Planning the Investigation
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Deciding on a Course of Action

- Step 1: Understanding the Report – Done
- Step 2: Preliminary Analysis of the Report
- Step 3: Tasking the Report
  - Referring the report to another department
  - Assisting the reporter directly with the concern
  - Dismissing the report
  - Investigating the report

Benefits of Proper Analysis and Tasking

- Keeps the report in the most appropriate resolution channel
- Creates realistic expectations for everyone involved
- Investigates only those reports that warrant an investigation
- Protects the credibility of your ethics and compliance program
- Determines the specific remedy for the report
- Avoids escalation of the report or referral to external agency
- Remember: “justice” and a “formal investigation” are not appropriate remedies. The former is a value, and the latter is a process.
Preliminary Analysis – What Are the Issues?

• You determine the issues / allegations, not the reporter.
• Look for larger issues that will drive your resolution strategy
  • Possible legal violations
  • High-level people involved
  • Whistleblower retaliation
  • Material impact on business or special sensitivity
• Look for implied allegations
  • Helps answer the intent of the report
  • If the reporter does not articulate it, you still need to account for it

Preliminary Analysis – What Is the Standard?

• Look for systemic problems
  • Issues affecting the organization, a division or a department (rather than just those people affected by the specific report)
  • Possible root causes can steer you to the places to look
• What was the role of management in the substance of the report?
• Identify the company policies regarding the issue you are dealing with.

Tasking – Conduct an Investigation?

• The preliminary analysis results in selecting a course of action.
  • Is the matter appropriate for another department?
    • Assisting the reporter with the concern
    • Referring the report to another department
    • Dismissing the report
    • Investigating the report
  • Is the matter appropriate for an investigation?
    • No, if there is a misunderstanding of company policy
    • No, if the report is a request for assistance
    • No, if the report concerns a management business decision with no allegation of misconduct
    • No, if it is a lack of communication between an employee and others
    • No, if the facts aren’t in dispute / the report gives sufficient facts
    • No, if someone feels “wronged” by the “system”
    • No, if the issue can be resolved informally
Preliminary Analysis – What Is the Standard?

- Essential elements of an allegation
  - **Who**: the subject must always be identified in the allegation
  - **Did what**: the subject improperly did something
  - **In violation of what**: what law, procedure, rule or policy was violated
  - **When and where**: time(s) and places

- You need separate allegations for each subject and allegation.
- Use neutral, non-emotional wording.
- Draft the allegation so that substantiation = impropriety.

A Quick Fact Pattern

- Larry Green works for your company as the Vice President of Procurement. You receive a hotline call from Steve, an employee in the department. Steve tells you that a large vendor for your company has just engaged Larry as a consultant so they can better serve your company’s needs. Steve thinks this is unethical.

- Your company has this Conflict of Interest Policy:
  
  All company employees are prohibited from engaging in any business transaction on behalf of the company with any entity in which the employee or an immediate family member has a personal interest, unless the employee first obtains the approval of the CEO.

Framing Your Investigation Allegation

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<tr>
<th>Don’t Say This</th>
<th>Say This</th>
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| • Did Larry Green violate the company’s conflict of interest policy when became a consultant to a company vendor? | The investigation will seek to determine if:
  
  - Larry Green is a company employee;
  
  - Larry engaged in a business transaction on the company’s behalf;
  
  - The business transaction was with another entity;
  
  - Larry or an immediate family member has a personal interest in that entity; and
  
  - Larry failed to obtain the approval of the CEO before engaging in the transaction. |
Planning the Investigation

• Your plan is the key to a proper investigation
• Your plan is your roadmap of how you will conduct the investigation
• Your plan ensures you will cover all necessary points
• Your plan is tailored to the particulars of the case and the shareholder concerns
• Your plan can be formal or informal

Planning the Investigation

• Who do you interview?
  • How many people do you interview?
  • What interview order do you follow?
  • Where should you conduct the interview?
  • What topics should you cover with that witness?
  • What assistance from colleagues or outside resources do you need?
  • What specific evidence do you need?

Closing Thoughts

• A poor analysis of the report results in overwork and hurts your credibility.
• A good analysis of the report leads to a timely, focused response that enhances your credibility.
• Analyzing a report is an art. Practice the skill to develop it.
• The end product of a good analysis is a clearly articulated investigation / resolution strategy.
Tasking – Conduct an Investigation?

- Do you have a reasonable basis to warrant an investigation?
- Who should conduct the investigation?
  - Supervisors / managers / administrators
  - Human Resources
  - Internal Audit
  - Compliance
  - Legal counsel (inside or outside)
- Make sure you understand the company policies regarding the investigation process. Remember to have an infrastructure.
- Assume the adequacy and objectivity of your investigation may be challenged.
- Who should receive initial notification that an investigation will be conducted?