



Defense Health Agency

ADMINISTRATIVE INSTRUCTION

NUMBER 040
September 14, 2018

J-1, R&M, HRD

SUBJECT: Management Directed Inquiries of Employee Conduct

References: See Enclosure 1.

1. **PURPOSE.** This Defense Health Agency-Administrative Instruction (DHA-AI), based on the authority of References (a) and (b), and in accordance with the guidance of References (c) through (k), establishes the Defense Health Agency's (DHA) procedures:

a. For Management Directed Inquiries of Employee Conduct. These Inquiries are to compile relevant evidence to determine whether misconduct has occurred, if the misconduct warrants disciplinary action, and the range of appropriate disciplinary actions. The intent is to ascertain and consider evidence on all sides of an issue, to be thorough while maintaining impartiality, make findings and recommendations warranted by the facts, and comply with the instructions of the appointing authority.

b. To be used by those who have been appointed to lead these Inquiries by conducting timely, thorough, and legally sufficient reviews. It is designed specifically for informal inquiries.

c. To cancel and reissues Reference (l).

2. **APPLICABILITY.** This DHA-AI applies to all DHA personnel to include: assigned, attached, or detailed Service members, federal civilians, contractors (when required by the terms of the applicable contract), and other personnel assigned temporary or permanent duties at DHA, to include regional and field activities (remote locations) and the National Capital Region Medical Directorate activities (centers, clinics, and Medical Treatment Facilities).

3. **POLICY IMPLEMENTATION.** It is DHA's policy, pursuant to References (a) through (n), to provide guidance to individuals who have been appointed to conduct a timely, thorough, and

legally sufficient review of the conduct of DHA employees. This DHA-AI ensures that inquiries are conducted in accordance with the following legal guidelines with the right to:

a. Manage an Agency workforce, and take appropriate disciplinary and adverse action implicit in the Civil Service Reform Act in accordance with Reference (o). The Civil Service Reform Act requires that an Agency prove, by a “preponderance of the evidence,” that an employee alleged misconduct occurred, and that adverse actions being taken against an employee to “promote the efficiency of the service.” The statutory burden of proof of “preponderance of the evidence” necessitates the Agency’s right to gather relevant evidence.

b. Discipline of employees is reserved for management by the Federal statute (see Reference (d)). This statute states that management has the right to “suspend, remove, reduce in grade or pay, or take any other disciplinary action against employees.”

c. Collect information in support of the Inquiry, which includes the right to truthful answers. False answers or misrepresentations provided during an inquiry may be the basis for disciplinary or adverse action, including removal.

d. Rights of employees

(1) Non-bargaining unit employees do not have the right to be informed of the right to representation prior to the conduct of an interview. If the Individual Appointed believes that the review could lead to criminal prosecution, he/she should discontinue the interview and coordinate with his/her Human Resources (HR) point of contact (POC).

(2) Bargaining unit employees do have additional rights. Before initiating an interview, the Individual Appointed should coordinate with their HR POC as to what these rights may be. If a representative accompanies the employee to the interview, the Individual Appointed may insist on hearing the employee’s own account of the incident. The representative does not have the right to interrupt or otherwise obstruct the interview. However, the representative may ask to clarify questions that are being asked of the employee, help the employee present the facts in his/her defense, and “consult privately” with the employee.

e. Keep the files and statements safe, advise all witnesses that they are not to discuss their testimony, and refrain from discussing the matter outside of those who have a need-to-know, in accordance with the Individual Appointed. They should not promise confidentiality or anonymity to witnesses because those who have a need-to-know may be privy to statements made during the review.

f. If harassment, mistreatment, or discrimination based on an employee’s affiliation with a protected class (e.g., race, gender, age, national origin, etc.), in accordance with Reference (m), is raised by an employee or surfaces during the review, then the Individual Appointed must immediately contact the DHA Equal Employment Opportunity office for guidance and assistance.

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3.

6. RELEASABILITY. **Not cleared for public release.** This DHA-AI is available to users with Common Access Card authorization on the DHA SharePoint site at:
<http://www.health.mil/dhapublications>.

7. EFFECTIVE DATE. This DHA-AI:

a. Is effective upon signature.

b. Will expire 10 years from the date of signature if it has not been reissued or cancelled before this date in accordance with DHA-Procedural Instruction 5025.01 (Reference (c)).



