UNITED STATES ARMY INSPECTOR GENERAL AGENCY

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THE ASSISTANCE AND INVESTIGATIONS GUIDE

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PREFACE

The Assistance and Investigations Guide provides a consolidated reference which focuses on how Inspectors General provide assistance and conduct inquiries/investigations. This guide attempts to create a tool that in conjunction with AR 20-1, prepares an IG to be able to provide the best support to the soldier, command, and the U.S. Army.

Comments and suggestions for improvements of this document should be made to Chief, Training Division, Department of the Army Inspector General (DAIG).

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SECTION I

ASSISTANCE

CHAPTER I -- Assistance.

1-1. General.

a. This chapter provides doctrine and procedures for implementing policies in AR 20-1 that relate to the Assistance Function. The information in this chapter applies to detailed, assistant, and acting IGs, except as otherwise noted.

b. This chapter describes the Assistance Function and the Inspector General Action Process (IGAP) that IGs will use to resolve Inspector General Action Requests (IGARs). The IG Assistance Function is the process of receiving, inquiring into, and responding to complaints and requests for information or help that are presented or referred to an IG. IGs provide assistance on an area basis so that complainants can go to the nearest IG for help (see AR 20-1, para 7-1d).

c. An IGAR is a complaint, allegation, or request for information or help presented or referred to an IG. IGARs may be submitted in any form, for example, in-person, by letter, telephone, fax, via E-mail, etc. The IG will record all IGARs on the DA Form 1559 as well as entering them into the IGARS data base. Once the IGAR has been accepted for action, resolve the IGAR by:

(1) Providing assistance,

(2) Referring the matter to the appropriate agency, or another IG,

(3) Conducting an IG inquiry or investigation,

(4) Referring the case to the chain of command for further investigation outside IG channels,

(5) Conducting an inspection.

d. The Inspector General Action Process (IGAP) enables the IG to assist the commander by acting as an ombudsman to correct injustices and eliminate conditions detrimental to the morale, efficiency and reputation of the unit and the Army.

1-2. Processing Inspector General Action Requests (IGAR)

The command or state IG is responsible for processing and resolving IGARs using the Inspector General Action Process (IGAP). Consequently, the IG must be familiar with this process and be capable of resolving IGARs, regardless of IG assignment.

1-3. Keeping the commander informed.

a. The IG should inform the commander about any individual case or allegation that could be significant to the command. An informed commander can take action, provided he or she is aware of the situation. However, the IG must appropriately protect the confidentiality of complainants and guard against reprisals. Ensure the commander and other members of the chain of command are sensitive to and aware of the statutory prohibition against reprisal for whistleblowing (See Chapter 8)

b. In addition, provide the commander with pertinent information derived from the IGARs received. The IG must ensure the commander is sensitive to the importance of protecting complainants. Large or increasing numbers of substantiated complaints may indicate the need for command action not otherwise warranted on the basis of a single allegation. On the other hand, large or increasing numbers of complaints not substantiated may indicate a higher expectation of a system than it was designed to deliver. Consistently large numbers of complaints about a system or issue, whether substantiated or not, are indicative of problems in that area. An IG should always watch for trends.

1-4. The Inspector General Action Process (IGAP)

a. The IGAP provides for a systematic fact-finding approach to problem solving. Specific actions or components of the IGAP are integral to the whole process and are not intended to be a group of individual steps that are accomplished independently during the process. The process does not require a dogmatic, sequential application of each step for every case. Using this process allows the IG to accomplish all critical tasks in resolving complaints. IGs commonly use these seven steps in receiving and resolving IGARs:

(1) STEP 1 - Receiving an IGAR (verbally or written)

