PROTOCOL FOR INVESTIGATION
HUMAN RIGHTS POLICY (GP18)

Simon Fraser University

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1. PURPOSE

1.1. The purpose of this Protocol is to:

1.1.1. ensure discrimination investigations are conducted in accordance with Simon Fraser University Human Rights Policy (Policies and Procedures, Number GP18, as revised effective April 4, 2003) ("Policy"),

1.1.2. ensure discrimination investigations are conducted in accordance with the principles of procedural fairness,

1.1.3. ensure discrimination investigations comply with the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 1652 ("FOIPP A"), and

1.1.4. provide general information, guidance and direction to individuals appointed to investigate discrimination complaints as authorized under the Policy.

2. DEFINITIONS

2.1. For the purposes of interpreting and applying the Protocol:

2.1.1. the "Definitions" (Section 1) provided in the Policy are adopted,

2.1.2. the applicable definitions in the FOIPPA are adopted, and

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1 For citation purposes, Simon Fraser University Policy and Procedures will be identified by the appropriate policy letter, number and paragraph (e.g. GP18, I10.04, I10.05). Relevant sections of the FOIPPA will be cited at the end of a paragraph. Other relevant references will be cited by source (e.g. Guidelines) or author(s) with the appropriate page or paragraph number. Details for all policy, legislation, cases, books, articles and other cites can be found in the References section at the end of the Protocol.

2 Simon Fraser University is subject to the FOIPPA by virtue of an Order in Council.
2.1.3. the following definitions are adopted:

"Complaint"
A written and signed statement of fact(s) by a Complainant seeking recourse pursuant to the Policy regarding an allegation discrimination, harassment based on a prohibited ground of discrimination and/or sexual harassment.

"Human Rights Coordinator" ("HRC")
An individual appointed by the President who performs the functions outlined in the Policy.

"Human Rights Office" ("HRO")
The office of the HRC and performs the functions outlined in the Policy in relation to an Investigation.

"Human Rights Policy Board" ("HRPB")
An advisory board comprised of individuals appointed by the Vice President, Academic who perform the functions outlined in the Policy in relation to an Investigation.

"Investigator"
An experienced investigator, external to the University, with expertise in administrative law, appointed by the Chair of the HRPB to conduct an Investigation into a Complaint. (GP18 at 9.7)

"Investigation"
A formal investigation into an allegation of discrimination, harassment based on a prohibited ground of discrimination and/or sexual harassment as defined in the Policy. (GP18 at 6.7)

"Support Person"
An individual, not acting in the capacity of legal counsel or representative from a Constituency Organization, relied upon by a Complainant or Respondent for emotional or psychological support during the processing of a Complaint and/or Investigation.
3. PRINCIPLES

3.1. An Investigator shall interpret and apply the Protocol consistent with the Preamble and Principles (Section 2) of the Policy.

4. APPOINTMENT

4.1. An Investigator is appointed by the Chair of the HRPB to conduct an Investigation. (GP18 at 9.7)

4.2. An Investigator appointed by the Chair of the HRPB to conduct an Investigation will be provided with:

   4.2.1. terms of reference for the Investigation,

   4.2.2. a copy of the Protocol, and

   4.2.3. a timeline for completing the Investigation (normally within two months). (GP18 at 9.7)


4.4. Prior to accepting an appointment, a prospective Investigator shall make reasonable inquiries to ensure no current or prior professional or personal relationship exists with either the Complainant or Respondent that would qualify as a conflict of interest or create a reasonable apprehension of bias. (GP18 at 2.13, 5.5 & 9.7)

5. JURISDICTION

5.1. An Investigator appointed by the Chair of the HRPB to conduct an Investigation is:

   5.1.1. authorized to examine the Complainant, Respondent, and such other persons and/or documents that an Investigator considers may have or contain relevant information pertaining to the Complaint, (GP18 at 9.8)

   5.1.2. responsible for administering relevant sections of the Policy, (GP18 at 5.1.f) and

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1 See also, Simon Fraser University Policies and Procedures, Number AD9.14: No Discrimination (February, 1990) and Simon Fraser University Policies and Procedures, Number AD10.14: No Discrimination (April 1, 1999).
5.1.3. considered an "employee" for the purposes of the *FOIPPA* and authorized, under contract, to collect personal information. (Schedule 1 and I10.05 at A.2.1)

5.2. If the Complainant or Respondent refuses to cooperate in an Investigation, an Investigator may:

5.2.1. proceed with an Investigation, or

5.2.2. recommend to the Chair of the HRPB that the Complaint be dismissed. (GP18 at 9.9)

5.3. Where an Investigator has recommended the Complaint be dismissed, the Chair of the HRPB may direct that an Investigation continue. (GP18 at 9.9)

5.4. At any point, an Investigator may recommend to the Chair of the HRPB that an Investigation be:

5.4.1. adjourned (e.g. a settlement is reached during an Investigation, but it will take several weeks to ensure the terms are fulfilled),

5.4.2. stayed (e.g. Respondent departs the country and is not permitted to return),

5.4.3. terminated (e.g. Complainant refuses to cooperate), or

5.4.4. otherwise settled with the agreement of the parties (which depending on the form and nature of the Complaint may include the Complainant, Respondent and/or University). (GP18 at 9.12 and 1 (Definition of Complainant))

5.5. The Chair of the HRPB shall make a decision regarding the recommendation of an Investigator after considering submissions from the Complainant (in certain cases, a University Official can assume the role of complainant) and Respondent. (GP18 at 1, 9.3 & 9.12)

6. **GENERAL RESPONSIBILITIES**

**Investigator**

6.1. An Investigator shall conduct a thorough, complete and fair examination of the relevant allegations, documents, witnesses, evidence and facts, and do so in a timely manner in accordance with the Policy. (GP 18 at 9.7 and 9.8; see

6.2. An Investigator shall have a thorough knowledge of the relevant University policies and procedures, legislation, legal decisions and accepted investigational practices that apply to an Investigation. (see References section)

Members of the University Community

6.3. Members of the University Community, including Complainants and Respondents, have an obligation to participate in procedures under the Policy, including an Investigation. (GP 18 at 2.11)

6.4. It is a ground for discipline for the Complainant or Respondent to refuse to participate in an Investigation without reasonable justification. (GP18 at 2.11)

6.5. Subject to any limits or disclosure requirements imposed by law or required by the Policy, any and all information, oral or written, created, gathered, received or compiled during an Investigation is to be treated as confidential and any member of the University Community who breaches confidentiality may be subject to disciplinary sanction or other appropriate action. (GP18 at 4.2 & 4.6)

6.5.1. The Complainant or Respondent may discuss the Complaint in confidence with her or his legal counsel, supervisor, Support Person, or representative from a Constituency Organization. (4.1)

7. ELEMENTS

7.1. During an Investigation, an Investigator shall consider and determine whether the relevant legal elements and requirements to establish an allegation of discrimination and/or harassment have been met.

Discrimination

7.2. Discrimination violates fundamental human rights, personal dignity, and the integrity of persons or groups, and may result in remedial action by the University. (GP18, Preamble and 12)

7.2.1. Discrimination is defined as intentional or unintentional differential treatment of a person or group based on a prohibited ground in the Human Rights Code, R.S.B.C. 1996, c. 210 (“Code”) for which there is no bona fide or reasonable justification. (GP18 at 1 and Code; see

4 Defined in s. 1 of the Policy as "all students and employees [which includes University Officials], all research grant and research contract employees, and any researcher, instructor or student spending an extended period of time at the University in an academic capacity.”

7.2.2. The University is under a legal duty to accommodate persons or groups protected against discrimination based on a prohibited ground unless it would create undue hardship on the University. (GP18 at 1 and Code; see also, Meiorin and Grismer)

7.2.3. In order to determine whether an allegation of discrimination has been established or justified an Investigator must consider:

1. "Intentional or unintentional"
   It is not necessary to find or prove that discrimination by the Respondent was intentional or deliberate. (s. 2 of the Code; also Ontario Human Rights Commission v. Simpson-Sears Ltd. (1985), 7 C.H.R.R. D/3102 (S.C.C.))

2. "differential treatment"
   Consideration must be given to whether the purpose or effect of the treatment of the Complainant created differentiation.

   Differential treatment may be direct in the form of conduct, standards or rules that are discriminatory on their face.

   Differential treatment may be indirect in the form of conduct, standards or rules that appear neutral, but discriminate in their effect or consequences. (Meiorin; see also, Sheppard article).

3. "directed at a person or a group"
   There must be some form of conduct, standard or requirement of the Respondent that effects or is directed at a person or group contrary to an prohibited ground in the Code. In addition, the Complainant must also be a member of the University Community.

4. "prohibited ground"
   The discrimination must relate to a prohibited ground of discrimination under the Code:

   1. age (means an age of 19 years or more and less than 65 years),
2. race,
3. colour,
4. ancestry,
5. place of origin,
6. political belief,
7. religion,
8. marital status,
9. family status,
10. physical disability,
11. mental disability,
12. sex,
13. sexual orientation, and
14. in the case of employment, unrelated criminal convictions.

5. "bona fide justification" "accommodation" and "undue hardship"
Discrimination is not permitted unless there is a bona fide justification, and even then, there is an obligation on the University to accommodate a person or group to the point of undue hardship.