R. C. BONO
VADM, MC, USN
Director

Enclosures

1. References
2. Responsibilities
3. Procedures
4. Information Requirements
5. Sample Appointment Memorandum
6. Defense Health Agency Form 37: Witness Statement Form
7. Defense Health Agency Form 36: Employee Information and Acknowledgement Form
8. Sample Memorandum: Findings and Recommendations
9. Confidentiality Statement
10. Steps to Conducting a Successful Interview

Glossary

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5136.01, "Assistant Secretary of Defense for Health Affairs (ASD(HA))," September 30, 2013, as amended
- (b) DoD Directive 5136.13, "Defense Health Agency (DHA)," September 30, 2013
- (c) DHA-Procedural Instruction 5025.01, "Publication System," August 21, 2015, as amended
- (d) United States Code Title 5, Section 7106(a)(2)(A)
- (e) DoD Directive 5400.11, "DoD Privacy Program," October 29, 2014
- (f) United States Code, Title 5, Section 552(a)
- (g) Privacy Act and the Health Insurance Portability and Accountability (HIPAA) Act of 1996
- (h) United States Code, Title 28, Section 1746
- (i) DoD 5400.7-R, "DoD Freedom of Information Act Program," September 1998, as amended
- (j) DoD 6025.18-R, "DoD Health Information Privacy Regulation," January 24, 2003
- (k) DoD Instruction 8580.02, "Security of Individually Identifiable Health Information in DoD Health Care Programs," August 12, 2015
- (l) TRICARE Management Activity Administrative Instruction 040, "Reviews of TRICARE Management Activity Employee Conduct," September 27, 2012 (hereby cancelled)
- (m) Title VII of the Civil Rights Act of 1964, July 2, 1964
- (n) DoD Instruction 8500.01, "Cybersecurity," March 14, 2014
- (o) Civil Service Reform Act of 1978, October 13, 1978

ENCLOSURE 2

RESPONSIBILITIES

1. DIRECTOR, DHA. The Director, DHA, will oversee implementation of this DHA-AI.

2. APPOINTING OFFICIAL. The Assistant Directors, Deputy Assistant Directors, or their designees, in the role of Appointing Official, will:
 - a. Appoint an individual to review the conduct in question.

 - b. Select the best qualified person for the duty based on education, training, experience, length of service, and temperament since the results of any review may have a significant impact on the policies, procedures, or careers of DHA personnel.

 - c. Ensure the individual(s) appointed are senior to any person that is part of the review if the review requires the individual(s) appointed to make adverse findings or recommendations against the person under review.

 - d. Ensure there is a consistent, thorough approach to conducting their review of employee-related problems or disturbances, and in the preparation of a report with recommendations for a Deciding Official.

3. INDIVIDUAL APPOINTED. The Individual Appointed will:
 - a. Ascertain and consider the evidence on all sides of the issue.

 - b. Conduct themselves impartially and thoroughly.

 - c. Provide findings and recommendations warranted by the facts, and comply with the instructions of the Appointing Official.

 - d. Report the findings and recommendations to the appropriate Deciding Officials (Supervisor(s) or Manager(s)).

 - e. Coordinate with Management Employee and Labor Relations (MELR) and Office of General Counsel (OGC) for review of investigative findings and recommendations prior to formally presenting them to the Deciding Official.

4. DECIDING OFFICIALS (SUPERVISOR(S) OR MANAGER(S)). The Deciding Officials (Supervisor(s) or Manager(s)), in the affected organization, will consider the findings and recommendations and decide to: accept; not accept; or modify the action(s) taken.

5. CHIEF, HUMAN RESOURCES DIVISION (HRD). The Chief, HRD, will fully support the Inquiry by:

- a. Serving as a liaison and resource for the Individual Appointed and the Appointing Official.
- b. Providing technical advisory services and HR-related guidance regarding this DHA-AI.
- c. Executing action or assisting in implementing any recommendation(s), as appropriate, as directed by the Appointing Official.

6. OGC. The OGC will provide support to the Inquiry by:

- a. Briefing the Appointed Individual on the legal aspects prior to beginning the Inquiry.
- b. Serving as a legal resource for the Individual Appointed and the Appointing Official, working with MELR Branch, to assist the Individual Appointed and the Appointing Official in framing the issues, identifying required information, planning the investigation, and interpreting and analyzing information obtained.
- c. Serving as a legal resource to the Individual Appointed and the Appointed Official throughout the investigation and final reporting to the Deciding Official.
- d. Conducting a final legal review of inquiry findings and recommendations prior to presentation to the Deciding Official.
- e. Executing action or assisting in implementing any recommendation(s), as appropriate, as directed by the Appointing Official.
- f. Providing legal advisory services and legal guidance regarding this DHA-AI.

ENCLOSURE 3

PROCEDURES

1. PRELIMINARY MATTERS. These procedures are to be used to conduct Management Directed Inquiries of Employee Conduct. They are to be used as an outline for compiling and analyzing facts during these Inquiries and making recommendations based on those facts. These procedures may be used to determine facts and circumstances. They are not intended to provide a hearing for persons who may have an interest in the subject of the Inquiry.

