

Date: May 10, 2023

To: Honorable Members of the Ethics Commission

From: Heather Van Wijk, Ethics Officer

Subject: **Investigations Protocol Feedback**

On November 9, 2022, the Ethics Commission requested feedback from affected City Departments on the draft Investigations Protocol presented previously by an ad hoc committee. Attached is feedback received by the City Attorney's office, the Office of the City Auditor, and the Human Resources Department.

If you have any questions, please contact me at (562) 570-7443.

ATTACHMENTS:

Attachment A - Ad Hoc Committee Draft
Attachment B - Feedback from City Attorney
Attachment C - Feedback from City Auditor
Attachment D - Feedback from Human Resources Department

Cc: APRIL WALKER, DEPUTY CITY MANAGER
JULIAN CERNUDA, ASSISTANT TO THE CITY MANAGER
TAYLOR ANERSON, DEPUTY CITY ATTORNEY
JT NAGAYAMA, CITY CLERK ANALYST

Protocol for Intake, Investigation and Disposition of Allegations of Improper Conduct¹

This protocol shall apply to intake, investigation, and disposition of allegations regarding potential violations of laws, regulations and standards related to campaign finance, lobbying, conflicts of interest, harassment, and any other violations of the City Code of Conduct or Ethics Guide. Investigations should be conducted in a timely manner with consistent outcomes, subject to audit.

I. Intake

- a. **Receipt of Allegation:** Receipt of allegations of improper conduct shall be documented, to include:
 - i. Date received
 - ii. Reporter's name and contact information, if known (and whether reporter requests confidentiality)
 - iii. Subject of the report including contact information, if known
 - iv. Date(s) of improper conduct
 - v. All facts known to reporter to support the report, how they know the facts, and who/what may corroborate the facts
 - vi. Identity of other potential witnesses¹
 - vii. Location of any relevant documents and copies if available
- b. **Record of Allegation:**
 - i. The report of allegation should be placed in a case management system that provides security adequate to protect confidentiality of information and is amenable to audit.² Each allegation should be categorized by the nature of the conduct alleged. A common list of categories, similar to or based on that used by the City Auditor should be used by all pathways.
 - ii. If the investigator determines the allegation does not merit investigation, the rationale for early termination of the investigation will be documented in the case management system.
 - iii. If the investigator determines that another organization should conduct the investigation, the transfer to that organization will be documented in the case management system with sufficient information so that the hand-off may be audited.
- c. **Initiation of Investigation:** Individual in receipt of report of improper conduct should make a preliminary determination if he/she/they have training³ and authority

¹ Are City employees obligated to cooperate with investigations of improper conduct? Are there consequences if a City employee declines to cooperate with an investigation? How/when does City attorney subpoena power come into play? Does any other entity have subpoena power in regards to investigations of misconduct in LB?

² There are numerous pathways for reporting and investigation of allegations of improper conduct. At present, there are no city-wide statistics on number of allegations reported and dispositions. A case management system should enable collection and analysis of allegations and trends.

³ TBD: Identify appropriate level of training needed to investigate allegations of improper conduct. Should include: understanding of the underlying legal/regulatory requirements alleged to have been violated (as is

to investigate the allegation and the time needed to conduct the investigation. If the individual lacks the training, authority and / or time needed, they should refer the report to an appropriate individual with authority and time needed to conduct a proper investigation.

- i. **Discussion point for Commission:** Should each Department or pathway have a single point for review of all allegations responsible for assignment of personnel to investigate, oversight of early disposition, and maintenance of records?