As set forth in Meiorin, Grismer, and the Code, the University may justify the impugned conduct, standard or requirement by establishing on the balance of probabilities that:

(1) it was adopted for a purpose rationally connected to the performance of a University-Related Activity,
(2) it was adopted in an honest and good faith belief that it was necessary to the fulfilment of that legitimate University-Related Activity, and
(3) it is reasonably necessary to the accomplishment of that legitimate University-Related Activity. (see GP18 at 1, Code, Meiorin, Grismer, and generally, Witelson, and Sheppard articles)

**Harassment**

7.3. Harassment is a form of discrimination that is prohibited under the Policy and may result in the imposition of disciplinary sanctions including, where appropriate, dismissal or permanent suspension. (GP18, Preamble and 13)

**Harassment Based on a Prohibited Ground of Discrimination**

7.4. Harassment based on a prohibited ground of discrimination is defined as:
7.4.1. Behaviour directed towards another person or persons:

1. which is abusive or demeaning; and
2. includes a direct or indirect reference to a prohibited ground of discrimination under the Code; and
3. would be viewed by a reasonable person experiencing the behaviour as an interference with her/his participation in a UniversityRelated Activity.

7.4.2. In order to determine whether or not an allegation of harassment based on a prohibited ground of discrimination has been established an Investigator must consider:

1. "Behaviour"
   There must be some form of physical or verbal conduct by a member of the University Community.

   It is not necessary to find or prove that the harassment by the Respondent was intentional or deliberate. (s. 2 of the Code and Ontario Human Rights Commission v. Simpson-Sears Ltd. (1985), 7 C.H.R.R. D/3102 (S.C.C.))

2. "directed towards another person or persons"
   The behaviour must be directed towards another person who is a member of the University Community (e.g. a member of the University Community issuing offensive comments in a public area about an identifiable group that are not directed towards a specific person or persons are not captured).

3. "abusive" or "demeaning"
   The behaviour directed towards another person must also be abusive (e.g. insulting, harmful, injurious, hurtful, or offensive) or demeaning (e.g. lowering dignity).

4. "direct or indirect reference to a prohibited ground of discrimination"
   In addition to being abusive or demeaning, the behaviour must also include a direct (i.e. an immediate connection or
relation) or indirect (i.e. not direct in relation or connection) reference to a prohibited ground of discrimination:

1. age (means an age of 19 years or more and less than 65 years),
2. race,
3. colour,
4. ancestry,
5. place of origin,
6. political belief,
7. religion,
8. marital status,
9. family status,
10. physical disability,
11. mental disability,
12. sex,
13. sexual orientation, and
14. in the case of employment, unrelated criminal convictions.

5. "reasonable person"

Refers to "whether or not a reasonable person in roughly the same position as the complainant would judge harassment to have occurred as a result of a behaviour or pattern of behaviour." (GP18 at Definitions and 2.9)

The form and nature of the behaviour alleged will determine whether or not one or more incidents is required to reasonably establish harassment.

_The more serious or severe the behaviour, the more likely a single or isolated incident will constitute harassment_ (e.g. physical touching). (Aggarwal and Gupta at 140-8)

6. "experiencing the behaviour"

The reasonable person standard applies to the person or persons who experienced the behaviour (i.e. it does not apply to a third party who may have heard about the behaviour).
7. "interference"

Interfere includes behaviour of a sexual nature that adversely affects, checks, hampers, hinders, infringes, encroaches, or disturbs. (Black's Law Dictionary).

8. "participation in a University-related activity"

The behaviour, in addition to being abusive or demeaning, including a direct or indirect reference to a prohibited ground of discrimination, must also be capable of being viewed by a reasonable person experiencing the behaviour as an interference with participation in a University-Related Activity (i.e. "An activity of any type operated under University auspices at any location. All activities on the University's campuses are Universityrelated unless they are within the exclusive control of constituency organizations or an organization/group external to the University"). (GP18 at Definitions)

Sexual harassment

7.5. Sexual harassment is defined as:

7.5.1. Behaviour of a sexual nature by a person:

a) who knows or ought reasonably to know that the behaviour is unwanted or unwelcome; and

b) which interferes with another person's participation in a UniversityRelated Activity; or

c) leads to or implies job or academicallyrelated consequences for the person harassed.

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5 Defined in s. 1 of the Policy as the "Administrative and Professional Staff Association, CUPE 3338, Polyparty, Simon Fraser Student Society, Simon Fraser University Faculty Association, Teaching Support Staff Union."
d) 7.3.2. In order to determine whether or not an allegation of sexual harassment has been established an Investigator must consider:

1. "Behaviour"

   There must be some form of physical or verbal conduct by a member of the University Community.

2. "sexual nature"

   The behaviour or conduct must be of a sexual nature. In relation to sexual harassment, behaviour may manifest itself in physical or psychological forms, including leering, pinching, grabbing, groping, hugging, patting, brushing against, touching, sexual assault, sexual innuendos, hints, propositions for dates or sexual favours, and gender-based insults, taunting, or belittling, inappropriate sexual comments, or proposals of physical intimacy. (Janzen v. Platy Enterprises Ltd. (1989), 10 C.H.R.R. D/6205 (S.C.C.) at D/6222-32 and Miller v. Sam's Pizza House (1995), 23 C.H.R.R. D/443 (N.S. Bd. of Inquiry) at paras. 122-26)

3. "by a person"

   The behavior or conduct of a sexual nature must be by an individual who is a member of the University Community.

4. "knows" or "ought reasonably to know"

   It is not necessary to find or prove that sexual harassment by the Respondent was intentional or deliberate. (s. 2 of the Code, Ontario Human Rights Commission v. Simpson-Sears Ltd. (1985), 7 C.H.R.R. D/3102 (S.C.C.) and Miller v. Sam's Pizza House (1995), 23 C.H.R.R. D/443 (N.S. Bd. of Inquiry) at paras. 122-26)

   An objective test is used to determine whether the Respondent knew or ought reasonably to have known that the behaviour towards the other person was unwelcome. In other words, would a reasonable person know or ought reasonably to know that the behaviour of a sexual nature was unwanted or unwelcome. (GP18 at 2.9, Aggarwal and Gupta at Chapter 3, A. v. Ruby's Food Services Ltd. (1992), 16 C.H.R.R. D/394 (Ont. Bd. Inq.) and Miller v. Sam's Pizza
5. "unwanted or unwelcome"

It is generally recognized that the signals indicating the behaviour of a sexual nature is unwanted or unwelcome vary from individual to individual and may vary in strength depending on the behaviour, incident, or comment. \( (Miller v. Sam's Pizza House) (1995), 23 C.H.R.R. D/443 (N.S. Bd. of Inquiry) at para. 135 \) and \( Dupuis v. British Columbia (Ministry of Forests) (1993), 20 C.H.R.R. D/87 (B.C. Council of Human Rights) at paras. 47-8 \)

Although verbal protests or notice is persuasive evidence, it is not a necessary element to find that the Complainant "verbally protested," expressly said "no", or otherwise verbally conveyed to the Respondent that the behaviour of a sexual nature was unwanted or unwelcome. \( (Aggarwal and Gupta at128-9, Dupuis v. British Columbia (Ministry of Forests) (1993), 20 C.H.R.R. D/87 (B.C. Council of Human Rights) at paras. 47-8, Fernandes v. MultiSun Movies Ltd. (1998), 35 C.H.R.R. D/43 (B.C. Council of Human Rights) at para. 124) \)

The Complainant's conduct, body movement, or body language can directly or indirectly convey to the Respondent that the behaviour of a sexual nature was unwanted or unwelcome. \( (Aggarwal and Gupta at 128) \)

The test is whether or not a reasonable person would recognize that the behaviour was unwanted or unwelcome, which will depend on all the circumstances and facts, including the nature of the impugned behaviour and the relationship. \( (Dupuis v. British Columbia (Ministry of Forests) (1993), 20 C.H.R.R. D/87 (B.C. Council of Human Rights) at paras. 47-8) \)

6. "interferes"

Includes behaviour of a sexual nature that adversely affects, checks, hampers, hinders, infringes, encroaches, or disturbs. (Black's Law Dictionary).

7. "another person's participation in a University-Related Activity"

The behaviour of a sexual nature that is unwanted or unwelcome must interfere with the participation of another member of the University Community in a University-Related Activity (i.e. "Any type of activity operated under University auspices at any location. All activities on the University's campuses are University-related unless they are within the exclusive control of constituency organization or an organization/group external to the University"). (GP18 at Definitions)

8. "leads to or implies job- or academic-related consequences"

Alternatively, the behaviour of a sexual nature that is unwanted or unwelcome must actually result in, suggest, or imply, job- or academic-related consequences for the Complainant. Adverse job- or academic-related consequences may vary in form and degree of severity in different circumstances, and are often associated with some form of adverse response (e.g. actual or implied re-assignment, reduction in hours, transfer, demotion, denial of promotion, withholding confirmation from a temporary or probationary employee status to regular status, negative comments in performance evaluations, shift changes, exclusion from work-related socializing, reduction in grades, reduced access to research facilities, loss of office, research or lab space, exclusion from field trips or interviews), but can include behaviour that creates an offensive work environment (i.e. a work or academic environment becomes intimidating, hostile, offensive, unpleasant or unbearable because of a pattern of insults, language, conduct, hostility or

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6 Defined in s. 1 of the Policy as the " Administrative and Professional Staff Association, CUPE 3338, Polyparty, Simon Fraser Student Society, Simon Fraser University Faculty Association, Teaching Support Staff Union."