2. APPOINTMENT PROCEDURES. The Appointing Official appoints an individual by issuing a memorandum with the appropriate authority line (see Enclosure 5). The appointment should specify clearly the purpose and scope of the review, and the nature of the findings and recommendations required. If the instructions are unclear, the Individual Appointed should seek clarification. The primary purpose of an Inquiry is to report on matters that the Appointing Official has designated for the Inquiry. The Appointment Memorandum may also contain specific guidance from the Appointing Official which must be followed. For example, sworn witness statements are not required under most Inquiries; however, if the Appointing Official requires this, all witness statements must be sworn.

3. ADMINISTRATIVE MATTERS

a. The Appointment Memorandum (see Enclosure 5), should state the suspense for conducting the Inquiry. It is crucial that the Inquiry be conducted expeditiously as memories may quickly fade, documents may be lost, and witnesses leave. Also, a prolonged inquiry may allow an individual to destroy evidence or influence witnesses. The Inquiry takes precedence over all other duties. The Individual Appointed should ensure his/her supervisory chain understands the precedence of the mission so that his/her Deciding Official (Supervisor(s) or Manager(s)) may coordinate with the Appointing Official to resolve conflicts with other duties. As soon as the individual is appointed, he/she should begin a chronology, showing the date, time, and a short description of everything done about the Inquiry. The chronology should begin with the date appointed, whether verbal or written. The Individual Appointed should also record the reason for any unusual delays in processing the case, such as the absence of witnesses. The chronology should be part of the final case file.

b. The Appointment Memorandum (see Enclosure 5), should state the specific issue(s). The Individual Appointed is to make factual findings in the final report and to recommend an appropriate course of action. Before proceeding with the Inquiry, if the Individual Appointed does not clearly understand the issues, he/she should contact the legal advisor and/or MELR Specialist. During the Inquiry, the Individual Appointed may uncover other relevant issues that are outside the scope of the Inquiry. He/she should consult with the legal advisor before expanding the Inquiry into the new areas.

4. CONCURRENT REVIEWS. An informal review may be conducted before, concurrently with, or after a Management Directed Inquiry into the same or related matter(s) by another organization. Appointing Officials and Individuals Appointed must ensure Inquiries do not hinder or interfere with criminal investigations or investigations directed by higher headquarters. In cases of concurrent reviews, Individuals Appointed should coordinate with the other authority to avoid duplication of effort wherever possible. If available, the results of other reviews may be incorporated into the DHA Inquiry. Additionally, the Individual Appointed should immediately coordinate with the legal advisor if he/she discovers evidence of criminal misconduct.

5. INDIVIDUAL(S) APPOINTED. The Individual(s) Appointed must receive a briefing from a legal advisor from the OGC, prior to beginning the Inquiry. OGC and/or MELR/HRD can provide assistance to an Individual Appointed at the beginning of, and at any time during, the Inquiry. Individuals appointed should always seek legal advice as soon as possible after they are informed of this duty, and as often as needed while conducting the Inquiry. A final legal review is mandatory, and this requirement should be included in the Appointment Memorandum. Early coordination with the legal advisor will allow problems to be resolved before they are identified in the mandatory legal review. The legal advisor, and/or a specialist from the MELR Branch, can assist in framing the issues, identifying the information required, planning the investigation, and interpreting and analyzing the information obtained. However, the role of MELR is to provide administrative advice and assistance, not to conduct the review or substitute his/her judgment for that of the Individual Appointed.

6. CONDUCTING THE REVIEW

a. The primary duty of the Individual Appointed is to compile evidence and make findings of fact and appropriate recommendations to the Deciding Official. Before obtaining information; however, he/she should develop a plan that consists of: (1) an understanding of the facts required to reach a conclusion, and (2) a strategy for obtaining evidence. This should include a list of potential witnesses and a plan for when each witness will be interviewed. The order in which witnesses are interviewed may be important. An effective, efficient method is to interview principal witnesses last. This best prepares the Individual Appointed to ask all relevant questions and minimizes the need to re-interview these critical witnesses. As the review proceeds, it may be necessary to review and modify the plan.

b. The Individual Appointed should begin the Inquiry by identifying the information already available, and determining what additional information will be required before findings and recommendations may be made to the Deciding Official. An important part of this is establishing the appropriate standards, rules, or procedures that govern the circumstances. The legal advisor, or other functional expert, can assist the Individual Appointed in determining the information that will be required.