II. Investigation

- a. **Early Disposition:** It may be possible to close a matter without investigation. If the investigator closes a matter without investigation, the rationale with all supporting materials should be provided in the case management system.
- b. **Preliminary steps. Investigator should:**
 - i. Contact the HR department responsible for the subject of the investigation and other investigative authorities to determine whether the same or a similar report is being or has been investigated.
 - ii. Obtain organization chart(s) for the subject's organization to identify potential witnesses in addition to those provided by the reporter.
 - iii. Identify likely sources of documents that may be relevant to the investigation and collect all such documents. Review documents and upload relevant documents to the case management system.
- c. **Interviews:**⁴
 - i. Start with fact witnesses
 - ii. Assure witnesses you will work to protect their identity if they request confidentiality. As a practical matter, in a small organization, the identity of the witnesses may become obvious to the subject of the investigation regardless of steps taken to protect confidentiality.
 - iii. Request that witnesses maintain confidentiality of the interview. In the event an allegation is unfounded, you want to mitigate any harm to the subject's reputation.
 - iv. Inform witnesses of the City policy prohibiting retaliation and your commitment to ensure the policy is enforced in regards to the witness' cooperation.
 - v. Ask every witness to identify any other possible witnesses or relevant documents.

presently required for allegations of harassment) and skills training appropriate to the nature of the allegations. Certain types of allegations will be far reaching and may require financial auditing skills or other specialized knowledge.

⁴ If legal counsel conducts the investigation, consideration should be given to the use of Upjohn warnings, consistent with City Counsel policy. Do City Employees have a right to counsel during interviews? A right to a union rep? What if the investigator interviews a person who is not a City employee and they ask to have counsel present?

- vi. When you Interview the subject of the investigation, admonish the subject not to attempt to determine the source of the allegation and ensure the subject is aware of the City's prohibition against retaliation. Afford the subject a fulsome opportunity to explain the conduct alleged to be improper. Allow the subject a full opportunity to provide any defensive information.
 - vii. Create a record of each interview and place the interview record in the case management system.
- d. **Status update:**
- i. When you have reached a preliminary decision on disposition, speak with the subject's immediate supervisor to determine if there are mitigating or aggravating circumstances that should be taken into account in your final report.
 - ii. Provide status update to source of allegation and subject at least every 30 days.

III. Report. The report should:

- a. Provide a summary of the allegation up front.
- b. Include a list of all interviews and a list of relevant documents. If additional documents were reviewed as part of the investigation but deemed not relevant, the report should describe those documents and the basis for the determination they were not relevant.
- c. State whether the investigation substantiated the allegation, in whole or in part, along with the rationale for the conclusion. If the investigation substantiated an allegation of improper conduct, the Report should include any mitigating or aggravating factors.

IV. Disposition

- a. Complete within 60 days of receipt of allegation.
- b. Conduct closure meeting with source of allegation and subject of the investigation.

ⁱ Sources:

US Sentencing Commission Guidelines for Sentencing of Organizations (ch 8) and 2020 Evaluation of Corporate Compliance Programs
Performance Audit of the City of Long Beach Ethics Program
LA City Ethics Commission website
Oakland Ethics Commission website
Sacramento Ethics Commission website
Institute for Local Government Ethics and Transparency
ALI
ECI
SCCE Handling Anonymous Report
ComplianceCosmos.org
(iSight for reports: www.i-sight.com.)



City of Long Beach

Working Together to Serve

Office of the City Attorney

Memorandum

DATE: March 21, 2023

To: Ethics Commission

FROM: Taylor M. Anderson, Deputy City Attorney

SUBJECT: Feedback on the Proposed Investigations Protocol

Pursuant to your request, please find feedback on behalf of the City Attorney's Office regarding the Ethics Commissions proposed "Protocol for Intake, Investigation and Disposition of Allegations of Improper Conduct" (Attachment 1).

Please let us know if you have any questions.

TMA:KAD

A22-03543

01501519.DOCX

cc: Joe Ambrosini, Director of Human Resources

Protocol for Intake, Investigation and Disposition of Allegations of Improper Conduct¹

This protocol shall apply to intake, investigation, and disposition of allegations regarding potential violations of laws, regulations and standards related to campaign finance, lobbying, conflicts of interest, **harassment**, and any other violations of the City Code of Conduct or Ethics Guide. Investigations should be conducted in a timely manner with consistent outcomes, subject to audit.