(2) STEP 2 - Conducting IG Preliminary Analysis

(3) STEP 3 -- Initiating referrals and making notifications

(4) STEP 4 -- Conducting IG fact-finding

(5) STEP 5 -- Making notifications of results

(6) STEP 6 -- Conducting follow-up

(7) STEP 7 -- Closing the IGAR

b. Anyone can file an IGAR, either orally or in writing. There are no preconditions for a complainant wishing to see an IG. IGs will encourage soldiers and civilian employees to first discuss complaints, allegations, or requests for assistance with their commander, chain of command, or supervisors as provided in AR 600-20. If a complainant does not wish to do so, the IG will receive the IGAR unless specific redress procedures are available. Listed below are typical sources of IGARs received by IGs:

(1) Active army soldiers

(2) Reserve and National Guard soldiers

(3) Family members

(4) Department of Army civilians (DACs)

(5) Retirees and veterans

(6) Referrals from other Army IGs or commands

(7) Internal command or staff actions

(8) Anonymous

(9) Contractors and their employees

(10) Private citizens

(11) Other Services' IGs or members

(12) Referrals from other governmental agencies

(13) Media

1-5. STEP 1 -- Receiving the IGAR.

a. An IGAR is received by an IG when it is given, presented or referred to that IG, either directly, or indirectly. The IGAR may be received by any means and from any source regarding any matter of concern for which IG action is requested.

b. Walk-in. Apply the procedures used to process walk-in complaints, as appropriate, to all IGARs.

(1) Remember this is an interview, and the key to successful interviewing is to establish rapport and listen. IGs are an extension of the eyes, ears, voice and conscience of the commander. Chapter 5, Appendix O, of the A&I Guide, and ST1, Communicative Skills, discuss in more detail interviewing techniques that are useful in all IG interviews.

(2) Screen walk-in complainants in a semiprivate area and then move them to a private room for an interview. Put the individual at ease, and maintain an attitude of sincere interest throughout the interview. Carefully consider each complaint or matter of concern presented. Remember what may seem trivial to the IG may represent a serious problem to the complainant. Conduct the discussion in an informal basis; however, always maintain a professional attitude and bearing. This encourages the complainant to freely express concerns and issues. Observe proper dignity at all times, and do not automatically insist (initially) on proper military customs and courtesy. The IG must recognize that the timing of corrections is important and may involve some risk. Corrections made too early in the interview could result in the individual being less than open and candid. While there is certainly a legitimate need for an IG to enforce standards of military appearance and courtesy and the techniques used and timing for such corrections will be personality dependent, they will likely have a significant impact on the success of the interview. The IG must weigh and balance “costs” and “risks” in deciding what actions to take.

(3) Afford the complainant sufficient time to discuss the matters of concern or to express requests without interruption. If the complainant talks about irrelevant matters and prolongs the discussion unnecessarily, ask questions to develop the pertinent facts and maintain control of the interview.

(4) The IG should ask the individual, **"What do you want the IG to do?"** This is the single most important question an IG can ask. It helps to focus the complainant. It also ensures that the matters of concern are of Army interest and appropriate for the IG. Other pertinent questions the IG should ask prior to determining whether to accept the IGAR for action are:

(a) Do you have any supporting documentation?

(b) Has assistance been requested from other agencies?

(c) Is your chain of command aware of the problem?

These questions should provide the IG with information pertaining to whether or not the complainant has already been, or is currently being assisted by the chain or command or another

agency. If some other action was initiated, determine whether sufficient time elapsed to resolve the matter. With that information determine if it is appropriate to accept the IGAR for action or advise the individual of future actions that may need to be taken before IG involvement becomes necessary.

(5) The individual or the IG will complete DA Form 1559, Inspector General Action Request (Appendix A). The DA Form 1559 is the base control document for every IGAR. It documents workload, assists in identifying trends and systemic issues, and facilitates entry into the IGARS database. It can also be used to provide the commanding general with information and insight for improvement of the command. Under normal circumstances, do not require the complainant to swear to the matters presented. Ask the individual to read the Privacy Act Statement at the top of the form. The purpose of having the complainant read the Privacy Act is to show that IGs have the authority to request personal information and that the release of the complainant's social security number, home address, and home telephone number is voluntary. If necessary, ask the complainant to read the statement at the bottom of the page concerning presenting false charge's to an IG. Do not place undue emphasis on the false charge statement.