7. OBTAINING DOCUMENTARY AND PHYSICAL EVIDENCE

a. The Individual Appointed may need to collect documentary and physical evidence such as applicable regulations, existing witness statements, accident or police reports, and photographs. This information can save valuable time and effort. Accordingly, the Individual Appointed should obtain this information at the beginning of the Inquiry. In some cases, the information will not be readily available so the request should be made early so the Individual Appointed may continue to work on other aspects of the Inquiry while the request is being processed. The Individual Appointed should, if possible and appropriate, personally inspect the location of the events and take photographs, if they will assist the Deciding Official.

b. A recurring problem that must be avoided is lack of documentation in Inquiries with findings of no fault, no loss, or no wrongdoing. It is just as important to back these findings up with documentary evidence as it is to document adverse findings. Frequently, one who makes a finding of no fault, no loss, or no wrongdoing closes the Inquiry with little or no documentation, which is incorrect. The report must include sufficient documentation to convince the Deciding Official who may receive the Inquiry that the finding of no fault, no loss, or no wrongdoing is supported by the evidence.

8. OBTAINING WITNESS TESTIMONY

a. In most cases, witness testimony will be required. Clearly, the best interviews occur face-to-face; but, if necessary, interviews may be conducted by telephone and should be used only in unusual circumstances. Information obtained telephonically should be documented in a Memorandum for Record (MFR).

b. Witness statements can be taken on Defense Health Agency Form 37: Witness Statement Form (see Enclosure 6). Legible handwritten statements and/or questions and answers are ordinarily sufficient. If the witness testimony involves technical terms that are not generally known outside of the witness' field of expertise, the witness should be asked to define the terms the first time they are used.

c. The Individual Appointed:

(1) Does not have the authority to subpoena witnesses, and their authority to interview civilian witnesses who are not Federal employees may be subject to certain limitations.

(2) Has the authority to direct Military members and Federal civilian employees to appear.

(3) Must obtain prior approval from the contracting company before interviewing their contract employee(s). Civilian witnesses who are not Federal employees may agree to appear, and, if necessary, be issued invitational travel orders. This authority should be used only if the information cannot be otherwise obtained and only after coordinating with the legal advisor or Appointing Official.

9. SCHEDULING WITNESS INTERVIEWS. The Individual Appointed will need to determine which witnesses should be interviewed and in what order. Oftentimes, information provided by one witness can raise issues that should be discussed with another. Organizing the witness interviews will save time and effort that would otherwise be spent “backtracking” to re-interview prior witnesses concerning information provided by subsequent witnesses. While re-interviewing may be unavoidable in some circumstances, it should be kept to a minimum. The following suggests an approach to organizing witness interviews; it is not mandatory.

a. When planning who to interview, work from the center of the issue outward, and identify the people who are likely to provide the best information. When conducting the interviews, start with witnesses who will provide all relevant background information and frame the issues. This will allow the interviews of key witnesses to be as complete as possible, avoiding “backtracking” as described above.

b. Concentrate on those witnesses who would have the most direct knowledge about the events in question. Without unnecessarily disclosing the evidence obtained, attempt to seek information that would support or refute information already obtained from others. In closing an interview, it is appropriate to ask if the witness knows of any other persons who might have useful information or any other information the witness believes may be relevant to the Inquiry.

c. Any information that is relevant should be collected regardless of the source; however, reviewers should collect the best information available from the most direct source.

d. It may be necessary or advisable to interview experts having a specialized understanding of the subject matter of the review.

e. At some point, there will be no more witnesses available with relevant and useful information. It is not necessary to interview every member of an organization—for example, if only a few people have information relevant to the Inquiry. Also, all relevant witnesses do not need to be interviewed if the facts are clearly established and not in dispute. However, the Individual Appointed must be careful not to prematurely terminate an Inquiry because a few witnesses give consistent testimony.

10. CONDUCTING WITNESS INTERVIEWS. Before conducting witness interviews, the following suggestions will be helpful:

a. Prepare for the interview. While there is no need to develop scripts for the witness interviews, Individuals Appointed may wish to review the information required and prepare a list of questions or key issues to be covered. This will prevent the Individual Appointed from missing issues and will maximize the use of the officer’s and witness’ time. Generally, it is helpful to begin with open-ended questions such as “Can you tell me what happened?” After a general outline of events is developed, follow up with narrow, probing questions, such as “Did you see Ms. X leave the bar before or after Mr. Y?” Weaknesses or inconsistencies in testimony can generally be better explored once the general sequence of events has been provided.

b. Complete Defense Health Agency Form 36: Employee Information and Acknowledgement Form (see Enclosure 7) for each witness. Ask the witness to sign the statement documented on the form to attest that the statement will be truthful. In the event a witness is willing to be interviewed, but refuses to make a written statement, immediately prepare an MFR to reflect in detail all statements made by the witness. If a Military or Federal civilian employee witness refuses to discuss a case, determine why the witness refuses to cooperate and consult with the legal advisor.

c. First, informally interview the witness asking open-ended questions. Once the questions have been fully discussed, back-brief the witness on the relevant aspects of the interview. This allows the witness to clarify any key points or add other relevant information. Then, ask the witness to write a written statement to the effect of his/her oral statements. It is not necessary to have a typed statement.