I. Intake

- a. **Receipt of Allegation:** Receipt of allegations of improper conduct should ~~shall~~ be documented, to include:
 - i. Date received
 - ii. Reporter's name and contact information, if known (and whether reporter requests confidentiality)
 - iii. Subject of the report including contact information, if known
 - iv. Date(s) of improper conduct
 - v. All facts known to reporter to support the report, how they know the facts, and who/what may corroborate the facts
 - vi. Identity of other potential witnesses¹
 - vii. Location of any relevant documents and copies if available
- b. **Record of Allegation:**
 - i. The report of allegation should be placed in a case management system that provides security adequate to protect confidentiality of information and is amenable to audit.² Each allegation should be categorized by the nature of the conduct alleged. A common list of categories, similar to or based on that used by the City Auditor should be used by all pathways.
 - ii. If the investigator determines the allegation does not merit investigation, the rationale for early termination of the investigation will be documented in the case management system.
 - iii. If the investigator determines that another organization should conduct the investigation, the transfer to that organization will be documented in the case management system with sufficient information so that the hand-off may be audited.
- c. **Initiation of Investigation:** Individual in receipt of report of improper conduct should make a preliminary determination if he/she/they have training³ and authority

¹ Are City employees obligated to cooperate with investigations of improper conduct? Are there consequences if a City employee declines to cooperate with an investigation? How/when does City attorney subpoena power come into play? Does any other entity have subpoena power in regards to investigations of misconduct in LB?

² There are numerous pathways for reporting and investigation of allegations of improper conduct. At present, there are no city-wide statistics on number of allegations reported and dispositions. A case management system should enable collection and analysis of allegations and trends. City and Harbor HR track all of their investigations.

³ TBD: Identify appropriate level of training needed to investigate allegations of improper conduct. Should include: understanding of the underlying legal/regulatory requirements alleged to have been violated (as is

to investigate the allegation and the time needed to conduct the investigation. If the individual lacks the training, authority and / or time needed, they should refer the report to an appropriate individual with authority and time needed to conduct a proper investigation.

- i. **Discussion point for Commission:** Should each Department or pathway have a single point for review of all allegations responsible for assignment of personnel to investigate, oversight of early disposition, and maintenance of records? Administrative Officers typically take on this role. However, very few are trained in how to conduct investigations. Therefore, the majority of investigations are handled by retained private investigators. The retained investigators are usually attorneys retained by the City Attorney's Office.

II. Investigation

- a. **Early Disposition:** It may be possible to close a matter without investigation. If the investigator closes a matter without investigation, the rationale with all supporting materials should be provided in the case management system.
- b. **Preliminary steps. Investigator should:**
 - i. Contact the HR department responsible for the subject of the investigation and other investigative authorities to determine whether the same or a similar report is being or has been investigated.
 - ii. Obtain organization chart(s) for the subject's organization to identify potential witnesses in addition to those provided by the reporter.
 - iii. Identify likely sources of documents that may be relevant to the investigation and collect all such documents. Review documents and upload relevant documents to the case management system.
- c. **Interviews:**⁴
 - i. Start with fact witnesses (most investigations are handled by outside investigators and to ensure the investigations are independent and neutral, we typically don't tell investigators how they should conduct their investigations to avoid allegations of undue influence by the City.
 - ii. Assure witnesses you will work to protect their identity if they request confidentiality. As a practical matter, in a small organization, the identity of the witnesses may become obvious to the subject of the investigation regardless of steps taken to protect confidentiality.
 - iii. Request that witnesses maintain confidentiality of the interview. In the event an allegation is unfounded, you want to mitigate any harm to the subject's reputation.
 - iv. Inform witnesses of the City policy prohibiting retaliation and your commitment to ensure the policy is enforced in regards to the witness' cooperation.
 - v. Ask every witness to identify any other possible witnesses or relevant documents.

presently required for allegations of harassment) and skills training appropriate to the nature of the allegations.

Certain types of allegations will be far reaching and may require financial auditing skills or other specialized knowledge.

