those items directly related to the matters under investigation or inquiry.

**Suspect** - A person against whom allegations of criminal or non-criminal wrongdoing have been made, there is sufficient evidence to substantiate the allegations, and disciplinary action may follow the investigative process.

**Sworn Statement** (Affidavit or Declaration) - A written or printed declaration or statement of facts made voluntarily. An affidavit is confirmed by the oath or affirmation of the party making it, before a person having authority to administer such oath; a declaration is made pursuant to 28 USC 1446 and need not be notarized before being introduced in an administrative or judicial proceeding.

**Testimony** - Any oral statement given in response to questions by an IG. This may be the product of a formal interview in which the IG takes sworn, recorded testimony using the read-in/out scripts or an informal interview after which the IG summarized what was said in an memorandum for record (MFR).

a. **Sworn Testimony** - Testimony given when the witness has taken oath or affirmed to tell the truth.

b. **Unsworn Testimony** - Testimony given when the witness has not taken an oath or affirmed to tell the truth.

**Unfavorable Information** - Any credible, derogatory information that may reflect adversely on an individual's character, integrity, trustworthiness, or reliability.

**Verbatim Testimony** - A word-for-word transcript of a recorded interview (questions and answers). This transcript should be certified as correct by the IG who conducted the interview or an authorized court reporter.

**Waste** - The extravagant, careless, or needless expenditure of Government funds, or the consumption of government property that results from deficient practices, systems, controls or decisions. The term also includes improper practices not involving prosecutable fraud.

**Witness** - A person selected for interview during an IG investigation or inquiry because they may have information that tends to support or refute an allegation, or information that may lead to the discovery of such information.

**Wrongdoing** - As used in this Manual, a generic reference to activity subject to an IG investigation or inquiry, including misconduct, improper conduct, or inappropriate conduct.

## APPENDIX G STANDARDS AND REFERENCES

### Abuse of Power/Position

U.S. Navy Regulations.  
Chapter 8, The Commanding Officer; Article 802, Responsibility of the  
Commanding Officer.

<http://neds.nebt.daps.mil/Directives/regs/ch-8.pdf>

Chapter 10, Precedence, Authority and Command; Section 1023, Abuse of  
Authority: Persons in authority are forbidden to injure their  
subordinates by tyrannical or capricious conduct, or by abusive  
language.

<http://neds.nebt.daps.mil/Directives/regs/ch-10.pdf>

Chapter 11, Requirement of Exemplary Conduct, Article 1131.

<http://neds.nebt.daps.mil/Directives/regs/ch-11.pdf>

10 U.S.C. Chapter 10, Requirement of Exemplary Conduct; Section 5947.

[http://www4.law.cornell.edu/cgi-bin/htm\\_h1?DB=uscode10&STEMMER=en&WORDS=5947+&COLOUR=Red&STYLE=s&URL=/uscode/10/5947.html](http://www4.law.cornell.edu/cgi-bin/htm_h1?DB=uscode10&STEMMER=en&WORDS=5947+&COLOUR=Red&STYLE=s&URL=/uscode/10/5947.html)

### Adultery

Uniform Code of Military Justice, Art. 134, Adultery.

<http://www.jag.navy.mil/documents/UCMJ.pdf>

### Anti-deficiency Act

DOD 7000.14R Financial Management Regulation, Volume 14

<http://www.dtic.mil/comptroller/fmr/14/index.html>

### Appearance of Impropriety

DOD 5500.7-R, Joint Ethics Regulation, Sec. 2-100, Standards of Ethical  
Conduct for Employees of the Executive Branch

[http://www.defenselink.mil/dodgc/defense\\_ethics/ethics\\_regulation/index.html](http://www.defenselink.mil/dodgc/defense_ethics/ethics_regulation/index.html)

### Conflicts of Interest

18 U.S.C., Conservation of Power and Water Resources; Section 208, Acts  
affecting a personal financial interest.

[http://caselaw.lp.findlaw.com/scripts/ts\\_search.pl?title=18&sec=208](http://caselaw.lp.findlaw.com/scripts/ts_search.pl?title=18&sec=208)

DOD 5500.7-R, Joint Ethics Regulation; Sections 2-100 and 5-300 through  
303, Standards of Ethical Conduct for Employees of the Executive  
Branch.

