

# FACT SHEET



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## 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. Many people worry that because we are engaged by the employer that our independence is compromised. We can confirm that employers cannot direct the outcome of our Findings. Employers can reject our Findings, but our Findings are based on the evidence collected.

### **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 against 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 the opportunity to respond to those allegations, i.e. during their interview, prior to any formal action being taken or a decision being made against them.

### **SUBJECT OFFICER'S RIGHT TO INFORMATION PRIOR TO ATTENDING INTERVIEW**

The subject officer is entitled to know about the allegation/s 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 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 employee's 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 not to play an active role in answering questions or advocating on behalf of the subject officer [Refer to Support Person's Fact Sheet].

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Sometimes, the interview will be audio recorded. Other times 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 anyone involved in an investigation, including witnesses, to ensure that strict confidentiality is maintained. This is also to protect any information collected and to ensure that people's evidence has not been influenced or contaminated.

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, or disciplinary action being taken.

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, an investigation report will be prepared by the investigator.

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

Recommendations 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 action (if any) should be taken.

The employer will not normally release the investigation report, unless lawfully required to do so, or 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.

## CAN YOU CONTACT US

Yes, you can contact us to discuss the process of the investigation. However, we will not disclose any information or provide a copy of our report to you. You need to request this from your employer.