It is preferable to have the statement in the witness' own handwriting. But, if the witness' handwriting is illegible, someone else may write the statement. The question and answer format should be used to elicit this information. Both the Individual Appointed and the witness must carefully read the witness' statement before signing to ensure that it is clear and understandable. Also, any relevant documents that the witness may possess to corroborate the statement and to identify other relevant witnesses should be obtained at this point.

d. Do not use a tape recorder to record any witness interviews without consulting with the legal advisor first. If recordings are made, they become evidence and must be preserved with the final report. Tape recordings are usually unnecessary and not advisable.

e. Interview certain witnesses telephonically, if necessary. The witness may fax a signed statement or send via email to the Individual Appointed, with the original being sent by mail. The more significant a witness' testimony is, the more important it is to have the witness record a statement in his/her own words.

f. Ensure the witness' privacy. The Individual Appointed should conduct the interview in an environment that will be free from interruptions and will permit the witness to speak candidly without fear of being overheard. Witnesses should not be subjected to improper questions, unnecessarily harsh and insulting treatment, or unnecessary inquiry into private affairs.

g. Focus on relevant information. Unless precluded for some reason, the Individual Appointed should begin the interview by telling the witness about the subject matter of the Inquiry. Generally, any evidence that is relevant and useful to the review is permissible. The Individual Appointed should not permit the witness to get off track on other issues, no matter how important the subject may be to the witness. Information should be material and relevant to the matter being reviewed. Relevancy depends on the circumstances in each case.

11. RULES OF EVIDENCE. A review under this DHA-AI is an administrative action and not a judicial action, and the rules of evidence normally used in court proceedings do not apply. Therefore, the evidence that may be used is limited by only a few rules. The Individual

Appointed should consult the legal advisor if he/she has any questions concerning the applicability of any of these rules.

a. The information must be relevant and material to the matter or matters under review.

b. Privileged communications between husband and wife, clergy member and penitent, and attorney and client may not be considered. Furthermore, the present or former inspector general personnel will not be required to disclose the contents of inspector general reports, investigations, inspections, action requests, or other memoranda without appropriate approval.

12. STANDARD OF PROOF. Since a review is not a criminal proceeding, there is no requirement that facts and findings be proven beyond a reasonable doubt. Instead, unless another specific directive states otherwise, this DHA-AI provides that the findings must be supported by a greater weight of evidence than supports a contrary conclusion, which is based on evidence. After considering all evidence presented, the findings point to a particular conclusion as being more credible and probable than any other conclusion.

13. CONCLUDING THE INQUIRY

a. Preparing Findings and Recommendations. After all the evidence is collected, the Individual Appointed must review it and make findings. The Individual Appointed should consider the evidence thoroughly and impartially, and make findings of fact and recommendations that are supported by the facts while complying with the instructions of the appointing authority.

b. Facts. To the extent possible, the Individual Appointed should accurately fix dates, places, persons, and events. The Individual Appointed should be able to answer questions such as: What occurred? When did it occur? How did it occur? Who was involved, and to what extent? Exact descriptions and values of any property at issue in the review should be provided.

c. Findings. A finding is a clear and concise statement that can be deduced from the evidence in the record. Then developing findings, the Individual Appointed is permitted to rely on the facts and any reasonable inferences that may be drawn from those facts. In stating findings, the Individual Appointed should refer to the exhibit or exhibits relied upon in making each finding (e.g., “Mr. Smith was intoxicated at the time of the collision with a Blood Alcohol Content of 0.17 (see Exhibit E).” It may be appropriate to make negative findings, including findings of no fault, no loss, or no wrongdoing.

(1) Negative findings must also be supported by the documented evidence that will become part of the report. If a finding is based on the observations of the Individual Appointed, the observations should be explained in an MFR or reflected in a photograph or video. Exhibits should be numbered in the order they are discussed in the findings. It should be noted that often the Individual Appointed will be faced with conflicting or contradictory statements (often described as “he said, she said” situations). The mere fact that only two individuals were present

in a room and each testifies to contrary facts does not mean that the witnesses cancel each other out.