<http://www.dtic.mil/whs/directives/corres/html/55007r.htm>

U.S. Navy Regulations, Chapter 11, General Regulations; Section 2,  
Standards of Conduct.

<http://neds.nebt.daps.mil/Directives/regs/ch-11.pdf>

## **Dependent/Domestic Affairs & Support**

Marine Corps Manual for Legal Administration MCO P5800.16A  
Spouse and Dependant Support

<http://www.usmc.mil/directiv.nsf/55fdafde3f044b0585256bd40066708b/a3b6cdb925031fc285256af10060f783?OpenDocument>

SECNAVINST 7431.1, INVOLUNTARY ALLOTMENTS FOR CHILD AND SPOUSAL SUPPORT  
<http://neds.nebt.daps.mil/Directives/table56.html>

## **Discrimination**

See Equal Opportunity

## **Equal Opportunity (EO) (Military)**

DODD 1350.2, DEPARTMENT OF DEFENSE MILITARY EQUAL OPPORTUNITY (MEO)  
PROGRAM

<http://www.dtic.mil/whs/directives/corres/html/13502.htm>

Marine Corps Equal Opportunity Manual MCO P5354.1D

<http://www.usmc.mil/directiv.nsf/bf7ed869c4398a1685256517005818da/2e7549b34a383abf852567cc003e96c7?OpenDocument>

Marine Corps Equal Opportunity Advisor (EOA) 5354.3B

<http://www.usmc.mil/directiv.nsf/bf7ed869c4398a1685256517005818da/815d751230d39df18525671c0055e283?OpenDocument>

DODD 1100.16 EQUAL OPPORTUNITY IN OFF-BASE HOUSING

<http://www.dtic.mil/whs/directives/corres/html/110016.htm>

DODD 1325.6 GUIDELINES FOR HANDLING DISSIDENT AND PROTEST ACTIVITIES  
AMONG MEMBERS OF THE ARMED FORCES

<http://www.dtic.mil/whs/directives/corres/html/13256.htm>

U.S. Navy Regulations, Chapter 11, General Regulations; Article 1164,  
Equal Opportunity and Treatment.

<http://neds.nebt.daps.mil/Directives/regs/ch-11.pdf>

SECNAVINST 5350.16, EQUAL OPPORTUNITY (EO) WITHIN THE DEPARTMENT OF THE  
NAVY

[http://neds.nebt.daps.mil/directives/5350\\_16.pdf](http://neds.nebt.daps.mil/directives/5350_16.pdf)

SECNAVINST 5354.1, DEPARTMENT OF THE NAVY (DON) POLICY ON MILITARY  
EQUAL OPPORTUNITY COMPLAINT PROCESSING

[http://neds.nebt.daps.mil/directives/5354\\_1.pdf](http://neds.nebt.daps.mil/directives/5354_1.pdf)

OPNAVINST 5354.1E, NAVY EQUAL OPPORTUNITY (EO) POLICY

[http://neds.nebt.daps.mil/Directives/5354\\_1e.pdf](http://neds.nebt.daps.mil/Directives/5354_1e.pdf)

OPNAVINST 5354.3D, NAVY AFFIRMATIVE ACTION PLAN

<http://neds.nebt.daps.mil/directives/5354d3.pdf>

NAVREGS Article 1167 SUPREMACIST ACTIVITIES

<http://neds.nebt.daps.mil/regs.htm>

NAVREGS Article 1164 EQUAL OPPORTUNITY AND TREATMENT  
<http://neds.nebt.daps.mil/regs.htm>

#### **Equal Employment Opportunity (EEO) (Civilians)**

DODD 1440.1 DOD CIVILIAN EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAM  
<http://www.dtic.mil/whs/directives/corres/html/14401.htm>