(6) Under unusual circumstances an IG may ask an individual to give a statement under oath (US citizens only). For example, if the IG doubts the veracity of a complainant who presents allegations of serious misconduct by senior officials, a sworn statement may be taken. If the complainant declines, the IG should take the statement, and record the declination to swear.

(7) Individuals visit IGs, often with an expectation of confidentiality. If so, take appropriate actions when preparing the case file. The IG should explain the inspector general policy on confidentiality to the individual and how it is treated in the same manner as a doctor-patient relationship. Stress the fact that **IGs cannot guarantee confidentiality**. The IG has a duty to protect confidentiality to the maximum extent possible, particularly when it is specifically requested. Simply inform the complainant of the rules and make an entry in the case file. (See para 1-12, AR 20-1)

(8) When a person requests anonymity, the IG will take more extensive measures to protect the person's identity. The complainants name will not be used as a file identifier or as a means to retrieve a file. In most anonymous cases the IG will not know the identity of the complainant. IGs will protect anonymity, but like confidentiality, it cannot be guaranteed.

(9) Review the DA Form 1559 for completeness while the complainant is present. If necessary, the IG may assist the individual in drafting the complaint.

(10) During the interview the IG should not make promises or commitments. Inform the complainant that the IG will look into the matter, and, when appropriate, respond to the complainant. Often an IG will receive a complaint from a third party. In this circumstance, the IG should provide the complainant a reply that expresses appreciation for the information and assure the complainant that an IG will look into the matter and will take appropriate action. They should be informed that they are a third party and will not be provided any further information regarding the matter presented. In the situation when a parent or spouse is the third party, and the IGAR is pertaining to their son/daughter, or spouse, explain that a privacy act statement will be required from the son/daughter, or spouse before any further information pertaining to the matter presented will be released to them.

(11) After the complainant has departed, the IG may record impressions of the complainant's understanding, attitude, apparent sincerity, credibility, and veracity in order to assist others in taking action. IGs can record their impressions in their case notes, remembering that case notes maintained in the file are releasable under the Freedom of Information Act (FOIA).

c. Call-in. When the IG receives a telephonic IGAR, the complainant should be advised of the Privacy Act and the false charge statement. Record the request on DA Form 1559 and indicate "Telephonic" in the signature block. It may be necessary to ask the individual to confirm a telephonic IGAR in writing and to submit other available information. Do this as the situation warrants. If the complainant makes an allegation telephonically, the IG should request the complainant follow-up with a written copy of the allegation.

d. Write-in. IGs may receive written complaints or requests for assistance in a variety of ways. The most frequent categories are:

(1) White House (Presidential) correspondence. The Army White House Liaison Office (WHLO) refers requests from the President, Vice President, or their spouses and family members to DAIG or to an Army staff element. Those referred to DAIG are normally letters requesting assistance or making allegations about Army personnel or units. The DAIG, Assistance Division, responds to the individual on behalf of the White House official. The Assistance Division normally refers these requests through the Major Command (MACOM) IG, to the field IG for action. The command or state IG completes the case and returns a copy of the

report of inquiry or investigation through the MACOM IG to the Assistance Division for reply to the complainant.

(a) If an IG receives a White House request from the local Liaison Office pertaining to issues that are being worked or have been completed, the IG will advise the DAIG Assistance Division of the request, and send them a case summary. DAIG will assume case responsibility, inform WHLO, set a new suspense date and formally refer the case, through the MACOM IG, to the field IG for action. The local IG must inform the local Liaison Office that DAIG has assumed responsibility for the case and return a copy of the report of inquiry or investigation through the MACOM IG, to the Assistance Division for reply to the complainant on behalf of the White House.