9. "for the person harassed"

Behaviour of a sexual nature that is unwanted or unwelcome must lead to or imply job- or academic-related consequences for a member of the University Community being harassed (which does not include a third party).

7.6. Standard of proof

7.6.1. Under the Policy, an Investigation will generally only occur where the alleged discrimination and/or harassment:

1. may have had a serious impact on the Complainant or Respondent,
2. where the case is important to the goals of the University, or
3. where the Respondent has refused to participate in earlier efforts (e.g. informal inquiries or mediation) to deal with the Complaint. (GP18 at 9.1)


7.6.3. Discrimination and/or harassment allegations which could result in suspension, dismissal or expulsion require clear and convincing evidence to establish an allegation. (GP18 at 10.2)

7.6.4. A trier of fact is justified in scrutinizing evidence with greater care under the civil standard of proof if there are serious allegations to be established. (Continental Insurance Co. v. Dalton Cartage Co. Ltd., [1982] 1 S.C.R. 164 at 170)
8. **FOIPPA CONSIDERATIONS**

8.1. Application

8.1.1. The *FOIPPA*:

1. applies to all "records" (which "includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records") in the custody or control of a "public body", and
2. governs the collection, accuracy, correction, protection, retention, use and disclosure of "personal information" during an Investigation.

8.1.2. Any written agreement or contract between the University and an Investigator shall stipulate that the collection, accuracy, correction, protection, retention, use and disclosure of personal information will be governed by the *FOIPPA*. (I10.05 at A.2.2)

8.1.3. When collecting, protecting, retaining, using and disclosing personal information during an Investigation, an Investigator shall consider and comply with the requirements of the *FOIPPA*.

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7 Which includes an Investigator in the capacity of "employee" under contract to the University.

8 "Disclosure" of personal information means the release of personal information to any person or organization inside or outside the University (I10.05 at Appendix B).

9 "Personal information" is defined in Schedule 1 as "recorded information about an identifiable individual, including:

   (a) the individual's name, address or telephone number,
   (b) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,
   (c) the individual's age, sex, sexual orientation, marital status or family status,
   (d) an identifying number, symbol or other particular assigned to the individual,
   (e) the individual's fingerprints, blood type or inheritable characteristics,
   (f) information about the individual's health care history, including a physical or mental disability,
   (g) information about the individual's educational, financial, criminal or employment history,
   (h) anyone else's opinions about the individual, and
   (i) the individual's personal views or opinions, except if they are about someone else."
8.1.4. An Investigator shall not use or disclose personal or other information gathered during an Investigation except to the extent necessary to complete an Investigation as permitted or required by the *FOIPPA* and Policy.

8.1.5. All recorded personal information will be treated as "supplied in confidence" for the purposes of complying with the *FOIPPA* and responding to access to information requests.

8.1.6. An Investigator should only collect personal information that is relevant, factual, objective and necessary to pursue an Investigation. (Laszlo *et al.* at 3-7).

8.1.7. An Investigator is permitted to collect non-personal information from any source provided it is done lawfully and in keeping with approved investigational practices.

8.2. **Collection of Personal Information**

8.2.1. *An Investigation under the Policy is a "law enforcement" matter and FOIPPA provisions authorize an Investigator to indirectly collect "personal information" about any individual involved in the investigation without giving notice about the collection.*

8.2.2. Normally, the *FOIPPA* requires that personal information be collected directly from an individual and that specific notice be given of the authority for collecting the information, the purpose of the collection, the way in which the information will be used and the contact person who can answer questions about the collection. (s. 27).

8.2.3. **However,** under the *FOIPPA* personal information can be collected indirectly (i.e. from sources other than directly from the individual) where:

1. the information may be disclosed (at the discretion of the public body holding it) under the relevant and applicable paragraphs of s. 33, being:
(c) for the purpose for which it was obtained or compiled or for a use consistent with that purpose,

(n) to a public body to assist in an investigation

(i) undertaken with a view to a law enforcement proceeding, or

(ii) from which a law enforcement proceeding is likely to result,

(p) if the head of the public body determines that compelling circumstances exist that affect anyone's health and safety and if notice of disclosure is mailed to the last known address of the individual the information is about. (s. 27(1)(b))

2. the information is collected for the purpose of law enforcement, (s. 27(1)(c)(iv)),

3. the information is available from a public source. (I10.05 at Policy, para. 2 and B.4.7.), and/or

4. the individual has provided prior authorization/consent (s. 27(1)(a)(i)).

8.2.4. Where the personal information is collected for the purposes of law enforcement, it is not necessary to give notice to an individual. (ss. 26, 27(1)(c)(iv) & (3)(a))

8.2.5. As set out below, during an Investigation an Investigator will normally rely upon the law enforcement and/or other indirect collection methods when conducting an Investigation.

8.3. Indirect Collection

Law Enforcement

8.3.1. An Investigator may collect personal information indirectly in an Investigation, without prior written authorization/consent or giving
notice where the information is collected for the purpose of law enforcement or to assist in an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result. (ss. 26(b), 27(1)(c)(iv), (3)(a) & s. 33(n))

1. It is important to note that a public body is not obligated to disclose personal information to an Investigator under the law enforcement authority. (s. 33(n)).

2. A private body is not governed by the FOIPPA and is not obligated to disclose personal information to an Investigator under the law enforcement authority.

3. Where a public or private body declines to disclose personal or other information an Investigator will decide whether or not to attempt to get a signed authorization/consent from an individual in order to obtain the information.

8.3.2. "Law enforcement" means "investigations that lead or could lead to a penalty or sanction being imposed, or proceedings that lead or could lead to a penalty or sanction being imposed" (Schedule 1), which includes disciplinary investigations or proceedings. (I10.04 at Definitions)

8.3.3. An Investigation undertaken pursuant to the Policy can lead to reprimand, suspension, expulsion and dismissal (GP18 at 12.2), which falls within the definition of law enforcement. (Inquiry Re: A Decision by the Ministry of Health to Withhold From a Parent a Series of Interviews Concerning a Child's Daycare, Order 83-1996 (February 16, 1996) (Office of the Information and Privacy Commissioner of British Columbia) and Inquiry Re: A Decision of the Law Society of British Columbia to Withhold Records Relating to a Complaint from an Applicant, Order No. 163-1997 (May 14, 1997) (Office of the Information and Privacy Commissioner of British Columbia))

Public Source

8.3.4. An Investigator may collect personal information indirectly in an Investigation, without prior written authorization/consent or giving
notice, where the information is collected from a public source (e.g. court registry). (I10.05 under "Policy" at 2.)

8.3.5. Public sources can provide important information in an Investigation (e.g. civil and criminal court registries may have information on criminal convictions, charges, or civil suits relevant to the Complaint).

Authorization/Consent

8.3.6. When necessary, personal information about an individual can be collected indirectly from another source where prior written authorization/consent has been given by the individual the information is about. (I10.05 at B.4.2-4.4.)

8.3.7. Although it is not necessary to give notice to an individual when seeking his or her authorization/consent to collect personal information indirectly (s. 27(3)(a) (law enforcement)), from a practical perspective (e.g. most individuals will not sign an authorization/consent without knowing what is to be obtained and/or most public bodies will not disclose material based on a broad blanket consent/authorization) it may be necessary to give the individual notice of:

1. the nature of the personal information to be collected,
2. the purpose of the indirect collection,
3. the reasons for making the collection indirectly, and
4. the consequences of refusing to authorize the indirect collection. (I10.05 at B.4.3) (see Appendix for Indirect Collection Authorization/Consent Template)

8.3.8. Where another source is asked for personal information about an individual based on an authorization/consent, the source should be informed of the purpose and authority for the collection of the personal information. (I10.05 at B.4.4)

8.3.9. The use of prior authorization/consent from an individual is an important method to obtain information and records from other public (and private) bodies during an Investigation (e.g. police agencies, medical records, phone records, and email records).
**Health or Safety**

8.3.10. An Investigator may collect, use and disclose personal information indirectly in an Investigation, without prior written authorization/consent or giving notice, where compelling circumstances exist that affect anyone's health or safety. (ss. 27(1)(b), (c)(iv) (law enforcement),(3) & 33 and I10.05 at B.4.6-7)

8.3.11. If at any point during an Investigation an Investigator forms reasonable grounds to believe that the health or safety of anyone is at risk, an Investigator shall notify the HRC and/or police in order that appropriate action(s) may be taken.

**Consistent Use**

8.3.12. An Investigator may collect personal information indirectly in an Investigation, without prior written authorization/consent or giving notice, where the information sought is being used for the purpose for which it was obtained or compiled, or for a use consistent with that purpose.

8.3.13. Use of personal information is consistent with the purposes for which the information was obtained or compiled if the use:

1. has a reasonable and direct connection to that purpose, and
2. it is necessary for performing the statutory duties of, or for operating a legal authorized program of, the public body that uses or discloses the information. (s. 34(1), Laszlo et al. at II under Use)

**8.4. Direct Collection**

8.4.1. In certain circumstances (e.g. where an Investigation will not be adversely affected or during interviews), an Investigator may collect personal information directly from an individual.