OPNAVINST 12720.4B, EQUAL EMPLOYMENT OPPORTUNITY PROGRAM MANAGEMENT  
<http://neds.nebt.daps.mil/directives/12720b4.pdf>

SECNAVINST 12720.5A, THE DEPARTMENT OF THE NAVY CIVILIAN EQUAL  
EMPLOYMENT OPPORTUNITY PROGRAM  
[http://neds.nebt.daps.mil/directives/12720\\_5a.pdf](http://neds.nebt.daps.mil/directives/12720_5a.pdf)

OPNAVINST 12720.8, CIVILIAN EQUAL EMPLOYMENT OPPORTUNITY PROGRAM  
MANAGEMENT  
[http://neds.nebt.daps.mil/directives/12720\\_8.pdf](http://neds.nebt.daps.mil/directives/12720_8.pdf)

#### **Ethics**

Department of Defense Directive 5500.7-R, Standards of Conduct  
<http://www.dtic.mil/whs/directives/corres/html/55007r.htm>

Code of Federal Regulations; Title 5- Administrative Personnel, Chapter  
XVI-Office of Government Ethics; and, Chapter XXVI  
<http://www.gpoaccess.gov/cfr/index.html>

Department of Defense, Part 3601- Supplemental Standards of Ethical  
Conduct for Employees of the Department of Defense. Code of Ethics.  
DoD 5500.7-R, Joint Ethics Regulation, Section 12-300  
[http://www.defenselink.mil/dodgc/defense\\_ethics/ethics\\_regulation/jer1-4.doc](http://www.defenselink.mil/dodgc/defense_ethics/ethics_regulation/jer1-4.doc)

*Conflicts of Interest.* DoD 5500.7-R, Joint Ethics Regulation, Sections  
2-100 and 5-300 through 303.  
[http://www.defenselink.mil/dodgc/defense\\_ethics/ethics\\_regulation/jer1-4.doc](http://www.defenselink.mil/dodgc/defense_ethics/ethics_regulation/jer1-4.doc)

*Disqualification, Standard for Accomplishing.* DoD 5500.7-R, Joint  
Ethics Regulation, Section 2-204.  
[http://www.defenselink.mil/dodgc/defense\\_ethics/ethics\\_regulation/jer1-4.doc](http://www.defenselink.mil/dodgc/defense_ethics/ethics_regulation/jer1-4.doc)

*Employment and Business Activities, Prior Approval for, Negotiating,  
Accepting, Discussing, Post Government, Restriction on Retired Military  
Members, Foreign Employment, and Outside Earned Income.* DoD 5500.7-R,  
Joint Ethics Regulation, Section 2-206, 2-303, 5-405/6, 8-200, 9-400,  
9-700, 9-701  
[http://www.defenselink.mil/dodgc/defense\\_ethics/ethics\\_regulation/jer1-4.doc](http://www.defenselink.mil/dodgc/defense_ethics/ethics_regulation/jer1-4.doc)

5 C.F.R. Parts 2635.601 through 2635.606, 2635.801 through 2635.809,  
and 2636  
[http://www.access.gpo.gov/nara/cfr/waisidx\\_01/5cfrv3\\_01.html#2600](http://www.access.gpo.gov/nara/cfr/waisidx_01/5cfrv3_01.html#2600)

## **False Official Statements**

18 U.S.C., Conservation of Power and Water Resources; Part 1, Crimes and Criminal Procedures; Chapter 47, Fraud and False Statements; Sections §1001-1035

<http://caselaw.lp.findlaw.com/cascode/uscodes/18/parts/i/chapters/47/toc.html>

Uniform Code of Military Justice, Art. 107, False Official Statement.