(b) If DAIG Assistance Division refers a case to a field IG that is currently being worked or has been previously worked by a local Liaison Office as a White House referral, the field IG will inform DAIG Assistance Division. The local IG should request a copy of the completed case from the Liaison Office, review it for completeness, ensure that all of the issues/allegations received from DAIG are addressed, and forward a copy of the case to the DAIG Assistance Division for review and response on behalf of the White House. If the case is not completed, inform DAIG Assistance Division and send a completed copy of the inquiry or investigation when received from the Liaison Office after completing the review.

(2) Congressional correspondence. Referrals from Members of Congress (MC) include requests from constituents for assistance, inquiry or investigation of alleged mistreatment or wrongdoing. The Army Office of the Chief of Legislative Liaison (OCLL) receives cases from MCs and refers them to either the Army Staff, the chain of command (Adjutant General (AG) Congressional channels), or to DAIG. The Assistance Division normally refers an OCLL case, through the MACOM IG, to the field IG for action. The command or state IG completes the case and returns a copy of the report of inquiry or investigation through the MACOM IG, to the Assistance Division for reply to the MC. The MC then responds to the constituent.

(a) If an IG receives a Congressional request for assistance from the local Congressional Inquiries Office, pertaining to issues that are being worked or have been completed, the IG will advise the DAIG Assistance Division of the request, and send them a case summary. DAIG will assume case responsibility, informing OCLL, set a new suspense date and formally refer the case, through the MACOM IG, to the field IG for action. The local IG must inform the local Congressional Inquiries Office that the DAIG has assumed responsibility for the case and return a copy of the report of inquiry or investigation through the MACOM IG, to the Assistance Division for reply to the MC.

(b) If DAIG Assistance Division refers a case to a field IG that is currently being worked or has been previously worked by a local Congressional Inquires Office, the field IG will inform DAIG Assistance Division. The local IG should request a copy of the completed case from the Congressional Inquires Office, review it for completeness, ensure that all of the issues/allegations received from DAIG are addressed, and forward a copy of the case to the DAIG Assistance Division for review and response to the MC. If the case is not completed, inform DAIG Assistance Division and send a completed copy of the inquiry or investigation when received from the Congressional Inquires Office after completing the review.

(3) SECDEF, SA, CSA, TIG. The Army Administrative Assistant, Office of Executive Communications and Control (ECC) receives referrals from the Secretary of Defense, Secretary of the Army, Chief of Staff, Army, and other senior leaders. ECC reviews the information provided and refers the case to the Army agency or headquarters best able to gather the facts and respond. At the installation level, the field IG may receive this type of referral from the local chain of command. These referrals normally include instructions as to the type of action requested and the desired form of reply. The IG should advise the command of The Inspector General's policy that all investigative work done by an IG for those type cases will be answered by DAIG.

(4) DoD Hotline. The Hotline Coordinators in Assistance Division, DAIG, receive these type cases from the DoD IG Hotline office. The coordinators refer DoD Hotline cases to field IG offices for appropriate action and reply in a specific format. The IG must meet the suspense established for DoD Hotline cases. See Chapter II for more details.

(5) "Normal" correspondence. These are letters written to the IG presenting a concern or requesting assistance. Enter "see attached" in the remark section of the DA Form 1559 rather than transferring the contents of correspondence to the DA Form 1559.

(6) Audio or Video tapes. Sometimes a complainant may submit an IGAR using audio or video tape. Should this occur, treat the tape as "normal" correspondence. It may be transcribed to written form if it is necessary for working the case.

(7) Complainants often request assistance or send complaints via email. The IG may not know if the person making the complaint is actually the same person listed in the address line. An individual, with access, could send an email to an IG from another person’s computer. IGs should acknowledge receipt by email (if no mailing address or phone number was provided) and either inform the complainant to contact the IG by phone or mail (providing the information), or ask the complainant to email an

address and/or phone number to the IG. The IG should also explain that no further information pertaining to the initial email sent by the complainant will be discussed over email. Email does not guarantee delivery to an individual. If the email accidentally goes to another individual, or is undeliverable, there is a possibility that the message could be read by someone other than the complainant. Since IGs attempt to protect confidentiality, responding to complainants by email may create a problem. The following is an example of an email response used by DAIG Assistance Division:

Dear _____:

We received your June 11, 1999, email message concerning your impending discharge.