⁴If legal counsel conducts the investigation, consideration should be given to the use of Upjohn warnings, consistent with City Counsel policy. Do City Employees have a right to counsel during interviews? A right to a union rep? What if the investigator interviews a person who is not a City employee and they ask to have counsel present?

- vi. When you Interview the subject of the investigation, admonish the subject not to attempt to determine the source of the allegation and ensure the subject is aware of the City's prohibition against retaliation. Afford the subject a fulsome opportunity to explain the conduct alleged to be improper. Allow the subject a full opportunity to provide any defensive information.
 - vii. Create a record of each interview and place the interview record in the case management system.
- d. **Status update:**
- i. When you have reached a preliminary decision on disposition, speak with the subject's immediate supervisor to determine if there are mitigating or aggravating circumstances that should be taken into account in your final report.
 - ii. Provide status update to source of allegation and subject at least every 30 days. Most investigations take up to 90 days to complete. Once completed, the complainant and respondent are provided with closure letters regarding the complaint and investigation.

III. Report. The report should:

- a. Provide a summary of the allegation up front.
- b. Include a list of all interviews and a list of relevant documents. If additional documents were reviewed as part of the investigation but deemed not relevant, the report should describe those documents and the basis for the determination they were not relevant.
- c. State whether the investigation substantiated the allegation, in whole or in part, along with the rationale for the conclusion. If the investigation substantiated an allegation of improper conduct, the Report should include any mitigating or aggravating factors.

IV. Disposition

- a. Complete within 60 days of receipt of allegation.
- b. Conduct closure meeting with source of allegation and subject of the investigation. Closure letters are provided. Before discipline is imposed on any classified employee, the classified employee is provided with a Skelly Hearing.

ⁱ Sources:

US Sentencing Commission Guidelines for Sentencing of Organizations (ch 8) and 2020 Evaluation of Corporate Compliance Programs
 Performance Audit of the City of Long Beach Ethics Program
 LA City Ethics Commission website
 Oakland Ethics Commission website
 Sacramento Ethics Commission website
 Institute for Local Government Ethics and Transparency
 ALI
 ECI

SCCE Handling Anonymous Report
ComplianceCosmos.org
(iSight for reports: www.i-sight.com.)



City of Long Beach
Working Together to Serve

ATTACHMENT C
Memorandum

Date: April 13, 2023
To: Ethics Commission
CC: Laura Doud, City Auditor
Julian Cernuda, Assistant to the City Manager
From: Alvin Chu, Deputy City Auditor
Subject: Feedback on the Proposed Investigation Protocol

Pursuant to your request, please find feedback on behalf of the City Auditor's Office regarding the Ethics Commission proposed "Protocol for Intake, Investigation and Disposition of Allegations of Improper Conduct" (Attachment 1).

Please let me know if you have any questions.

Protocol for Intake, Investigation and Disposition of Allegations of Improper Conduct¹

This protocol shall apply to intake, investigation, and disposition of allegations regarding potential violations of laws, regulations and standards related to campaign finance, lobbying, conflicts of interest, harassment, and any other violations of the City Code of Conduct or Ethics Guide. Investigations should be conducted in a timely manner with consistent outcomes, subject to audit.

I. Intake

- a. **Receipt of Allegation:** Receipt of allegations of improper conduct shall be documented, to include:
 - i. Date received
 - ii. Reporter’s name and contact information, if known (and whether reporter requests confidentiality)
 - iii. Subject of the report including contact information, if known
 - iv. Date(s) of improper conduct
 - v. All facts known to reporter to support the report, how they know the facts, and who/what may corroborate the facts
 - vi. Identity of other potential witnesses¹
 - vii. Location of any relevant documents and copies if available
- b. **Record of Allegation:**

- i. The report of allegation should be placed in a case management system that provides security adequate to protect confidentiality of information and is amenable to audit.²
 - ii. Each allegation should be categorized by the nature of the conduct alleged. A common list of categories, similar to or based on that used by the City Auditor should be used by all pathways.

c. Evaluation of Allegation;

