

FACT SHEET

The Respondent *(person complained about)*

A respondent (or sometimes referred to as subject officer) is the person who is the subject of a complaint or allegations which have been assessed as requiring preliminary inquiry or investigation.

NOTIFICATION OF COMPLAINT

The employer will assess the complaint and determine what allegations are appropriate. The employer then determines the most appropriate means of dealing with the allegations that have been identified.

The employer is responsible for also determining when it is appropriate to inform the subject officer of the complaint. In some circumstances, it may be appropriate to delay informing the subject officer whilst preliminary inquiries are made and/or evidence collected. There is no legal requirement to immediately inform a subject officer of a complaint that has been received about them.

Natural justice / procedural fairness is not compromised where it has been determined to delay informing a subject officer of the matter being investigated.

A subject officer must be informed of the allegations and provided with opportunity to respond to those allegations, i.e. during their interview, prior to any formal action/decision being taken against them.

SUBJECT OFFICER'S RIGHTS TO INFORMATION PRIOR TO ATTENDING INTERVIEW

The subject officer is entitled to know about the allegations prior to attending an interview with the investigator. The allegation/s is a broad description of the conduct being investigated and does not necessarily include specific details of the matter. In other words, the subject officer should be advised in broad terms about the subject matter to be addressed at the interview.

The purpose of the interview is then to explore the allegation/s in detail with the subject officer in a manner that is productive.

ATTENDING AN INTERVIEW

The appointed investigator will invite the subject officer to an interview, at which time the allegations against them will be discussed in full.

Attendance at the interview is part of an employees official duty. An officer may receive a written direction or verbal request to attend an interview of this type.

The subject officer is entitled to invite a support person to attend the interview with them. The support person's role is to provide moral and emotional support to the subject officer and does not play an active role in answering questions or advocating on behalf of the subject officer [Refer to Support Person's Fact Sheet].

Sometimes, the interview will be audio recorded. Other times the interview a written statement will be made at the time of the interview. The subject officer will have an opportunity to read through the statement to ensure it captures their responses accurately.

CONFIDENTIALITY

Confidentiality is a duty of care not to disclose information that may be sensitive or damaging to the interests of another, whether or not the other person has specifically asked for the information to be kept in confidence.

It is the responsibility of officers involved in an investigation, including witnesses, to ensure that strict confidentiality is maintained.

The maintenance of strict confidentiality means that an individual is unlikely to face civil action for defamation i.e. attacking the good reputation of someone or speaking ill of them.

Please note that information collected during an investigation may need to be released where there is a legal requirement to do so.

OUTCOMES OF AN INVESTIGATION

At the conclusion of an investigation of allegations against one or more subject officers, the investigator will prepare an investigation report.

The quality and comprehensiveness of an investigation report is assessed by the employer. The employer then recommends to the decision maker a course of action. Recommended action may include:

- Taking no further action and closing the matter
- Commencing a disciplinary process
- Resolving some or all issues by way of Managerial Resolution

ACCESS TO INVESTIGATION REPORT

The purpose of the investigation report is primarily for the guidance of the employer and, in particular, the decision maker responsible for determining what (if any) action should be taken about the matter.

The employer will not normally administratively release the investigation report to the subject officer, unless the officer is subject to a disciplinary process or formal counsel process relating to allegations substantiated in the investigation. In those circumstances, parts of the investigation report relating specifically to the subject officer may be provided in accordance with procedural fairness requirements.