By policy, the Inspector General (IG) system will not initiate an inquiry on your behalf on the basis of an email message. To ensure that you are the one presenting these matters, we request that you provide a signed request for IG assistance. This may be accomplished by printing your email message, signing it, and faxing or mailing it. Our fax number is ( )XXX-XXXX. You must also provide a mailing address in your request. Our mailing address is:

//signed//
IG's name
Rank, U.S. Army
Inspector General

The information provided should always be analyzed in the same manner as information received from any complainant. If the complainant does not respond to your email and the information provided is enough to open a case, work it as an anonymous case.

e. Referrals

(1) IGs

(a) DAIG. Normally, DAIG Assistance Division, refers requests for assistance to the Major Command IG for resolution. The referral memorandum gives special instructions concerning the case, including who will provide the final response. The receiving IG should check for duplication of effort (e.g. IG, AG, Criminal Investigations Command (CIDC)working the same issues) on White House and Congressional correspondence. Notify DAIG telephonically if another agency is currently working on the referred case. DAIG also refers all Army National Guard (ARNG) cases to the National Guard Bureau (NGB) IG for referral to state

IGs or other agencies as required. Special rules apply to Congressional referrals sent directly to The Adjutant General (TAG) or NG IG (see AR 20-1, para 7-7c). Although infrequent, this also applies for any White House correspondence received. It is recommended that in those situations, a copy of the IG response be forwarded to DAIG Assistance Division.

(b) Other IGs. Other Service IGs and governmental agencies normally make their referrals to DAIG in writing. Specific instructions usually accompany these requests, such as action requested, desired form of response, and possibly a suspense date. Army IGs will often refer a case directly to another IG. In this case, the receiving IG will acknowledge receipt to the referring IG. The IG who is the office of record is responsible for entering the IGAR information into the IGAR database. An exception is a referral from DAIG, for which the DA case number and originator code remain with the case

(2) Other agencies or commands. These IGARs are handled the same as "normal" correspondence above. The IG should inform the agency that is receiving the referred IGAR as well as the individual who submitted the IGAR, of the referral. Normally, the acknowledgment should be in writing. The IG should also refer the case to an agency, requesting the response be returned to the IG. This enables the IG to ensure that the reply addresses the complaint or request for assistance and then is able to provide the appropriate response to the complainant. This method ensures the complainant receives the correct response and should preclude the complainant from returning to the IG initially with a response that might not have resolved all the issues presented.

f. Commander directed or initiated. Normally an action given to an IG by his commander as a normal "commander to IG" action may not require initiation of a DA Form 1559. The IG should consider using the DA Form 1559, because, it tracks the workload, and may develop into a case requiring input into the IGARs database.

g. Other considerations.

(1) Anonymous complaints. Do not ignore anonymous IGARs; take action to resolve them and protect the interests of the government. When processing anonymous complaints, do not create the appearance of unduly trying to identify a complainant instead of determining the facts and circumstances related to the IGAR.

(2) Pen pals or phone pals. Some complainants will repeatedly bring complaints to an IG. Some will be new; others will be complaints previously handled by the IG. If the IG has

worked the case before, he may choose not to reopen the case unless the complainant has presented new relevant information or evidence. If it is new information from a previous complainant, the IG will have to judge the matters of concern and the complainant individually on a case-by-case basis. The IG should be prepared to either reopen a case or initiate a new case based on new information presented. If the IG reopens a case, and will be amending an opinion, judgment, or conclusion, the IG must get approval from the TIG prior. The request will be forwarded to the Records Release Office for referral to the appropriate Division within DAIG for review prior to action by TIG. Included will be two copies of the record to which amendment is sought, any record, acknowledgment to the complainant, and recommendations concerning whether the amendment should be granted or refused, with supporting rationale. If the case is reopened by the IG, and upon review of the new information presented, no change is made, the IG may close the case without TIG approval. Do not automatically reject the complainant's communication without honestly analyzing the correspondence for new matters.