- i. A preliminary determination should be made of the appropriate course of action to take based on the conduct alleged. It should also be considered which individual and or organization has the authority to investigate the allegation and the time needed to conduct the investigation.
 - ii. If it is determined that another organization should conduct the investigation, the transfer to that organization will be documented in the case management system with sufficient information so that the hand-off may be audited. The following are examples of where allegations should be transferred based on the conduct alleged:

Formatted: Subscript

Formatted: Subscript

Formatted: Font: Not Bold, Subscript

Formatted

¹ Are City employees obligated to cooperate with investigations of improper conduct? Are there consequences if a City employee declines to cooperate with an investigation? How/when does City attorney subpoena power come into play? Does any other entity have subpoena power in regards to investigations of misconduct in LB?

² There are numerous pathways for reporting and investigation of allegations of improper conduct. At present, there are no city-wide statistics on number of allegations reported and dispositions. A case management system should enable collection and analysis of allegations and trends.

1. City Auditor’s Fraud Hotline: Allegations of City fraud, waste, and abuse.
2. City Ethics Commission: Allegations regarding potential violations of laws, regulations and standards related to campaign finance, lobbying, conflicts of interest, and any other violations of the City Code of Conduct or Ethics Guide.
3. Departmental Management: General issues regarding employee misconduct or mistreatment, unless they involve high-level managers or appear to be widespread.
4. Human Resources: All matters involving general personnel practices, including discrimination, hiring practices, workers compensation, and other HR-related issues should involve this Department.
5. City Attorney: Complaints that involve pending litigation with the City, or involve legal matters beyond the scope of the City Auditor. Certain matters referred to the City Ethics Commission (i.e., campaign finance, lobbying, and any other violations of the City Code of Conduct or Ethics Guide) may also be referred simultaneously to the City Attorney.
6. City Council: Allegations that arise to the level whereby City Council should be notified.
7. Police Department: Allegations that relate to a criminal act, such as a theft of property or money, or other matters that would normally fall under police jurisdiction, including allegations involving actions or misconduct by Police Department personnel.

~~ii.iii.~~ If it is determined the investigator determines the allegation does not merit investigation, the rationale for early termination of the investigation will be documented in the case management system.

~~iii.~~ If the investigator determines that another organization should conduct the investigation, the transfer to that organization will be documented in the case management system with sufficient information so that the hand-off may be audited.

~~e.d.~~ **Initiation of Investigation:** If it is determined the allegation merits an internal investigation within a department that is not listed above, the Administrative Officer or designee of the department should conduct the investigation. Once an investigation is initiated, all information and records regarding the allegation shall be restricted to the designated investigator. Individual in receipt of report of improper conduct should make a preliminary determination if he/she/they have training³ and authority to investigate the allegation and the time needed to conduct the investigation. If the individual lacks the training, authority and / or time needed,

³ TBD: Identify appropriate level of training needed to investigate allegations of improper conduct. Should include: understanding of the underlying legal/regulatory requirements alleged to have been violated (as is presently required for allegations of harassment) and skills training appropriate to the nature of the allegations. Certain types of allegations will be far reaching and may require financial auditing skills or other specialized knowledge.

Formatted

Formatted: Not Superscript/ Subscript

Commented [AC1]: Based on the list provided above, we anticipate that all allegations will be routed to the appropriate channels for investigation, and the protocol described in the initiation of investigation will only be relevant to the situation described.

Commented [AC2]: Due to the confidentiality and sensitivity of reported allegations, the initiation of investigation should only be done by individuals who meet the following criteria: the investigator has received the proper training, has the authority to investigate the allegation, and has the time needed to conduct the investigation. If the individual lacks the training, authority, and or time needed to properly investigate the allegation, they should refer the report to the appropriate individuals.

~~they should refer the report to an appropriate individual with authority and time needed to conduct a proper investigation.~~

- i. **Discussion point for Commission:** Should each Department or pathway have a single point for review of all allegations responsible for assignment of personnel to investigate, oversight of early disposition, and maintenance of records?