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10 The HRC has delegated authority under the FOIPPA to disclose personal information where there are compelling circumstances that someone's health or safety may be at risk.
8.4.2. Collecting personal information directly from an individual assists in ensuring it is complete, accurate and up-to-date. (Trott and Westmacott at 5.1.22-24)

8.4.3. Although it is not necessary to give notice to an individual when gathering personal information directly during an Investigation (s. 27(3)(a) (law enforcement)), from a practical perspective an Investigator may give notice to the individual of:

1. the purpose for which the information is being collected,
2. the ways in which the information will be used,
3. the legal authority for its collection, and
4. the contact person who can answer questions about the collection. (s. 27(2) & I10.05 at B.3.2) (See Appendix for the Direct Collection Template)

8.4.4. An Investigator shall perform the role of "contact person" during an Investigation and will answer any questions about the collection of personal information (and where necessary will consult with an appropriate representative from the office responsible for administering the FOIPPA at the University).

8.4.5. If an Investigator decides to give notice it should be done in writing at the time the personal information is collected or by written notification to the individual concerned as soon as possible. (I10.05 at B.3.4)

8.5. File & Records Management

8.5.1. The management of information and records compiled during an Investigation is essential to ensuring a fair investigation, accountability and compliance with the FOIPPA. (Laszlo et al. at 1-5)

8.5.2. An Investigator shall institute the following file and records management practices during an Investigation in order to meet the requirements of the FOIPPA:
1. utilize a separate file for each Investigation,
2. organize the file using systematic and consistent filing practices,
3. communicate separately with each party by creating different records,
4. do not make, or destroy, multiple copies of the same record (e.g. same record received by fax and mail),
5. use courtesy or blind copies only where necessary,
6. utilize standard formats for repetitive transactions (e.g. acknowledging receipt of information),
7. separate confidential records from non-confidential records,
8. collect and retain only those records that are directly relevant to an Investigation,
9. copies of original records are usually sufficient (e.g. copy of letter or card sent to the complainant by respondent),
10. if it is necessary to obtain an original record, copy it and return it as soon as possible,
11. record what records are returned, including date of return,
12. transcribe all handwritten notes so there is an accurate and legible record,
13. never use postit notes, and
14. where appropriate, use the authorization/consent, notice, statement and report templates provided in the Appendix. (Laszlo et al., Trott and Westmacott at 5.1.14-24 and FOI Orders cited in References)

8.6. Note-taking

8.6.1. It is recommended that an Investigator adopt the following practices with respect to taking notes during an Investigation:

1. list the purpose of the handwritten record or note,
2. only record information directly and necessarily related to investigation,
3. avoid lengthy quotes, unless directly relevant to an issue,
4. record objective and concise observations, particularly if they are relevant to findings of credibility,
5. limit notes to recording facts,
6. if recording someone's opinion document it as such,
7. date, sign and file notes (unless being transcribed), and
8. witness statements should be dated and signed. (Laszlo et al.,
    and Trott and Westmacott at 5.1.14-24)

8.7. Transitory Records

8.7.1. Transitory records are notes, working papers and draft documents
    created for a temporary purpose. The FOIPPA does not distinguish
    between an official or unofficial record and applies to any record in
    the custody or control of the University (including an Investigator).
    (Laszlo et al. at 5)

8.7.2. It is permissible to eliminate hastily scribbled notes to file by
    rewriting them with properly recorded file notes from which all
    subjective comments or unneeded quotations are removed. (Laszlo
    et al. at 5)

8.7.3. Once the final version of a letter, note, report or other record is
    prepared, the earlier drafts should be destroyed promptly because
    they are no longer required. (Laszlo et al. at 5 and Trott and
    Westmacott at 5.1.24)

8.7.4. An email can be considered a transitory record and does not have to
    be retained provided it does not contain any substantive information
    relevant to an Investigation.

8.8. Security of Records

8.8.1. An Investigator shall protect personal and other information
    gathered during an Investigation by making reasonable security
    arrangements to prevent the risk of unauthorized collection, access,
    use, disclosure, retention or disposal of information. (s. 30,
    Guidelines & I10.04 at B.8.)

8.8.2. An Investigator shall comply with the physical, procedural and
    technical security measures that are appropriate to the sensitivity of
    the information collected during an Investigation. (Guidelines at
    A.4.)
8.9. Disposition of Records

8.9.1. Upon completion of an Investigation, the HRO is the "office of record" for all documentation related to an Investigation under the Policy. (GP18 at 4.4)

8.9.2. At the conclusion of an Investigation, an Investigator shall transfer his or her file, including all records, documents, statements, electronic records and/or computer diskettes containing information about an Investigation to the HRO. (Guidelines at A.5)

8.9.3. An Investigator shall not retain any paper or electronic copies of information or records obtained or created during an Investigation, except a copy of the contract authorizing an Investigator to conduct an Investigation and a copy of any billing, disbursement or expense records related to an Investigation.

9. INVESTIGATIONAL CONSIDERATIONS

9.1. General

9.1.1. An Investigator shall thoroughly investigate all sources of information, whether inculpatory or exculpatory, relevant to a Complaint.

9.1.2. The Complainant and Respondent shall be given an opportunity to present evidence in support of their case. (GP18 at 2.8.c.)

9.1.3. An Investigator shall not present her or himself as a counsellor or advocate for the Complainant or Respondent.

9.2. Notice of Allegation and Process

9.2.1. Prior to an Investigation being authorized by the Chair of the HRPB, pursuant to the Policy the HRC will have:
1. obtained a signed, detailed statement from the Complainant setting out the substance of the discrimination and/or harassment allegation(s),

2. discussed the Complaint with the Complainant and Respondent and informed them of the options and procedures under the Policy, and

3. disclosed the Complaint, including the Complainant's detailed statement, to the Respondent if initial attempts to resolve or mediate the Complaint did not succeed. (GP18 at 2.8.a. & e., 6.2, & 6.4-6.6)

9.2.2. The disclosure of the Complainant's detailed statement (and/or any supplemental statement provided by the Complainant to an Investigator) to the Respondent at the investigative stage will normally meet the legal obligation to give notice of the substance of the allegation(s) against the Respondent (i.e. there is no requirement to provide copies of every witness statement or other information to the Respondent as an Investigation progresses). (West Fraser Timber Co. Ltd. v. Thomson 2001 BCSC 1139 (6 Sept. 2001), Strauts v. College of Physicians & Surgeons (British Columbia) (1997), 47 Admin. L.R. (2d) 79 (B.C.C.A.) at 81-2, Baldry v. College of Nurses (Ontario) (1980), 116 D.L.R. (3d) 522 (Ont. H.C.), Casey at 7-9 to 7-14 & 8-2 to 8-24, and Macaulay and Sprague at 12-28 to 12-31)

9.3. Investigational Plan

9.3.1. Prior to commencing an Investigation, particularly in complex cases, an Investigator shall develop an investigational plan outlining the potential sources of relevant information, including a list of:

1. witnesses to be interviewed,

2. forms and sources of documentary evidence (e.g. handwritten note(s), emails, cards),

3. forms and sources of physical evidence (e.g. damage to vehicle),

4. sources of corroborative or contemporaneous evidence (e.g. video surveillance tapes), and
5. other sources of related information or records (e.g. attendance or shift schedules confirming presence at the University).

9.3.2. An investigational plan may be amended or supplemented as an Investigation progresses.

9.3.3. If appropriate, develop a time line of events, particularly in a complex or complicated Complaint that covers a long period of time or numerous alleged events or incidents.

9.3.4. Review the initial statement provided to the HRC by the Complainant (previously disclosed to the Respondent by the HRC) and outline the areas, if any, which need clarification, more examination, or where further information is required in relation to the elements of the allegation.

9.3.5. If appropriate, an Investigator may contact the Respondent and/or his or her legal counsel or representative from a Constituency Organization to determine if they have any initial questions, concerns or information relative to the Complaint that may need to be addressed in the investigational plan, during interviews, or when collecting records.

9.3.6. An Investigator shall not conclude an Investigation without examining all the evidence merely because several initial witnesses, records or documents appear to substantiate or refute the Complaint.

9.3.7. An Investigator shall consider all relevant information that can be reasonably obtained before concluding an Investigation.

9.4. Confidentiality

9.4.1. As noted in the Policy:

1. Allegations of discrimination, particularly sexual harassment, often involve the collection, use, and disclosure of sensitive personal information.
2. Confidentiality is required so that those who have been discriminated against and/or harassed will feel free to come forward.
3. Confidentiality is also required so that the reputations and interests of those accused of discrimination are protected. (GP18 at 4.1)

9.4.2. Information relating to a Complaint and an Investigation shall be treated as "supplied in confidence" for the purposes of the Policy and FOIPPA. (GP18 at 4.3)

1. It is important for an Investigator to ensure individuals understand the meaning of "supplied in confidence."
2. Supplied in confidence does not mean that the identity of the individual supplying the information will never be disclosed to anyone else (e.g. pursuant to their official functions under the Policy certain University Officials, such as the Responsible Officer, Chair of the HRPB and/or HRC, may learn the identities of individuals who provide information).
3. Although an individual's identity is generally protected (e.g. as personal information under the FOIPPA and Policy), supplied in confidence does not mean what an individual has said will never be disclosed (e.g. pursuant to the Policy certain information may be disclosed to the parties such as what a witness said in a statement).

9.4.3. Subject to any limits or disclosure permitted by law, the FOIPPA, or the Policy, any and all information, oral and written, created, gathered, received or compiled through the course of a Complaint and an Investigation is to be treated as confidential by both the Respondent and Complainant (and their representatives), witnesses (who are members of the University Community), and University officials designated under the Policy. (GP18 at 4.2)

9.4.4. The Complainant or Respondent may, however, discuss the case in confidence with her/his supervisor, Support Person, and/or representative of her/his Constituency Organization. (GP18 at 4.1)

9.4.5. Any member of the University Community breaching confidentiality may be subject to disciplinary sanction or other appropriate action. (GP18 at 4.7)
9.4.6. An Investigator shall remind the Complainant, Respondent and witnesses of the obligation to treat any information relating to an Investigation as confidential.