[http://www.jag.navy.mil/html/reading\\_room.htm](http://www.jag.navy.mil/html/reading_room.htm)

## **Federal Government Resources, Use of**

Acceptance of Incidental Benefits (e.g. frequent flyer mileage, airlines, rental car companies and hotel credits). DoD 5500.7-R, Joint Ethics Regulation, Section 4-200 through 202

[http://www.defenselink.mil/dodgc/defense\\_ethics/ethics\\_regulation/jer1-4.doc](http://www.defenselink.mil/dodgc/defense_ethics/ethics_regulation/jer1-4.doc)

Communications (including Government owned telephones, facsimile machines, electronic mail, internet systems, and commercial systems). DoD 5500.7-R, Joint Ethics Regulation, Section 2-301a

[http://www.defenselink.mil/dodgc/defense\\_ethics/ethics\\_regulation/jer1-4.doc](http://www.defenselink.mil/dodgc/defense_ethics/ethics_regulation/jer1-4.doc)

Endorsements. DoD 5500.7-R, Joint Ethics Regulation, Section 3-209

[http://www.defenselink.mil/dodgc/defense\\_ethics/ethics\\_regulation/jer1-4.doc](http://www.defenselink.mil/dodgc/defense_ethics/ethics_regulation/jer1-4.doc)

Fundraising and Membership Drives and other activities. DoD 5500.7-R, Joint Ethics Regulation, Section 3-210, 3-300.

[http://www.defenselink.mil/dodgc/defense\\_ethics/ethics\\_regulation/](http://www.defenselink.mil/dodgc/defense_ethics/ethics_regulation/)

Gambling. DoD 5500.7-R, Joint Ethics Regulation, Section 2-302

[http://www.defenselink.mil/dodgc/defense\\_ethics/ethics\\_regulation/jer1-4.doc](http://www.defenselink.mil/dodgc/defense_ethics/ethics_regulation/jer1-4.doc)

Military Title, use of. DoD 5500.7-R, Joint Ethics Regulation, Use of - Section 2-304

[http://www.defenselink.mil/dodgc/defense\\_ethics/ethics\\_regulation/jer1-4.doc](http://www.defenselink.mil/dodgc/defense_ethics/ethics_regulation/jer1-4.doc)

Official Participation in Non-Federal Entities. DoD 5500.7-R, Joint Ethics Regulation, Section 3-200

[http://www.defenselink.mil/dodgc/defense\\_ethics/ethics\\_regulation/jer1-4.doc](http://www.defenselink.mil/dodgc/defense_ethics/ethics_regulation/jer1-4.doc)

Others (including personnel, equipment, and property). DoD 5500.7-R, Joint Ethics Regulation, Section 2-301b, 3-305.

[http://www.defenselink.mil/dodgc/defense\\_ethics/ethics\\_regulation/jer1-4.doc](http://www.defenselink.mil/dodgc/defense_ethics/ethics_regulation/jer1-4.doc)

## **Financial and Employment Disclosure, Conflicting Financial Matters**

DoD 5500.7-R, JOINT ETHICS REGULATION, SECTION 7-100.

[http://www.defenselink.mil/dodgc/defense\\_ethics/ethics\\_regulation/jer1-4.doc](http://www.defenselink.mil/dodgc/defense_ethics/ethics_regulation/jer1-4.doc)

5 C.F.R. Parts 2635.401 through 2635.403  
[http://www.access.gpo.gov/nara/cfr/waisidx\\_01/5cfrv3\\_01.html#2600](http://www.access.gpo.gov/nara/cfr/waisidx_01/5cfrv3_01.html#2600)

### **Financial Obligations**

See Dependent/Domestic Affairs & Support

### **Fraternization**

Uniform Code of Military Justice, Art. 134, Fraternalization.  
<http://www.jag.navy.mil/documents/UCMJ.pdf>

Marine Corps Manual, Chapter 3

ALMAR 185/96  
<http://www.usmc.mil/almars/almar2000.nsf/0/0537b60638bc191585256a55005e1261?OpenDocument>

U.S. Navy Regulation, Chapter 11, General Regulations; Article 1165, Fraternalization Prohibited  
<http://neds.nebt.daps.mil/Directives/regs/ch-11.pdf>