(2) The Individual Appointed must decide who to believe and explain in the findings why one witness was found to be more credible than the other. This should be based on corroboration, credibility, and common sense. For example, it may be based on a more believable description of the events, because one witness' demeanor and method of answering questions appears forthright rather than evasive, or for a variety of other reasons.

d. Recommendations. Recommendations should take the form of proposed courses of action consistent with the findings, such as disciplinary action, a training course, or other corrective action. Recommendations must be supported by the facts and consistent with the findings. Each recommendation should cite the specific findings that support the recommendation.

e. Preparing the Submission to the Deciding Official (Supervisor(s) or Manager(s)). After developing the findings and recommendations, the Individual Appointed should complete the report including a Findings and Recommendation Memorandum (see Enclosure 8), and assemble the packet in the following order:

- (1) Appointing order;
- (2) Initial information collected;
- (3) Rights, warning statements;
- (4) Chronology; and
- (5) Exhibits (with an index).

14. LEGAL REVIEW

a. This DHA-AI requires that all Inquiries receive a legal review. Generally, the legal review will determine the following:

- (1) Whether the Inquiry complies with requirements in the appointing order and other legal requirements.
- (2) The effects of any errors in the Inquiry.
- (3) Whether the findings, including findings of no fault, no loss, or no wrongdoing, and recommendations are supported by sufficient evidence.
- (4) Whether the recommendations are consistent with the findings.

b. The legal review must be completed before the Deciding Official accepts the findings and recommendations. After receiving a completed Findings and Recommendations Memorandum report from the reviewer, the Deciding Official may accept, not accept, or modify the findings and recommendations, or they may direct further action, such as the taking of additional evidence or making additional findings.

c. “Off-the-record” statements are not acceptable.

ENCLOSURE 4

INFORMATION REQUIREMENTS

1. Consistent with DoD security and Privacy Act policies, sensitive information in regards to the Inquiry process must be safeguarded and confidentiality maintained.

2. All files, records, papers, or machine-readable materials created while completing this Inquiry are the property of DHA, and will be retained in the MELR Branch/HRD once the investigation is complete.

3. Sensitive information will be transported in opaque envelopes to prevent unintentional disclosure. These documents must be returned upon completion of the assignment.

4. Sensitive information will not be transported or stored without proper encryption as required by DoD policy in accordance with References (k) and (n).

5. Records containing sensitive information may not be disclosed to anyone except those with authorized access as a requirement of their official responsibilities.

6. Inquiry materials, which include personally identifiable information and protected health information, in accordance with Reference (g), respectively, must be safeguarded in accordance with the aforementioned acts.

TASKS			Comments/ Concerns
1. Preliminary Matters	a. Has the Appointing Official appointed an appropriate individual based on seniority, availability, experience, and expertise?		
	b. Does the Appointment Memorandum clearly state the purpose and scope of the Inquiry, the POCs for assistance (if appropriate), and the nature of the findings and recommendations required?		
	c. Has the initial legal briefing been accomplished?		
2. Plan	a. Does the plan outline the background information that must be gathered, identify the witnesses who must be interviewed, and order the interviews in the most effective manner?		
	b. Does the plan identify witnesses no longer in the Agency and address alternative ways of interviewing them?		
	c. Have all witnesses signed Confidentiality Statements		

TASKS			Comments/ Concerns
	(Enclosure 9)?		
	d. Does the plan identify information not immediately available and outline steps to quickly obtain the information?		
3. Conducting the Inquiry	a. Is the chronology being maintained in sufficient detail to identify causes for unusual delays?		
	b. Is the information collected (e.g., witness statements, MFRs of phone conversations, photographs, etc.) being retained and organized?		
	c. Is routine coordination with the legal advisor being accomplished?		
4. Preparing Findings and Recommendations	a. Is the evidence assembled in a logical and coherent fashion?		
	b. Are the findings (including findings of no fault, no loss, or no wrongdoing) supported by the evidence? Does each finding cite the exhibits that support it?		
	c. Are the recommendations supported by the findings? Does each recommendation cite the findings that support it?		
	d. Are the findings and recommendations responsive to the tasking in the Appointment Memorandum?		
	e. Did the Inquiry address all issues (e.g., systemic breakdowns, failures in supervision, oversight, or leadership; program weaknesses; accountability for errors; and other relevant areas of inquiry) raised directly or indirectly by the appointment?		
5. Final Action	a. Was an appropriate legal review conducted?		
	b. Have the necessary taskers been prepared and completed to implement the recommendations?		