9.4.7. Information concerning a Complaint may be provided by an Investigator to appropriate University officials on a need-to-know basis.\textsuperscript{11} (GP18 at 4.5)

9.4.8. An Investigator shall not disclose information except as required or permitted by:

1. the Policy (e.g. Final Report to Chair of HRPB),
2. the \textit{FOIPPA} (e.g. law enforcement),
3. other provincial or federal legislation,
4. subpoena or legal process (e.g. court order), and
5. where there is a risk to health or safety. (Laszlo \textit{et al.} at 9-10)

9.5. Interviews

General

9.5.1. An Investigator shall make reasonable efforts to interview the Complainant, Respondent and all witnesses (including relevant University Officials, members of the University Community, and individuals external to the University) in an Investigation.

9.5.2. The purpose of an interview is to obtain a detailed account from the individual being interviewed about the circumstances and events surrounding the allegation(s).

9.5.3. Interviews can have several purposes including the need to:

1. obtain information,
2. substantiate documentary evidence,

\textsuperscript{11} Need-to-know is determined by considering who needs to know, what specific information needs to be known and why that information needs to be known.
3. obtain chronological information,
4. fill-in information gaps,
5. clarify conflicts in statements, and
6. examine inconsistencies.

9.5.4. Prior to conducting interviews, and as required throughout an Investigation, an Investigator shall make reasonable efforts to visit the location(s) where the alleged discrimination (particularly in the cases of harassment) occurred, as this can provide important objective information about the validity and credibility of information provided by witnesses (e.g. was it possible for the witness to see or hear what is claimed).

9.5.5. As a neutral fact-finder, when conducting interviews an Investigator shall not disclose her or his personal opinions regarding any of the parties or the substance of the allegations.

9.5.6. An Investigator shall consider and be sensitive to cultural, ethnic and religious values of the Complainant, Respondent or witnesses that may impact an interview or the obtaining of information.

9.5.7. An Investigator must also ensure he or she can communicate effectively with the Complainant, Respondent or witnesses, and if necessary, arrange for an interpreter, translator or third party who can facilitate communication.

1. An Investigator shall contact the University first to determine if it has an interpreter or translation service available or under contract.
2. Expenses related to the use of an interpreter or translator will be paid by the University.

9.5.8. An Investigator shall, if requested, address questions about the investigational process, confidentiality, the FOIPPA, and obligations and procedures under the Policy.

9.5.9. Interviews should be limited to the relevant evidence, facts and elements relating to the Complaint.
9.5.10. An Investigator should only use appropriate investigative interviewing techniques when conducting interviews. (Fisher & Geiselman, 1992 and Milne & Bull, 1999)

9.5.11. If the witness cannot remember specific dates or times, use time frames or important events to try and circumscribe an event (e.g. before or after Spring Break).

9.5.12. It is important to determine whether the witness has spoken to anyone else, particularly another witness, about the events or incident (and if so, what was said or discussed).

9.5.13. An Investigator shall not conduct group, joint or simultaneous interviews.

9.5.14. Normally, an Investigator will rely upon the law enforcement exception to giving notice, however, at the beginning of an interview where personal information will be collected, written or verbal notice may be given regarding the purpose of the collection, the authority for the collection and the contact person who can answer questions about the collection. (Guidelines at A.2, s. 27) (See Appendix for Interview Template)

9.5.15. Prior to commencing or concluding an interview, an Investigator shall advise the individual of his or her general obligation not to disclose information to other individuals about a Complaint or Investigation, except as provided in the Policy (the non-disclosure or confidentiality obligation cannot be applied to witnesses who are not members of the University Community). (See Appendix for Interview Template)

9.5.16. Where appropriate, if an interview reveals the need to obtain personal information or records not directly available from the individual being interviewed, an Authorization/Consent form authorizing an Investigator to obtain information from another public body or source may be completed and signed at the end of the interview (or as required during an Investigation) (see Appendix for Authorization/Consent Template).

9.5.17. An Investigator should not rely upon phone interviews to gather information from a witness, unless it relates to technical or factual
information that will be subsequently confirmed in a record (e.g. Registrar confirms by phone that a record exists and is forwarding a copy of that record to an Investigator).

Recording Method

9.5.18. Due to the difficulty, expense, and time related to providing or ensuring limited access to audio- or video-tapes, an Investigator shall only obtain written statements, unless there is a compelling reason to use audio- or video-tape during an interview. (Laszlo et al. at 4)

9.5.19. Every witness shall read and sign a copy of his or her statement, acknowledging that it is true and accurate (see Appendix for Interview Template).

Representation

9.5.20. The Complainant or Respondent may be represented or accompanied by legal counsel, a Support Person, and/or a representative of their Constituency Organization throughout the procedures set out in the Policy, which includes an interview. (GP18 at 2.8.d)

9.5.21. This does not mean, however, that a legal counsel, Support Person or representative from a Constituency Organization will be permitted to control the interview or answer questions for the Complainant or Respondent.

9.5.22. The role of a legal counsel, Support Person or representative from a Constituency Organization is not to answer questions for the individual being interviewed and they should not be allowed to interfere with or answer questions specifically related to the allegations contained in the Complaint.

9.5.23. Legal counsel or a representative from a Constituency Organization may advise the individual being interviewed not to respond to certain questions, and this fact should be noted, after reminding the individual and legal counsel or representative of a Constituency
Organization of the individual's obligation to cooperate under the Policy.

9.5.24. If the individual continues to decline answering the question, and it is a relevant and appropriate question, document that fact in the Draft and/or Final Report.

9.5.25. If the Complainant or Respondent provides a submission, response, or comment in writing it shall be provided within two weeks. (GP18 at 2.8.e.)

Complainant

9.5.26. Although the HRC will have already obtained and disclosed a detailed statement containing all the relevant information from the Complainant, it may be necessary to clarify certain details or obtain further information about the Complaint.

1. If a supplemental interview is required, it should be restricted to those few facts or details that need to be clarified, and not become a full review of the original statement, unless it is absolutely necessary.

9.5.27. When the Complainant is contacted, an Investigator should advise the Complainant of the general process for an Investigation and address any questions.

9.5.28. Encourage the Complainant to be as specific as possible in clarifying points in the statement, including names, dates, locations, frequency, specific behaviour, records created, parallel investigations, court appearances, or other possible witnesses.

9.5.29. If a supplemental statement is necessary, it shall be signed by the Complainant.

1. A supplemental statement from the Complainant shall be disclosed to the Respondent, particularly if it discloses new or specific information pertaining to the Complaint.
9.5.30. Although Interim Measures (GP18 at 7.1) may have already been taken by the University, an Investigator should ensure the Complainant does not have any immediate concerns, such as fear or threats, that need to be addressed through the University or HRO.

9.5.31. If the Complainant reports any instances of retaliation in relation to the Complaint, the HRO should be advised immediately.

9.5.32. If the Complainant discloses new allegations against the Respondent, an Investigator shall refer the Complainant to the HRC to appropriately process the new allegations under the Policy.

9.5.33. If the Complainant discloses any new allegations involving a different individual who is a member of the University Community, an Investigator shall refer the Complainant to the HRC to appropriately process the allegations under the Policy.

9.5.34. It is appropriate to advise the Complainant that she or he is under no obligation to speak with or be interviewed by the Respondent's legal counsel, Support Person or representative of a Constituency Organization.

9.5.35. Absent the consent of the Complainant, the Respondent's legal counsel, Support Person or representative from a Constituency Organization does not have a right to be present during an investigative interview of the Complainant. (A Dentist v. College of Dental Surgeons (British Columbia) (16 June 1999), Vancouver Reg. CC981417 (B.C.S.C.) at para. 72)

9.5.36. If the Complainant refuses to cooperate or does not cooperate, she or he should be reminded verbally and/or in writing of the obligation to participate in procedures under the Policy and that it may be a ground for discipline to refuse to participate in an Investigation without reasonable justification. (GP18 at 2.11)

9.5.37. If the Complainant refuses to cooperate, an Investigator may proceed with an Investigation or recommend to the Chair of the HRPB that the Complaint be dismissed. (GP18 at 9.9)
9.5.38. The circumstances, evidence and nature of the Complaint will determine whether or not it is possible to proceed with an Investigation.

**Respondent**

9.5.39. An Investigator should interview the Respondent in order to allow the Respondent to provide a response, relevant evidence or information in relation to the Complaint.

9.5.40. When conducting an interview, an Investigator shall review the Complaint with the Respondent and obtain a detailed written statement that deals with the specifics of the allegation(s).

9.5.41. Even if the Respondent provides a full or partial admission to the allegation(s), an Investigator shall complete an Investigation to ensure all the relevant information has been obtained (e.g. normal follow-up inquiries with witnesses could uncover other information or allegations which an individual was too embarrassed or scared to report).

9.5.42. If the Respondent is represented by legal counsel or a representative of a Constituency Organization, initial contact shall be made with that individual to arrange an interview, obtain records, obtain other relevant information, or to agree on a process for conducting an interview or obtaining information from the Respondent (it may be that legal counsel will indicate to an Investigator that contacting and interviewing the Respondent is agreeable) (Law Society of British Columbia, 1993 at Chapter 4, para. 1.112).