Uniform Code of Military Justice, Art. 134, Fraternalization  
[http://www.jag.navy.mil/html/reading\\_room.htm](http://www.jag.navy.mil/html/reading_room.htm)

OPNAVINST 5370.2B, NAVY FRATERNIZATION POLICY  
[http://neds.nebt.daps.mil/Directives/5370\\_2b.pdf](http://neds.nebt.daps.mil/Directives/5370_2b.pdf)

### **Freedom of Information Act (FOIA)**

Secretary of the Navy and Chief of Naval FOIA website:  
<http://foia.navy.mil/introduction.html>

Code of Federal Regulations, Title 5, Administrative Personnel; Chapter XVI, Office of Government Ethics; Part 2604, Freedom of Information Act  
[http://www.access.gpo.gov/nara/cfr/waisidx\\_01/5cfrv3\\_01.html#2600](http://www.access.gpo.gov/nara/cfr/waisidx_01/5cfrv3_01.html#2600)

### **Gifts**

DoD 5500.7-R, JOINT ETHICS REGULATION, Section 2-202 & 3, 2-300, 4-200.  
[http://www.defenselink.mil/dodgc/defense\\_ethics/ethics\\_regulation/jer1-4.doc](http://www.defenselink.mil/dodgc/defense_ethics/ethics_regulation/jer1-4.doc)

5 C.F.R. Parts 2635.201 through 2635.304  
[http://www.access.gpo.gov/nara/cfr/waisidx\\_01/5cfrv3\\_01.html#2600](http://www.access.gpo.gov/nara/cfr/waisidx_01/5cfrv3_01.html#2600)

### **Hazing**

Hazing MCO 1700.28  
<http://www.usmc.mil/directiv.nsf/55fdafde3f044b0585256bd40066708b/ed296b69a421e23e8525677d0041b324?OpenDocument>

SECNAVINST 1610.2 DEPARTMENT OF THE NAVY POLICY ON HAZING  
[http://neds.nebt.daps.mil/Directives/s1610\\_2.pdf](http://neds.nebt.daps.mil/Directives/s1610_2.pdf)

### **Management and Oversight**

U.S. Navy Regulations, Chapter 7, Commanders in Chief and Other Commanders; Article 0702, Responsibility and Authority of Commanders  
<http://neds.nebt.daps.mil/Directives/regs/ch-7.pdf>

U.S. Navy Regulations, Chapter 8, The Commanding Officer; Article 0802, Responsibility of the Commanding Officer  
<http://neds.nebt.daps.mil/Directives/regs/ch-8.pdf>

### **Medical/Dental Issues**

Dental Health Care MCO 6600.3  
<http://www.usmc.mil/directiv.nsf/1c91d777911e6e7d8525651700581966/bf1cb e3cb2ffdd068525649700673652?OpenDocument>

Commander's Guide to the HIV NAVMC 2094  
<http://www.usmc.mil/directiv.nsf/1c91d777911e6e7d8525651700581966/b1b24 153c434acfb85256d6b005f55b3?OpenDocument>

Administration and Processing of Hospitalized Marines  
<http://www.usmc.mil/directiv.nsf/1c91d777911e6e7d8525651700581966/8f7c8 a841b203be38525677b00440f45?OpenDocument>

TRICARE Family Member Dental Plan  
<http://www.usmc.mil/directiv.nsf/1c91d777911e6e7d8525651700581966/b0292 d17c52abff38525677b0043b36a?OpenDocument>

SECNAVINST 1850.4E, "Department of the Navy Disability Evaluation Manual"  
[http://neds.nebt.daps.mil/1850\\_4e.htm](http://neds.nebt.daps.mil/1850_4e.htm)

Physical Evaluation Board Home Page  
[http://www.hq.navy.mil/ncpb/PEB/Physical\\_evaluation\\_board.htm](http://www.hq.navy.mil/ncpb/PEB/Physical_evaluation_board.htm)

Tricare Home Page  
<http://www.tricare.osd.mil>

### **Mental Health Evaluations**

DODD 6490.1 Mental Health Evaluations of Members of the Armed Forces  
<http://www.dtic.mil/whs/directives/corres/html/64901.htm>

### **Misuse of Government Manpower/Equipment Resources**

Uniform Code of Military Justice, Art. 108, Art. 109, Property other than military property of the United States—waste, spoilage, or destruction  
[http://www.jag.navy.mil/html/reading\\_room.htm](http://www.jag.navy.mil/html/reading_room.htm)

Also, see Ethics, Use of Government property and Use of official time.