II. Investigation

- a. **Early Disposition:** It may be possible to close a matter without investigation. If the investigator closes a matter without investigation, the rationale with all supporting materials should be provided in the case management system.
- b. **Preliminary steps. Investigator should:**
 - ~~i. Contact the HR department responsible for the subject of the investigation and other investigative authorities to determine whether the same or a similar report is being or has been investigated.~~
 - ~~ii. Obtain an understanding of the reporting structure for the subject's organization to identify potential point of contacts to assist the investigation process. organization chart(s) for the subject's organization to identify potential witnesses in addition to those provided by the reporter.~~
 - ii. Identify likely sources of documents that may be relevant to the investigation and collect all such documents. Review documents and upload relevant documents to the case management system.
 - ~~iii. Determine if the report should be referred to another organization based on the information discovered in the preliminary steps. If it is determined that another organization should continue the investigation, the investigator should ensure that the report is transferred to that organization at this time, with sufficient information so that the hand-off may be audited. This transfer will be documented in the case management system.~~
- c. **Interviews:**⁴
 - i. Start with fact witnesses
 - ii. Assure witnesses you will work to protect their identity if they request confidentiality. As a practical matter, in a small organization, the identity of the witnesses may become obvious to the subject of the investigation regardless of steps taken to protect confidentiality.
 - iii. Request that witnesses maintain confidentiality of the interview. In the event an allegation is unfounded, you want to mitigate any harm to the subject's reputation.

⁴ If legal counsel conducts the investigation, consideration should be given to the use of Upjohn warnings, consistent with City Council policy. Do City Employees have a right to counsel during interviews? A right to a union rep? What if the investigator interviews a person who is not a City employee and they ask to have counsel present?

- iv. Inform witnesses of the City policy prohibiting retaliation and your commitment to ensure the policy is enforced in regards to the witness' cooperation.
- v. Ask every witness to identify any other possible witnesses or relevant documents.
- vi. When you interview the subject of the investigation, admonish the subject not to attempt to determine the source of the allegation and ensure the subject is aware of the City's prohibition against retaliation. Afford the subject a fulsome opportunity to explain the conduct alleged to be improper. Allow the subject a full opportunity to provide any defensive information.
- vii. Create a record of each interview and place the interview record in the case management system.

d. Status update:

- i. When you have reached a preliminary decision on disposition, an administrative meeting can occur to determine if there are mitigating or aggravating circumstances that should be documented in the final report. However, the investigation findings and results should stand alone apart from any mitigation discussion. speak with the subject's immediate supervisor to determine if there are mitigating or aggravating circumstances that should be taken into account in your final report.
- ii. Provide status update to source of allegation and subject at least every 30 days.

Commented [AC4]: A mitigation discussion with the subject's immediate supervisor can potentially skew the discussion with biased information due to the direct relationship and oversight involved.

Commented [AC5]: To preserve the confidentiality of the investigation, status updates should not be provided to the source of the allegation. Additionally, to protect the reporter's whistleblower rights, status updates should not be given to the subject as the information provided may reveal the whistleblower's identity and/or subject the whistleblower to potential retaliation.

III. Report. The report should:

- a. Provide a summary of the allegation up front.
- b. Include a list of all interviews and a list of relevant documents. If additional documents were reviewed as part of the investigation but deemed not relevant, the report should describe those documents and the basis for the determination they were not relevant.
- c. State whether the investigation substantiated the allegation, in whole or in part, along with the rationale for the conclusion. If the investigation substantiated an allegation of improper conduct, the Report should include any mitigating or aggravating factors. In consideration of the sensitivity of the allegation and to preserve the confidentiality of the investigation, the report should remain confidential.

Commented [AC6]: Due to the varying nature of allegations, a timeframe requirement is unrealistic as some investigations could take years to complete. Additionally, the presence of a deadline could potentially jeopardize the investigation process and impact the results as the investigator may be "rushed" to complete the work without having the ability to thoroughly investigate the allegations.