1. An Investigator should confirm that the legal counsel or representative has in fact been appointed by the Respondent.

9.5.43. The Respondent, legal counsel or representative from a Constituency Organization may try to claim a right to full disclosure of any and all statements or records before submitting to an interview and/or providing a statement during an Investigation.

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12 States "A lawyer must not communicate with any person who is not the lawyer's client regarding any matter in which the lawyer knows the person is represented by another lawyer, except through or with the consent of the person's lawyer."
9.5.44. However, at the "investigative" stage, if the Respondent has been provided a copy of the Complaint and/or the Complainant's statement which provides details of the substance of the allegation(s), an Investigator is not normally required to disclose any further information before conducting an interview or obtaining a response from the Respondent. (*West Fraser Timber Co. Ltd. v. Thomson*, 2001 BCSC 1139 (6 Sept. 2001), *Syndicate des Employes de production du Quebec et de l'Acadie v. Canada (Human Rights Commission)*, [1989] 2 S.C.R. 879 Casey at 7-9 to 7-14 & 8-2 to 8-24, and Macaulay and Sprague at 12-28 to 12-31)

9.5.45. If the Respondent, legal counsel, Support Person or representative from a Constituency Organization makes an application for disclosure of information or records under the *FOIPPA* during an Investigation, an Investigator, prior to making any response, shall consult with a representative from the office responsible for administering the *FOIPPA* at the University (GP18 at 4.3, also note s. 15(1)(a) allows the head of a public body to refuse disclosure of information "if the disclosure could reasonably be expected to harm a law enforcement matter").

9.5.46. Depending on the circumstances and allegations set out in the Complaint, it may be necessary to accept a signed, written statement from the Respondent without conducting an interview, but an Investigator shall follow up with further written questions and/or an interview if the prepared statement does not address important evidentiary points, is non-responsive, or lacks sufficient detail.

9.5.47. If the Respondent's legal counsel, Support Person or representative from a Constituency Organization attempts to provide an unsigned statement or written document purportedly setting out the Respondent's response (e.g. legal counsel writes on firm letterhead "I am advised by my client that he did not..."), it should not be accepted as the Respondent's statement and/or it should be accorded little or no weight. (*Armitage v. Cst. Kullman and Cst. Hipsey* (1999) 8 A.L.E.R.B. 29 at 48-53 (Law Enforcement Review Board)).

9.5.48. The Respondent should be given a reasonable opportunity to decide whether or not he or she will attend an interview and/or provide a signed written statement (the Respondent shall provide any written
submission, response or comment to an Investigator within two weeks). (GP18 at 2.8.e.)

9.5.49. If at any time the Respondent refuses to cooperate, does not cooperate, or declines to answer questions he or she should be reminded verbally and/or in writing of the obligation to participate in procedures under the Policy and that it is a ground for discipline to refuse to participate in an Investigation without reasonable justification. (GP18 at 2.11)

9.5.50. If the Respondent refuses to cooperate, an Investigator may proceed with an Investigation or recommend to the Chair or the HRPB that the Complaint be dismissed. (GP18 at 9.9)

9.5.51. In most instances, it will be possible and appropriate to proceed with an Investigation without a statement and/or interview of the Respondent.

Witnesses

9.5.52. Witnesses include anyone who can provide information, records or details regarding an allegation or the circumstances surrounding a Complaint.

9.5.53. Where appropriate, an Investigator should consider interviewing witnesses who can provide information about accepted practices, procedures and conduct in University or academic matters (e.g. approved and accepted research or teaching methods) and/or experts who can provide advice or information relevant to a Complaint (e.g. forensic psychologist).

1. Expenses related to the use of an expert will be paid by the University.

9.5.54. It is important to interview all potential witnesses identified by the Complainant or Respondent and/or identified through inquiries during an Investigation.

9.5.55. If during an Investigation a witness discloses a new allegation involving the Respondent or another member of the University
Community, an Investigator shall refer the witness to the HRC to appropriately process the new allegation under the Policy.

9.5.56. Witnesses who are members of the University Community have an obligation to participate in procedures under the Policy, including an Investigation. (GP18 at 2.11)

9.5.57. It is a ground for discipline for the Complainant or Respondent to refuse to participate in an Investigation without reasonable justification. (GP18 at 2.11)

9.5.58. Witnesses who are not members of the University Community have no obligation to participate in an Investigation, however, an Investigator shall contact any such witness and seek her or his cooperation.

9.5.59. It is appropriate for an Investigator to advise witnesses that they are under no obligation to speak with or be interviewed by the Respondent, and/or the Respondent's legal counsel, Support Person or representative from a Constituency Organization, but can do so if they wish.

9.6. Records

9.6.1. Records can provide reliable and important information regarding a Complaint.

9.6.2. In compliance with the FOIPPA and/or accepted investigational practices, an Investigator should consider collecting all relevant records available from direct, indirect, and public sources, including:

1. University held records (e.g. faculty, administrative, HRO, department heads, security),
2. phone company records,
3. email, internet or service provider records,
4. information available to or submitted by an individual to the Worker's Compensation Board,
5. information available to or submitted by a "victim" under the Criminal Injury Compensation Act, R.S.B.C. 1996, c. 85,
6. civil court registries (e.g. statement of claim, affidavit, court
order, reasons for judgement),
7. criminal court registries (convictions, probation orders, peace
bonds, reasons for judgement, conditions of release),
8. motor vehicle branch records (e.g. registered owner of a licence
plate),
9. personal records of the Respondent, Complainant or witnesses
(e.g. appointment books, receipts, credit card statement),
10. information available to a "victim" under the *Victims of Crime
Act*, R.S.B.C. 1996, c. 478,
11. police records\(^\text{13}\) (e.g. reports, statements, photographs), or
12. the personal property security registry (e.g. particulars regarding
vehicle ownership).

9.6.3. As the office of record under the Policy (GP18 at 4.4), at the
commencement of an Investigation the HRO shall forward to an
Investigator its entire file (except records relating to mediation or
solicitor/client privilege) containing all relevant information (e.g.
statements, notes from informal inquiries) pertaining to the
Complaint.

1. The HRO shall not forward to an Investigator any record relating
to mediation of the Complaint or containing information
protected by solicitor/client privilege. (GP18 at 8.3)

9.6.4. Where University records or documents relevant to an Investigation
are not in the possession of the HRO, an Investigator shall make a
request in writing through the HRO for disclosure of the records.

1. The HRO shall forward the written request by an Investigator to
the relevant University official who will provide the records or
documents to an Investigator through the HRO as the office of
record under the Policy.

\(^{13}\) If attempting to obtain information or records from the RCMP (as opposed to the municipal police), it will be
necessary to obtain an authorization/consent relative to the federal Privacy Act, R.S.C. 1985, c. P-21
(see Appendix for Authorization/Consent Template).
9.6.5. Where appropriate, it is sometimes more efficient and timely to obtain as much relevant documentation directly from an individual as possible.

9.6.6. Where an individual does not have a copy of a relevant record/document, depending on the circumstances, an Investigator may obtain it indirectly through the law enforcement authority or by obtaining a signed written authorization/consent from the individual to get a copy of the record/document (see Appendix for Authorization/Consent Template).

9.6.7. If the record or document is available from a public source, it is not necessary to obtain the authorization/consent of the individual.

9.6.8. If an individual will not authorize/consent to obtaining the record/document and the record/document is not available from a public source, it may be possible to obtain the record/document containing personal information from another "public body" by relying on the law enforcement exception contained in the FOIPPA (ss. 27(1)(c)(iv), (3)(a) and 33(n)).

9.6.9. If the record or document is held by a non-public body, and it refuses to disclose the record/document (with or without the consent of the individual), an Investigator may not be able to obtain a copy of the record or document and shall record the circumstances in the Draft and Final Report.

9.6.10. Normally, it is not necessary to obtain original records or documents, and copies will be sufficient (dated and initialed by the person who produces the record).

9.6.11. Where appropriate, have individuals bring the original and copies of records or documents to an interview to ensure they can be fully examined (e.g. notes on back of an original record may not appear on a photocopy).
9.7. Mediation

Pre-Investigation

9.7.1. Mediation proceedings undertaken prior to an Investigation are confidential, and all communications made by the Complainant and Respondent during mediation are without prejudice. (GP18 at 8.3)

9.7.2. An Investigator shall not have access, nor request access, to mediation proceedings, which includes all records or documents related to mediation of a Complaint.

9.7.3. The HRO (as the office of record for Complaints) shall ensure all mediation related records or documents are removed from any file or record before it is provided to, or accessed by, an Investigator.

During An Investigation

9.7.4. Resolving a Complaint through mediation should always be an option, even after an Investigation has been initiated.

9.7.5. If at any point during an Investigation, an Investigator concludes that the Complainant and Respondent are agreeable to pursuing mediation, an Investigator can temporarily delay an Investigation to permit further mediation.

1. An Investigator shall advise the Complainant and/or Respondent to make a written request for mediation through the HRC.
2. An Investigator shall advise the Chair of the HRPB in writing that an Investigation is being temporarily delayed to pursue mediation.
3. To ensure mediation is actively pursued, an Investigation shall not normally be delayed for more than two weeks.

