Private Eye 101:
Investigations Principles for Process Owners

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Introductory thoughts
The optimal investigations process has all of these steps:
1. The report
2. Fact-finding
3. Final report / other fact-reporting
4. Identify the business problem
5. Fix the business problem
6. Add to or reduce loss of profit
Introductory thoughts

- Be sure you can defend how the investigation was conducted.
- The investigations should establish innocence as well as culpability.
- Every organization should implement a standard investigations protocol.
- The process should be fair and create the appearance of fairness.
- The process is more important than any single investigation.

Key Purposes for Your Investigations

- You must determine the true story as well as the back story.
- Your findings must establish accountability.
- Your findings must maximize the decision-making process for the business people.
- Your findings must help the bigger needs of the business.
Discovering workplace problems

- Gather your reports from multiple sources.
- Once someone knows of a problem, the company is held to legally know.
- You need to determine whether an allegation is minor. Don’t assume it is minor.
- There are risks if you don’t investigate. There are risks if you do.

Interviewing the reporter

- The reporter is your initial source of information. Take full advantage of the opportunity.
- Make sure you understand their report before making the investigation plan.
- Accept the reporter’s information but don’t adopt their characterizations.
- Stay alert to confidentiality and retaliation concerns.
- Do not thank a reporter for their report.
- Be sure to manage the reporter’s expectations.
- Start considering the “back story” of the problem.
Preliminary investigation steps

- Beginning the investigation depends on whether you have probable cause to believe misconduct occurred.
- If an investigation is needed, what is the precise allegation you are investigating?
- Determine whether interim steps are needed while the investigation is pending.
- The investigation needs to be conducted timely.

Making your investigation plan

- Based on the precise allegation, decide what exactly you need to know. An overly broad objective is worse than an overly narrow one.
- From whom do you need information?
- In what order should you conduct your interviews?
- Consider the information other key internal departments need for post-investigation activity.
- Make sure you have informed the right managers.
The interview process

- Interview witnesses with the “funnel method.”
- Gather *intelligence* on the witness.
- Make a list of topics, not questions.
- The interviewer must control the interview.
- Keep opinions to yourself.
- Every material fact must be corroborated.
- Always look for leads.

- Always maintain confidentiality.
- An investigator’s notes should be reviewed with the witness. Do not ask the witness to sign the notes.
- Do not allow tape recording of interviews.
- Phone interviews are a fact of life, but they have limited value.
- Never allow joint interviews.
- Interview questionnaires are good for discrete questions.
Interviewing the accused person

- There is a fundamental difference between an interview and an interrogation.
- You are looking more for a confession than additional information.
- The person should be confronted with information, but this has its limits.
- The person should respond and, if appropriate, offer mitigating circumstances.
- Be aware of the pitfalls of confronting this person.
- Prepare an interview memorandum.

Getting the Proper Documents

- You don’t want or need every shred of paper.
- Each investigation has a different paper trail.
- Emails tell useful snippets of the bigger story.
- Try to review the personnel files of witnesses to learn their histories.
- Documents are needed only to corroborate or give structure to specific issues and events.
Evaluating the evidence

- You owe it to the company, the process, and the people involved to get done quickly.
- Remind yourself of the investigation’s scope and determine whether your information covers each of the allegation’s elements.
- The burden of proof is the preponderance of the evidence.
- Are you sure there is no tip of the iceberg?

Evaluating the evidence

- Separate the disputed from the undisputed facts. There is no need to resolve undisputed facts.
- Determine the credibility of the witnesses.
- It is possible to resolve a “he said / she said” situation.
- Don’t be afraid to get a second opinion, especially if you are involved in deciding on discipline later.
Preparing the investigations report

- Determine the specific purposes of your report for your company’s needs.
- The format does not matter if the elements are there.
- All good reports have common qualities.
- The report should be distributed carefully.
- The report is discoverable in a lawsuit.
- The report-writing process is not without its pitfalls.

Post-investigation steps

- The investigation process does not end with the report.
- The affected employees (and departments) should be addressed.
- The reporter should be contacted regarding the end of the investigation.
- The investigator or someone in your organization should participate in the remediation process.
Questions, Anyone?

An Insider’s Guide...

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