IV. Disposition

- ~~a. Complete within 60 days of receipt of allegation.~~
- a. In review of the findings of the investigation, the investigator should determine the appropriate course of action that should be taken, such as but not limited to, issue recommendations and or contact the appropriate authority to initiate corrective actions (i.e., department management, HR etc.)
- b. Conduct closure meeting with source of allegation and subject of the investigation. Provide a closure notice to the source of the allegation that the investigation has

Commented [AC7]: To preserve the confidentiality of the investigation, a closure notice would be a more appropriate method to close out an investigation. To protect the reporter's rights to whistleblower protection and to mitigate any harm to the subject's reputation in the situation that the allegation is unfounded, the closure notice should go to the source of the allegation only.

ended. The closure notice should only inform the source of the allegation that the investigation is complete. In an effort to preserve the confidentiality of the investigation process, no details pertaining to the findings or the corrective actions taken should be included in the notice.

b.—

ⁱ Sources:


US Sentencing Commission Guidelines for Sentencing of Organizations (ch 8) and 2020 Evaluation of Corporate Compliance Programs
Performance Audit of the City of Long Beach Ethics Program
LA City Ethics Commission website
Oakland Ethics Commission website
Sacramento Ethics Commission website
Institute for Local Government Ethics and Transparency
ALI
ECI
SCCE Handling Anonymous Report
ComplianceCosmos.org
(iSight for reports: www.i-sight.com.)

Protocol for Intake, Investigation and Disposition of Allegations of Improper Conduct¹

This protocol shall apply to intake, investigation, and disposition of allegations regarding potential violations of laws, regulations and standards related to campaign finance, lobbying, conflicts of interest, **harassment**, and any other violations of the City Code of Conduct or Ethics Guide. Investigations should be conducted in a timely manner with consistent outcomes, subject to audit.

I. Intake

- a. **Receipt of Allegation:** Receipt of allegations of improper conduct should ~~shall~~ be documented, to include:
 - i. Date received
 - ii. Reporter's name and contact information, if known (and whether reporter requests confidentiality)
 - iii. Subject of the report including contact information, if known
 - iv. Date(s) of improper conduct
 - v. All facts known to reporter to support the report, how they know the facts, and who/what may corroborate the facts
 - vi. Identity of other potential witnesses¹
 - vii. Location of any relevant documents and copies if available
- b. **Record of Allegation:**
 - i. The report of allegation should be placed in a case management system that provides security adequate to protect confidentiality of information and is amenable to audit.² Each allegation should be categorized by the nature of the conduct alleged. A common list of categories, similar to or based on that used by the City Auditor should be used by all pathways.
 - ii. If the investigator determines the allegation does not merit investigation, the rationale for early termination of the investigation will be documented in the case management system.
 - iii. If the investigator determines that another organization should conduct the investigation, the transfer to that organization will be documented in the case management system with sufficient information so that the hand-off may be audited.
- c. **Initiation of Investigation:** Individual in receipt of report of improper conduct should make a preliminary determination if he/she/they have training³ and authority

¹ Are City employees obligated to cooperate with investigations of improper conduct? Are there consequences if a City employee declines to cooperate with an investigation? How/when does City attorney subpoena power come into play? Does any other entity have subpoena power in regards to investigations of misconduct in LB? 


² There are numerous pathways for reporting and investigation of allegations of improper conduct. At present, there are no city-wide statistics on number of allegations reported and dispositions. A case management system should enable collection and analysis of allegations and trends. City and Harbor HR track all of their investigations.

³ TBD: Identify appropriate level of training needed to investigate allegations of improper conduct. Should include: understanding of the underlying legal/regulatory requirements alleged to have been violated (as is

to investigate the allegation and the time needed to conduct the investigation. If the individual lacks the training, authority and / or time needed, they should refer the report to an appropriate individual with authority and time needed to conduct a proper investigation.

- i. **Discussion point for Commission:** Should each Department or pathway have a single point for review of all allegations responsible for assignment of personnel to investigate, oversight of early disposition, and maintenance of records? Administrative Officers typically take on this role. However, very few are trained in how to conduct investigations. Therefore, the majority of investigations are handled by retained private investigators. The retained investigators are usually attorneys retained by the City Attorney's Office.