ENCLOSURE 5

SAMPLE APPOINTMENT MEMORANDUM



DEFENSE HEALTH AGENCY
7700 ARLINGTON BOULEVARD, SUITE 5101
FALLS CHURCH, VIRGINIA 22042-5101

Component

MEMORANDUM FOR _____

SUBJECT: Management Directed Inquiry into _____

You have been officially appointed to conduct a Management Directed Inquiry into the following:

With concurrence from your supervisor, _____, you are hereby appointed to review the issues as stated in this memorandum. Please review Defense Health Agency Administrative Instruction Number 040, "Management Directed Inquiries of Employee Conduct," for information and procedures for completing a Management Directed Inquiry. Prior to beginning this Inquiry, you must receive a briefing from a legal advisor from the Office of General Counsel (OGC). Please inquire into all relevant facts and circumstances related to the above matter. Provide your findings and recommendations to OGC for legal review. After review by OGC, provide your final report to me no later than _____. You may also contact Chief, Management Employee & Labor Relations Branch, at (XXX) XXX-XXXX, for assistance with this Inquiry. Your assistance in this matter is greatly appreciated.

Appointing Official
Signature Block

ENCLOSURE 6

DEFENSE HEALTH AGENCY FORM 37: WITNESS STATEMENT FORM

Witness Statement Form	
<i>Pursuant to Title 28, United States Code, Section 1746 (Reference (h)), I, [name of person providing testimony], declare as follows:</i>	
[Body of Declaration]	
Print Name	Title
Signature	Date
Print Name (Witness)	Title
Signature (Witness)	Date
DHA OA Form 37	

ENCLOSURE 7

DEFENSE HEALTH AGENCY FORM 36: EMPLOYEE INFORMATION AND
ACKNOWLEDGEMENT FORM

EMPLOYEE INFORMATION AND ACKNOWLEDGEMENT FORM	
<i>Please read carefully and acknowledge each section by initialing in the space provided:</i>	
<p>___ I have been informed, and I understand this is a review involving matters relating to my official duties as a Federal employee.</p> <p>___ I have been informed and understand that if I provide information during this review that <i>I know to be false</i> at the time I provide that information, my providing false information may be the basis for criminal prosecution and/or disciplinary action, which may result in my removal from Federal service.</p>	
Print Name Below	Title
Signature	Date
Print Name (Witness)	Title
Signature (Witness)	Date
DHA OA Form 36	

ENCLOSURE 8

SAMPLE MEMORANDUM: FINDINGS AND RECOMMENDATIONS



DEFENSE HEALTH AGENCY
7700 ARLINGTON BOULEVARD,
SUITE 5101
FALLS CHURCH, VIRGINIA
22042-5101

Findings and Recommendations

1. Date:
2. Name of Official Conducting Inquiry:
3. Rank and/or Grade of Official:
4. Position and Phone Number:
5. Organization:
6. Scope of Inquiry, Findings, Conclusions, and Recommendations:
7. Scope of Review:
 - a. Allegations:
 - b. Scope, Nature, and Manner of Inquiry Conducted:
 - c. Documents Reviewed:
 - d. Personnel Interviewed:
8. Findings:
9. Conclusions:
10. Recommendations:

ENCLOSURE 9

CONFIDENTIALITY STATEMENT



DEFENSE HEALTH AGENCY
7700 ARLINGTON BOULEVARD,
SUITE 5101
FALLS CHURCH, VIRGINIA
22042-5101

SUBJECT: Confidentiality Nondisclosure Agreement

As a participant in a Defense Health Agency (DHA) proceeding requiring a high degree of confidentiality regarding employees' personal information and concerns and/or Privacy Act protected information, I will have access to written information, both hard copy and electronic, and will be privy to oral information pertaining to employees. I understand that this information is For Official Use Only and will not be disclosed to individuals without a legitimate need-to-know. Further, I understand that unauthorized disclosure may result in administrative sanctions up to, and including, my removal. I also understand that unauthorized disclosure of For Official Use Only information that is protected by the Privacy Act may result in civil and criminal sanctions. Consistent with DoD Directive 5400.11, "DoD Privacy Program," October 29, 2014, noted as Reference (e) in the DHA-Administrative Instruction 040, I will:

- Protect the security and confidentiality of personal information contained in a system of records to which I have access to or am using in connection to the conduct of official business.
- Not disclose any personal information contained in any system of records, except as authorized by applicable law or regulation.
- Report any unauthorized disclosures of personal information from a system of records or the maintenance of any system of records that are not authorized to the Chief, DHA Privacy and Civil Liberties Office.