9.7.6. The HRC, with the written agreement of both the Complainant and Respondent, may assist an Investigator with selecting an experienced mediator to resolve the Complaint (GP18 at 8.2).
9.7.7. An Investigator of a Complaint may act as a mediator, provided both the Complainant and Respondent state in writing that they consent and agree to:

1. an Investigator undertaking the mediation role;
2. an Investigator not relying upon or referring to (e.g., in the Preliminary or Final Report) any records, communications or comments arising from the mediation;
3. an Investigator continuing with an Investigation if the mediation is not successful; and
4. not asserting a reasonable apprehension of bias based solely on the fact an Investigator conducted a mediation which was not successful and is now continuing an Investigation.

9.7.8. An Investigator does not have the authority to settle a Complaint on behalf of the Complainant, Respondent or University.

9.7.9. If the Complainant and Respondent agree to settle the Complaint, the terms of the settlement will be recorded in writing and signed by both parties and the University. (GP18 at 8.4 and 9.1)

9.7.10. Since an Investigation necessarily involves a Complaint which has had a serious impact on the Complainant or Respondent or involves important goals of the University, any proposed mediation settlement reached during an Investigation will be referred to the University for approval. (GP18 at 9.1)

9.7.11. Mediation discussions undertaken during an Investigation are confidential (e.g. mediation discussions will not be included in the Draft or Final Report), and all communications by the Complainant and Respondent during mediation are made without prejudice.

1. Where an Investigator does not participate in mediation, he or she will not have access, nor request access, to mediation proceedings that occur during an Investigation, which includes all records or documents related to the mediation of a Complaint.
2. If an Investigator acts as a mediator during mediation, he or she will not refer to or rely upon mediation proceedings, which includes all records or documents and communications related to
the mediation of a Complaint, when an Investigation is continued and/or when preparing the Draft or Final Report.

9.7.12. Depending on the results of the mediation, an Investigator may recommend to the Chair of the HRPB that an Investigation be adjourned, stayed, or terminated. (GP18 at 9.12)

9.8. Solicitor-Client Privilege

9.8.1. An investigator shall not seek the disclosure of, nor access to, any records or documents containing legal advice or communications protected by solicitor client privilege.

9.8.2. The HRO (as the office of record for Complaints) shall ensure all documentation or records containing information protected by solicitor/client privilege are removed from any file or record before it is provided to, or accessed by, an Investigator.

9.9. Health or Safety

9.9.1. If at any point during an Investigation an Investigator forms reasonable grounds to believe that the health or safety of anyone is at risk\textsuperscript{14}, this information will be reported to the HRC\textsuperscript{15} and/or police depending on the immediacy of the threat.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{14} Note, s. 14 of the Child, Family and Community Service Act, R.S.B.C. 1996, c. 46 states:  
14(1) A person who has reason to believe that a child [means a person under 19 years of age and includes a youth]
\begin{itemize}
\item (a) has been or is likely to be, physically harmed, sexually abused or sexually exploited by a parent or other person, or
\item (b) needs protection under section 13 (1)(d) to (k)
\end{itemize}
\begin{itemize}
\item [i.e. (d)] if the child has been, or is likely to be, physically harmed because of neglect by the child's parent;
\item (e) if the child is emotionally harmed by the parent's conduct;
\item (f) if the child is deprived of necessary health care;
\item (g) if the child's development is likely to be seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment;
\item (h) if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care;
\item (i) if the child is or has been absent from home in circumstances that endanger the child's safety or well-being;
\end{itemize}
\end{itemize}
\end{footnotesize}
9.10. **Investigation Status**

9.10.1. An Investigation will normally be completed within two months (GP18 at 9.7).

9.10.2. If an Investigation is not concluded within four weeks, an Investigator shall advise the Chair of the HRPB in writing of the status of an Investigation.

10. **REPORTING**

10.1. **Preliminary (or Draft) Report**

**Preparation**

10.1.1. Once an Investigator has completed interviews and gathered relevant records in an Investigation, a Preliminary Report will be drafted.

10.1.2. When completed, the Preliminary Report will be forwarded to the Complainant and Respondent for comment or response before the Final Report is completed and submitted to the Chair of the HRPB. (GP18 at 9.10)

10.1.3. Once the Preliminary Report is drafted by an Investigator, and before it is forwarded to the Complainant and Respondent for

(j) if the child's parent is dead and adequate provision has not been made for the child's care;

(k) if the child has been abandoned and adequate provision has not been made for the child's care]

(2) Subsection (1) applies even if the information on which the belief is based

(a) is privileged, except as the result of a solicitor-client relationship, or

(b) is confidential and its disclosure is prohibited under another Act.

(3) A person who contravenes subsection (1) commits an offence.

15 The authority to disclosed information under s. 33(p) where compelling circumstances exist that affect anyone's health or safety has been delegated by the University to the HRC.
comment or response, an Investigator may consult with and seek advice from the office responsible for administering the *FOIPPA* at the University:

1. to ensure it complies generally with the requirements of the *FOIPPA*,
2. to confirm what personal information can or cannot be disclosed to the Complainant and Respondent, and/or
3. to ensure appropriate summaries of personal information supplied in confidence by a third party have been drafted that can be disclosed according to s. 22(5) of the *FOIPPA*.

10.1.4. Depending on the circumstances of an Investigation, the information that is obtained, and any advice from a representative of the office responsible for administering the *FOIPPA* at the University, it may be necessary for an Investigator to create and provide a separate Preliminary Report for the Complainant and Respondent in order to ensure compliance with the *FOIPPA*.

10.1.5. The statement(s) of the Complainant, Respondent and witnesses will be attached to the Preliminary Report, however, each statement will be reviewed to ensure only appropriate information is disclosed.

1. Pursuant to the *FOIPPA* it may be necessary to ensure personal information is not disclosed by withholding or severing portions of the record.
2. Depending on the nature of the Complaint, it may also be necessary to ensure other information related to an Investigation is not disclosed (e.g. information relating to a Complainant's emotional state may not be disclosed).

**Disclosure**

10.1.6. Once the Preliminary Report is drafted and has been reviewed by a representative from the office responsible for administering the *FOIPPA* at the University, an Investigator will forward it to the Complainant for a response. (GP18 at 9.10)
10.1.7. The Complainant will have a maximum of two weeks to make a written response to an Investigator about the Preliminary Report. (GP18 at 2.8.e)

10.1.8. Once the response of the Complainant is received, the Preliminary Report and the Complainant's response (excluding any personal information, where necessary) will be forwarded to the Respondent for a response. (GP18 at 9.10)

10.1.9. The Respondent will have a maximum of two weeks to make a written response to an Investigator regarding the Preliminary Report and Complainant's response. (GP18 at 2.8.e.)

1. If the Respondent refused to cooperate or provide a statement during an Investigation, and then provides a detailed statement/response after reviewing the Preliminary Report, depending on the circumstances, an Investigator may have to closely consider the value and weight of the post-Investigation response provided by the Respondent.

10.1.10. Once the response of the Respondent is received, it will be forwarded to the Complainant for a final response. (GP18 at 9.10)

10.1.11. The Complainant will have a maximum of two weeks to provide a final written response to an Investigator. (GP18 at 2.8.e.)

10.2. Final Report

10.2.1. Once an Investigator has the final written responses of the Complainant and Respondent to the Preliminary Report, a Final Report will be completed. (GP18 at 9.10)

10.2.2. The Final Report will include the Investigator's opinion whether, on a balance of probabilities, based on the disputed and undisputed facts of the Complaint, there has been a violation of the Policy. (GP18 at 9.10)

10.2.3. The Final Report will normally be completed within four weeks of receiving the last response to the Preliminary Report. (GP18 at 9.10)
10.2.4. Once completed, the Final Report of an Investigator will be sent to the Chair of the HRPB. (GP18 at 9.11)

10.3. Completing the Report

General Considerations

10.3.1. An Investigator will analyze in detail the information gathered during an Investigation, including comparing the evidence, records/documents, and facts with the elements of the form of discrimination and/or harassment alleged in the Complaint.

10.3.2. In some cases, verbal exchanges will be the only evidence, and in such instances, an Investigator should consider any external, objective or independent evidence, where available.

10.3.3. Versions of an event may differ, and in such cases, it is important for an Investigator to consider and weigh any documentary evidence and evaluate the credibility and reliability of the evidence.

10.3.4. When evaluating credibility and reliability of witness evidence, an Investigator should consider whether the witness was in a position to see and hear and what is being reported.

10.3.5. In the absence of independent witnesses or corroborating evidence, allegations often come down to credibility and an Investigator must carefully consider and examine evidence that goes to the credibility of the Respondent or Complainant.

10.3.6. In appropriate and limited circumstances (i.e. where the evidence is relevant and its probative value outweighs the prejudicial effect), an Investigator may find it necessary to gather and/or consider hearsay or similar fact evidence when investigating a Complaint. (Aggarwal and Gupta at 201-15, Zinn and Brethour, and McLean v. Hutchinson (1998), 31 C.H.R.R. D/224 (B.C. Council of Human Rights)).
Format

10.3.7. The Preliminary and Final Report prepared by an Investigator will include an opinion on whether there has been a violation of the Policy. (GP18 at 9.10)

10.3.8. An Investigator only provides an opinion, as it is the Responsible Officer who makes a decision on whether or not a violation of the Policy has occurred. (GP18 at 10.1)

10.3.9. An Investigator shall create the Report bearing in mind the principles of fairness and the need to protect personal information under the FOIPPA. (Laszlo et al. at I).

10.3.10. It is important to state the purpose of the Report and separate information in order that exceptions to disclosure under the FOIPPA can be easily identified.