### **Misuse of Position**

Use of public office for private gain - 5 C.F.R. Part 2635.70  
Use of nonpublic information - 5 C.F.R. Part 2635.7  
Use of Government property - 5 C.F.R. Part 2635.704  
Use of official time (Use of an employee's own time  
Use of a subordinate's time) - 5 C.F.R. Part 2635.705  
Conflicting outside employment and activities - 5 C.F.R. Parts 2635.801  
through 809  
[http://www.access.gpo.gov/nara/cfr/waisidx\\_01/5cfrv3\\_01.html#2600](http://www.access.gpo.gov/nara/cfr/waisidx_01/5cfrv3_01.html#2600)

#### **Payroll Allowances/Entitlements**

Defense Finance and Accounting Service (DFAS) Home Page  
<http://www.dfas.mil/>

#### **Personnel**

5 USC Section 2302 (b) Prohibited Personnel Practices  
<http://www4.law.cornell.edu/uscode/>

#### **Political Activities**

DoD 5500.7-R, Joint Ethics Regulation, Section 6-200  
[http://www.defenselink.mil/dodgc/defense\\_ethics/ethics\\_regulation/jer1-4.doc](http://www.defenselink.mil/dodgc/defense_ethics/ethics_regulation/jer1-4.doc)

Soliciting Sales. DoD 5500.7-R, Joint Ethics Regulation, Section 2-205,  
5-409  
[http://www.defenselink.mil/dodgc/defense\\_ethics/ethics\\_regulation/jer1-4.doc](http://www.defenselink.mil/dodgc/defense_ethics/ethics_regulation/jer1-4.doc)

#### **Pregnancy (Navy Policy)**

SECNAVINST 1000.10 DEPARTMENT OF THE NAVY POLICY ON PREGNANCY  
<http://neds.nebt.daps.mil/Directives/table38.html>

#### **Privacy Act**

DoD Privacy Act website  
<http://www.defenselink.mil/privacy/>

Secretary of the Navy and Chief of Naval Privacy Act website:  
<http://privacy.navy.mil/>

Code of Federal Regulations, Title 5 - Administrative Personnel,  
Chapter XV--Office of Administration, Executive Office of the  
President, Part 2504 - Privacy Act Regulations.  
[http://www.access.gpo.gov/nara/cfr/waisidx\\_01/5cfrv3\\_01.html#2600](http://www.access.gpo.gov/nara/cfr/waisidx_01/5cfrv3_01.html#2600)

#### **Procurement**

Defense Federal Acquisition Regulation Supplement (48 C.F.R. Ch. 2)  
<http://www.access.gpo.gov/cgi-bin/cfrassemble.cgi?title=200148>

Procurement Integrity Act, 43 U.S.C., Ch. 31  
[http://caselaw.lp.findlaw.com/casecode/uscodes/43/chapters/31/sections/section\\_1475.html](http://caselaw.lp.findlaw.com/casecode/uscodes/43/chapters/31/sections/section_1475.html)

#### **Prohibited Personnel Practices**

5 U.S.C. § 2302  
[http://caselaw.lp.findlaw.com/scripts/ts\\_search.pl?title=5&sec=2302](http://caselaw.lp.findlaw.com/scripts/ts_search.pl?title=5&sec=2302)