I understand that no employee information is to be discussed, forwarded, or otherwise disseminated to persons outside the employee inquiry process (e.g., co-workers), unless there is an officially sanctioned need-to-know. I agree to not only safeguard privacy protected information, but to also protect from unauthorized disclosure information pertaining to the Inquiry process. Exempted from this requirement is that information specifically designated for public disclosure. The Inquiry into this DHA workplace concern in which I have been authorized to engage is limited only to relevant information which may or may not support a

decision by management to resolve this concern equitably and fairly, with all due attention to appropriate information and available resources substantiating the final decision which may be shared with the employee, or designated representative, seeking information on how any recommendations are determined.

I understand that I must coordinate with DHA's OGC and the Management Employee and Labor Relations (MELR) Branch prior to releasing information to those individuals outside the immediate inquiry process for any purpose, including additional official inquiries and reviews.

SIGNATURE

DATE

PRINTED NAME

ORGANIZATION

ENCLOSURE 10STEPS TO CONDUCTING A SUCCESSFUL INTERVIEW

No.	Steps to Conducting a Successful Interview
1)	Interview one witness at a time.
2)	Advise the witness of the general purpose of the <u>Inquiry</u> and of his/her rights and duties in the review.
3)	Advise the witness that a written declaration/affidavit will be prepared and he/she will receive a copy of the completed document.
4)	Advise the witness to tell you everything he/she knows about the issues. Record the testimony, but do not interrupt the employee to ask questions. During free narration, interviewees frequently provide valuable information while talking about things that may have seemed unrelated to the Individual Appointed prior to the interview.
5)	When the employee is finished, go back through your notes on the testimony carefully and ask specific and directed questions. Take verbatim notes and maintain a pace that allows you to take complete notes. Inform the witness that you may require follow-up meetings.
6)	Ask easy questions first then move to the more difficult issues. Leave the issues most likely to be in dispute until the end.
7)	Clarify everything! Pin down the facts. Never accept a vague or conclusory statement by the witness. You do not want to know that a person was angry; you want to know what they did, what they said, how they said it, if it was said in a loud voice or a screaming voice, etc. Likewise, words like drunk, confused, impolite, disrespectful, late, troublemaking, numerous, threatening, frequent, etc. are all too imprecise.
8)	Put the interview into the first-person statement using the exact words used by the witness. Do not edit or summarize in your own language or include your conclusions. Prepare the statement in one sitting, if possible, as soon as possible after the interview. Include the statement, "I declare under penalty of perjury that the foregoing is true and correct." When a witness signs such a statement, he/she may be found guilty of the crime of perjury if his/her statement is shown to be materially false.
9)	When the draft witness statement is complete, provide a copy to the witness to read for accuracy. If changes are required, have the employee record corrections directly on the witness statement and have the employee initial next to each change. Have the employee sign and date his/her review of the statement.
10)	After incorporating all necessary changes, sign and date your final account of the interview.
11)	Give the witness a copy of his/her final statement and have the witness sign and date the statement. Tell the witness to contact you immediately if he/she thinks of any new information. Make sure you know how to contact the witness again and make sure he/she knows how to contact you in the event of newly remembered information.
12)	Advise the witness to refrain from discussing his/her testimony with other prospective witnesses.
13)	Keep your original notes with the finished statement.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

DHA	Defense Health Agency
DHA-AI	Defense Health Agency-Administrative Instruction
HR	Human Resources
HRD	Human Resources Division
MELR	Management Employee and Labor Relations
MFR	Memorandum for Record
OGC	Office of General Counsel
POC	point of contact

PART II. DEFINITIONS

These terms and their definitions are for the purposes of this DHA-AI.

Appointing Official. Responsible for appointing the individual to review the conduct in question, per the Director, Assistant Directors, Deputy Assistant Directors, or their designee, in the role of Appointing Official.

Freedom of Information Act. A Federal freedom of information law that allows for the full or partial disclosure of previously unreleased information and documents controlled by the U.S. Government.

Individual Appointed. Appointed by the Appointing Official to conduct an impartial and thorough inquiry within certain parameters, and ascertain and consider the evidence on all sides of an issue. Make findings and recommendations warranted by the facts, comply with the instructions of the Appointing Official, and then report the findings and recommendations to the Deciding Official.

personally identifiable information. Information, which can be used to distinguish or trace an individual's identity, including name, Social Security number, date and place of birth, mother's maiden name, biometric records, and any other personal information which is linked or linkable to specified individual privacy data. Any record that is contained in a system of records, in accordance with Reference (f), and which, if the information was disclosed, would constitute an unwarranted invasion of personal privacy.

protected health information. Individually identifiable health information that is created, received, or maintained by a covered entity, including DHA, that is transmitted or maintained by

electronic or any other form or medium, except, as otherwise, contained in employment records held by DHA in its role as an employer.