II. Investigation

- a. **Early Disposition:** It may be possible to close a matter without investigation. If the investigator closes a matter without investigation, the rationale with all supporting materials should be provided in the case management system.
- b. **Preliminary steps. Investigator should:**
 - i. Contact the ~~HR~~-department responsible for the subject of the investigation and other investigative authorities to determine whether the same or a similar report is being or has been investigated.
 - ii. Obtain organization chart(s) for the subject's organization to identify potential witnesses in addition to those provided by the reporter.
 - iii. Identify likely sources of documents that may be relevant to the investigation and collect all such documents. Review documents and upload relevant documents to the case management system.
- c. **Interviews:**⁴
 - i. Start with fact witnesses (most investigations are handled by outside investigators and to ensure the investigations are independent and neutral, we typically don't tell investigators how they should conduct their investigations to avoid allegations of undue influence by the City.
 - ii. Assure witnesses you will work to protect their identity  they request confidentiality. As a practical matter, in a small organization, the identity of the witnesses may become obvious to the subject of the investigation regardless of steps taken to protect confidentiality.
 - iii. Request that witnesses maintain confidentiality of the interview. In the event an allegation is unfounded, you want to mitigate any harm to the subject's reputation.
 - iv. Inform witnesses of the City policy prohibiting retaliation and your commitment to ensure the policy is enforced in regards to the witness' cooperation.
 - v. Ask every witness to identify any other possible witnesses or relevant documents.


presently required for allegations of harassment) and skills training appropriate to the nature of the allegations.

Certain types of allegations will be far reaching and may require financial auditing skills or other specialized knowledge.

⁴If legal counsel conducts the investigation, consideration should be given to the use of Upjohn warnings, consistent with City Counsel policy. Do City Employees have a right to counsel during interviews? A right to a union rep? What if the investigator interviews a person who is not a City employee and they ask to have counsel present?

- vi. When you Interview the subject of the investigation, admonish the subject not to attempt to determine the source of the allegation and ensure the subject is aware of the City’s prohibition against retaliation. Afford the subject a fulsome opportunity to explain the conduct alleged to be improper. Allow the subject a full opportunity to provide any defensive information.
 - vii. Create a record of each interview and place the interview record in the case management system. 
- d. **Status update:**
- i. When you have reached a preliminary decision on disposition, speak with the subject’s immediate supervisor to determine if there are mitigating or aggravating circumstances that should be taken into account in your final report.
 - ii. Provide status update to source of allegation and subject at least every 30 days. Most investigations take up to 90 days to complete. Once completed, the complainant and respondent are provided with closure letters regarding the complaint and investigation.

III. Report. The report should:

- a. Provide a summary of the allegation up front.
- b. Include a list of all interviews and a list of relevant documents. If additional documents were reviewed as part of the investigation but deemed not relevant, the report should describe those documents and the basis for the determination they were not relevant.
- c. State whether the investigation substantiated the allegation, in whole or in part, along with the rationale for the conclusion. If the investigation substantiated an allegation of improper conduct, the Report should include any mitigating or aggravating factors. 

IV. Disposition

- a. Complete within 60 days of receipt of allegation.
- b. Conduct closure meeting with source of allegation and subject of the investigation. Closure letters are provided. Before discipline is imposed on any classified employee, the classified employee is provided with a Skelly Hearing.

ⁱ Sources:

US Sentencing Commission Guidelines for Sentencing of Organizations (ch 8) and 2020 Evaluation of Corporate Compliance Programs
 Performance Audit of the City of Long Beach Ethics Program
 LA City Ethics Commission website
 Oakland Ethics Commission website
 Sacramento Ethics Commission website
 Institute for Local Government Ethics and Transparency
 ALI
 ECI

SCCE Handling Anonymous Report
ComplianceCosmos.org
(iSight for reports: www.i-sight.com.)