10.3.11. An Investigator shall:

1. provide a chronology of the investigative steps and actions taken during an Investigation,
2. address the allegations and counter allegations, findings, and opinion(s) in separate sections of the Report (i.e. identify and organize different types of information under different headings), and
3. discuss procedural and jurisdictional issues separately from the substance of the Complaint, and
4. use nonidentifying terms in the Report when referring to individuals (e.g. Complainant, Respondent or Witness 1) and provide a separate table of the names at the start of the Report corresponding to the non-identifying terms used.

10.3.12. In order to protect confidentiality, personal information, personal privacy and to facilitate the subsequent disclosure of the Preliminary Report to the Complainant and Respondent, the following report format is recommended (see Appendix for more details):
1. Cover Page
2. Summary
3. Table of Contents
4. Table of Individuals
5. Appointment
6. Jurisdiction
7. Procedural and Jurisdictional Issues
8. Investigative Steps
9. Allegation(s)
10. Findings
   - Factual
   - Credibility
11. Other Findings
12. Opinion
13. Appendix.

10.3.13. An Investigator shall write objectively, summarizing the evidence and facts where appropriate.


10.3.15. The Report will be double spaced and margins will be one inch (1"), except the right margin which will be one and half inches (1.5") (in order to facilitate any review by a representative from the office responsible for administering the FOIPPA at the University).

10.3.16. The Final Report will be signed by an Investigator.

11. TIME

11.1. An Investigation shall be conducted in a prompt and timely manner. (GP18 at 2.3)

11.2. An Investigation will normally commence within three weeks of an Investigator being authorized to conduct an Investigation. (GP18 at 9.8)
11.3. An Investigation will normally be completed within two months (GP18 at 9.7.)

11.4. An Investigator will normally complete a Final Report within four weeks of receiving the last response to the Preliminary Report. (GP18 at 9.10)

11.5. Where a party has the opportunity to make a submission, response or comment, it shall be provided to an Investigator within two weeks. (GP18 at 2.8.e.)

11.6. In accordance with the Interpretation Act, R.S.B.C. 1996, c. 238 (ss. 25(2), (3) & (5)) time will be calculated as follows:

1. If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.
2. If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.
3. In the calculation of time the first day must be excluded and the last day included.

12. REFERENCES

12.1. Policy

Simon Fraser University. *A Guide for Chairs and Directors to the SFU Human Rights Policy* (no date).

Simon Fraser University. *A Guide for Students to the SFU Human Rights Policy* (no date).

Simon Fraser University. *Protection of Privacy Guidelines* (Archives and Records Management Department, September 26, 1995).


Simon Fraser University Policies and Procedures. Number I 10.05: Collection of Personal Information.

12.2. Legislation

Child, Family and Community Service Act, R.S.B.C. 1996, c. 46.

Criminal Injury Compensation Act, R.S.B.C. 1996, c. 85.


Interpretation Act, R.S.B.C. 1996, c. 238.


University Act, R.S.B.C. 1996, c. 468.


12.3. Cases


12.4. Books and Articles


Casey, James T. The Regulation of Professions in Canada (Scarborough, Ont.: Carswell, 1994).


Laszlo, Krisztina, Peter Johnson and Ian Forsyth. How to Manage Investigative Records in the New Information Rights Environment:
Standards for "Access" and "Privacy" Record-Keeping (Simon Fraser University, Archives and Records Management Department, July, 1999).


13. APPENDIX

DIRECT COLLECTION TEMPLATE

[Use this format if you are not relying on the "law enforcement" method and you are gathering information directly from an individual and notice is being given under the FOIPPA]

I, ________________________________, have been appointed to investigate a complaint under Simon Fraser University Policies and Procedures, Number GP18: Human Rights Policy (as revised April 4, 2003) (the "Policy"). The information I am seeking is being collected under the general authority of the Policy, and the University Act, R.S.B.C. 1996, c. 468. The information being collected is relevant to the processing and disposition of a complaint under the Policy. If you have any questions about the collection or use of this information please contact me directly at [Investigator's business phone number and/or address].
INDIRECT COLLECTION AUTHORIZATION/CONSENT TEMPLATE

[Use this format if you are not relying on the "law enforcement" method and you are gathering information indirectly about an individual and notice is being given under the FOIPPA]

Pursuant to sections 22(4), 27 and 33 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165 [use or include s. 8 of the Privacy Act, R.S.C. 1985, c. P-21 if seeking records from a federal agency (e.g. RCMP)], I __________________ authorize __________________ of Simon Fraser University to contact the following persons, organizations, entities, public bodies or government institutions:

[list]

for the purposes of obtaining information and records relevant to an investigation being conducted under Simon Fraser University Policies and Procedures, Number GP18: Human Rights Policy (as revised effective April 4, 2003) including:

[specify the information or records to be collected].

These persons, organizations or public bodies are authorized to disclose such information. I understand that failure to give my authorization may result in [describe consequences of refusing to authorize indirect collection - e.g. "my complaint filed with the Human Rights Office being concluded as unsubstantiated"]

Date __________________ Signature __________________________
INTERVIEW TEMPLATE

[Use this paragraph if you are not relying on the "law enforcement" method and information is being gathered directly with notice being given as per the FOIPPA]

I understand that the information in this statement is being collected under the general authority of Simon Fraser University Policies and Procedures, Number GP 18: Human Rights Policy (as revised effective April 4, 2003), and the University Act, R.S.B.C. 1996. I further understand that this statement is being taken for the purposes of obtaining information relevant to a complaint under the Human Rights Policy and that it will only be used by the University to process and dispose of the complaint or any related complaint. I have been advised to contact [Investigator business address or phone number] if I have any questions about the collection or use of the information I have provided.

[The following para. is only used where the individual is a member of the University Community]

As a member of the University Community, I understand that I have an obligation to participate in procedures under the Human Rights Policy, including an Investigation and it may be a ground for discipline for a member of the University Community to refuse to participate in an Investigation without reasonable justification.

[Use the following para. for Respondent or Complainant only]

As the [Respondent or Complainant], I also acknowledge that, subject to any limits or disclosure requirements imposed by law or required by the Human Rights Policy, any and all information, oral and written, compiled through the course of this interview and investigation is to be treated as confidential by both the respondent and complainant, their representatives, witnesses, and the officials designated by the Human Rights Policy. However, I understand that I may discuss the case in confidence with my legal counsel, supervisor, support person, and/or representative of my constituency organization. I also understand that any person breaching confidentiality may be subject to disciplinary sanction or other appropriate action.

[Use the following para. for University Community witness]

I also acknowledge that, subject to any limits or disclosure requirements imposed by law or required by the Human Rights Policy, any and all information, oral and written, I become aware of during this interview and investigation is to be treated as confidential. If I breach this confidentiality I may be subject to disciplinary sanction or other appropriate action.
[Remaining paragraphs normally used in all interviews]

I wish to note that this statement is supplied in confidence, and I have been advised that it will not be disclosed except to the extent permitted or required by law, the Freedom of Information and Protection of Privacy Act or the Human Rights Policy.

This is the statement of ________________________ of __________________________

(Name) (Contact information)

regarding [set out allegation].

I have been permitted to read and correct this statement and having nothing further to add.

This statement is true and accurate to the best of my knowledge and belief.

Date_______________ Signature____________________

Date_______________ Witness _____________________

[Investigator and witness initial each page and any amendments]
REPORT TEMPLATE

1. Cover Page

Human Rights Investigation [Preliminary/Final] Report
Simon Fraser University

CONFIDENTIAL

Investigator:
Date:
File No.:

THIS REPORT CONTAINS PERSONAL INFORMATION AND INFORMATION SUPPLIED IN CONFIDENCE

2. Summary

- summarize the findings, opinion(s) and recommendation(s) contained in the Report
- does not disclose personal information

3. Table of Contents

4. Table of Individuals

- list each individual by name with corresponding non-identifiable term in report (e.g. Complainant, Respondent, Witness 1)

5. Appointment

- "On [date], the Investigator was appointed and authorized by the Chair of the Human Rights Policy Board to investigate a complaint of discrimination and/or harassment filed under......"

6. Jurisdiction

- "Pursuant to the Policy, an investigator is authorized to...."

7. Procedural and Jurisdictional Issues
8. **Investigative Steps**
   - outline factual chronology of the steps and actions taken during investigation
   - indicate what information has been communicated to parties
   - note promises of confidentiality

9. **Allegation(s)**
   - state each allegation

10. **Findings**
    * **Factual**
      - only rely upon and cite personal information necessary to support findings
      - only use necessary details
      - use non-identifiable terms
      - be aware of identifying person based on context
      - if appropriate/possible attribute observations to more than one witness (e.g. "All the witnesses confirmed...")
      - cite records or documents evidence in appendix
    * **Credibility**
      - identify factors and evidence relating to findings of credibility

11. **Other Findings**
    - there may be some instances where inappropriate conduct is identified (not involving the Respondent) that may or may not have formed part of the discrimination and/or harassment allegation (e.g. improper disclosure of information or unprofessional conduct)
    - these findings should be noted in order to ensure the University can take the action it considers appropriate

12. **Opinion**
    - state an opinion on the facts of the case (disputed and undisputed)
    - state an opinion on whether the Policy has been violated
    - refer to the standard of proof and elements of discrimination/harassment

13. **Appendix**
    - appointment
    - statements (reviewed and edited to remove personal information)
    - documentary evidence