Merit Systems Protection Board  
<http://www.mspb.gov>

#### **Quality of Life/Morale & Personal Affairs website**

Bureau of Naval Personnel website  
<http://www.bupers.navy.mil/pers6>

Navy Life Lines Services Network  
<http://www.lifelines.navy.mil/>

#### **Recruiting/Retirement/Discharges**

SECNAVINST 5420.174C, "Review at the Level of the Navy Department of Discharges from the Naval Service"  
<http://neds.nebt.daps.mil/directives/5420174C.pdf>

Naval Discharge Review Board Home Page  
<http://afls14.jag.af.mil/dscgi/ds.py/View/Collection-203>

SECNAVINST 5420.193, "Board for Correction of Naval Records"  
<http://neds.nebt.daps.mil/directives/s5420193.pdf>

Board for Correction of Naval Records Home Page  
<http://www.hq.navy.mil/bcnc/bcnc.htm>

#### **Religious Practices, Accommodation of**

SECNAVINST 1730.8A Accommodation of Religious Practices  
<http://neds.nebt.daps.mil/Directives/table41.html>

#### **Reprisal**

Military Whistleblower Protection MCO 5041.1  
<http://www.usmc.mil/directiv.nsf/55fdafde3f044b0585256bd40066708b/5602e209aa637fb585256770004a2b62?OpenDocument>

DODD 7050.6 MILITARY WHISTLEBLOWER PROTECTION  
<http://www.dtic.mil/whs/directives/corres/dir2.html>

SECNAVINST 5370.7B, MILITARY WHISTLEBLOWER PROTECTION  
[http://neds.nebt.daps.mil/directives/5370\\_7b.pdf](http://neds.nebt.daps.mil/directives/5370_7b.pdf)

SECNAVINST 5370.8, MILITARY REPRISAL INVESTIGATIONS  
[http://neds.nebt.daps.mil/directives/5370\\_8.pdf](http://neds.nebt.daps.mil/directives/5370_8.pdf)

SECNAVINST 6320.24A, MENTAL HEALTH EVALUATIONS OF MEMBERS OF THE ARMED FORCES

[http://neds.nebt.daps.mil/directives/6320\\_24a.pdf](http://neds.nebt.daps.mil/directives/6320_24a.pdf)

SECNAVINST 12771.1, DEPARTMENT OF THE NAVY ADMINISTRATIVE GRIEVANCE SYSTEM

<http://neds.nebt.daps.mil/directives/12771.1.pdf>

## **Safety/Environmental**

Safety

<http://safetycenter.navy.mil/>

Environmental

<http://web.dandp.com/enviroweb/index.html>

<http://www.navosh.net/>

## **Security/Intelligence**

*Security*

Navy Information System Security website:

[www.infosec.navy.mil](http://www.infosec.navy.mil)

DoDD 2000.12 DOD ANTITERRORISM/FORCE PROTECTION (AT/FP) PROGRAM

<http://www.dtic.mil/whs/directives/corres/html/200012.htm>

DoDI 2000.16 DoD ANTITERRORISM STANDARDS

<http://www.dtic.mil/whs/directives/corres/html/200016.htm>

DoD 5200.2-R PERSONNEL SECURITY PROGRAM

<http://www.dtic.mil/whs/directives/corres/html/52002r.htm>

DoDD 5200.2 DoD PERSONNEL SECURITY PROGRAM

<http://www.dtic.mil/whs/directives/corres/html/52002.htm>

SECNAVINST 5510.30A DEPARTMENT OF NAVY PERSONNEL SECURITY PROGRAM

<http://neds.nebt.daps.mil/Directives/table52.html>

SECNAVINST 5510.36 DEPARTMENT OF THE NAVY (DON) INFORMATION SECURITY PROGRAM (ISP) REGULATION

<http://neds.nebt.daps.mil/Directives/table52.html>

*Intelligence*

OPNAVINST 3300.55 NAVY COMBATING TERRORISM PROGRAM STANDARDS

<http://neds.nebt.daps.mil/Directives/table10.html>

OPNAV 5530.14C NAVY PHYSICAL SECURITY

<http://neds.nebt.daps.mil/Directives/table29.html>

Executive Order 12333 United States Intelligence Activities

<http://www.cia.gov/cia/information/eo12333.html>

DoD Regulation 5240.1-R Procedures Governing the Activities of DoD Intelligence Components That Affect United States Persons

<http://www.dtic.mil/whs/directives/corres/publ.html>

SECNAVINST 3820.3D Oversight of Intelligence Activities Within the Department of the Navy

<http://neds.nebt.daps.mil/Directives/table43.html>

### **Sexual Harassment**

Sexual Harassment MCO 1000.9

<http://www.usmc.mil/directiv.nsf/55fdafde3f044b0585256bd40066708b/78e29bd660aacc48525692600599aae?OpenDocument>

U.S. Navy Regulations, Chapter 11, General Regulations; Article 1166, General Order for USN & USMC

<http://neds.nebt.daps.mil/Directives/regs/ch-11.pdf>

SECNAVINST 5300.26C, DEPARTMENT OF THE NAVY (DON) POLICY ON SEXUAL HARASSMENT

<http://neds.nebt.daps.mil/directives/s530026c.pdf>

Commander's Handbook for Prevention of Sexual Harassment

### **Support (Family and Spousal)**

See Dependent/Domestic Affairs & Support

### **Time and Attendance**

See Ethics, Misuse of Position.

### **Travel Abuses**

31 U.S.C. 1353

[http://caselaw.lp.findlaw.com/scripts/ts\\_search.pl?title=31&sec=1353](http://caselaw.lp.findlaw.com/scripts/ts_search.pl?title=31&sec=1353)

DOD 5500.7-R, Joint Ethics Regulation, Chapter 4, Travel Benefits

<http://www.dtic.mil/whs/directives/corres/html/55007r.htm>

Joint Federal Travel Regulations (JTR), Vol. 1 - military; Vol. 2 - civilian

<http://www.dtic.mil/perdiem/trvlregs.html>

### **Women in the Military**

SECNAVINST 1300.12B Assignment of Women Members in the Department of the Navy

<http://neds.nebt.daps.mil/Directives/1300b12.pdf>

## USEFUL INTERNET SITES

### Acquisition Guide

<http://www.ntsc.navy.mil/Resources/Library/Acqguide/Acqguide.htm>

### Comptroller General Decisions, etc. - General Accounting Office site

<http://www.gao.gov/index.htm>

### DoD Instructions and Directives

<http://www.dtic.mil/whs/directives>

### GAO Investigator's Guide to the Internet

[http://www.gao.gov/special.pubs/soi/soi\\_ch5.htm](http://www.gao.gov/special.pubs/soi/soi_ch5.htm)

### General Services Administration homepage - various GSA rules and regulations

<http://www.gsa.gov>

### Government Executive Magazine - useful information on pay, travel, etc.

<http://www.govexec.com>

### Inspector General Network homepage - links to other IG homepages, IG community news

<http://www.ignet.gov>

### Joint Ethics Regulations in DoD General Counsel's site

[http://www.defenselink.mil/dodgc/defense\\_ethics/resource\\_library/resourcesindex.html](http://www.defenselink.mil/dodgc/defense_ethics/resource_library/resourcesindex.html)

### NAVINGEN homepage

<http://www.ig.navy.mil>

### Navy Homepage (links to other Navy sites)

<http://www.navy.mil>

### Office of General Counsel site

<http://ogc.navy.mil>

<http://www.jag.navy.mil>

### Office of Special Counsel homepage

<http://www.osc.gov>

### SECNAV and OPNAV instructions and directives

<http://neds.nebt.daps.mil>

**Travel** - Federal Travel Regulation, Joint Travel Regulation, per diem rates, lodging info., etc.

<http://www.policyworks.gov/fttr>

<http://www.dtic.mil/perdiem/index.html>

U.S. House of Representatives Internet Law Library

<http://www.lawguru.com/ilawlib>

**For Navy**, try:

<http://www.history.navy.mil/library>