(3) Third party letters. This category can be divided into two categories. One type of third party letters is sent by persons on behalf of someone else. The information presented (for example, those sent by a parent or family member on behalf of a soldier) may have been submitted without the knowledge of the soldier. Another type of third party letter pertains to someone giving information about another person who is alleged to have been doing something wrong. The resultant inquiries in both cases will produce information not directly pertaining to the individuals who initiated the letters. Remember that the Privacy Act prohibits the release of personal information to third parties without consent. Use care in the reply to ensure that information provided does not violate an individual's right to privacy. The IG should obtain a Privacy Act release authorization as shown below from the individual. If the complainant is a soldier or civilian government employee and a participant in alcohol or drug rehabilitation programs, refer to AR 600-85 for an example of the consent statements for release of information. IGs will ensure the complainant's confidentiality and administrative due process rights are protected.

PRIVACY ACT INFORMATION RELEASE FORM

I,_____ , SSN___-__-____, authorize access or release of any inspector general records pertaining to me to (either specific individuals or a general release).

_____ _____
Date Signature

_____ _____
Date Witness

.....

(4) Equal Opportunity, Discrimination, and Sexual Harassment Complaints. The Army's policy is to provide equal opportunity and treatment to soldiers, their families and Army civilians based on merit, fitness, and capability. This policy:

(a) Applies both on and off post, 24-hours-a-day.

(b) Extends to soldiers and their families.

(c) Applies to soldiers' working, living, and recreational environments (including both on and off post housing).

(d) The program formulates, directs, and sustains a comprehensive effort to ensure fair treatment of all soldiers based solely on merit, fitness, capability, and potential, which supports readiness. As such, EO is a responsibility of leadership and a function of the chain of command.

(e) The chain of command, whether military or civilian, is the primary channel for correcting discriminatory practices and for communicating on EO matters. Individuals are encouraged to use the command channels for redress of grievances. These procedures are to be in writing and displayed at all times where all unit soldiers have access to them.

(f) Individuals may present such complaints to the chain of command, IG, or EO advisors. Local command policy determines how and by whom the complaint is formally processed, see AR 20-1, para 4-4h. As the local IG, make these determinations with the commander based on the preliminary analysis of the case.

(g) The commander will answer the question who should inquire into or investigate EO and racial or sexual harassment complaints. The EO advisor and the IG should provide the commander with advice. If the preliminary analysis indicates the allegation may be substantiated and punitive action is possible,

the IG recommendation would likely be to conduct a non-IG investigation or commander's inquiry. If more information is required to make that determination, either the EO counselor or the IG should conduct further preliminary analysis.

(5) Withdrawn complaints. At any point following receipt of a complaint, the complainant may ask to withdraw the IGAR. This can occur at anytime during the process, but more typically occurs while the IG is conducting IG fact-finding. It is the IG's decision on whether or not to continue, based on the best interests of the Army or command. If the IG decides to continue the case he does not require the permission of the complainant. If he accepts the request to withdraw the complaint, but keeps the case open, he should change the "case name" from that of the complainant to a generic title, and is not required to provide a final response. The IG may want to ask the complainant why he wants to withdraw his complaint. Possible reprisal, coercion or duress are issues of concern for IGs. IGs will not suggest that a complainant withdraw a complaint; however, if the complainant desires to do so, IGs should normally require a written request to properly document the withdrawal. In some instances complainants have requested confidentiality. When a person complains or provides information about impropriety or wrongdoing, the IG may disclose the complainant's identity to detailed IGs, the supporting legal advisor and to the directing authority without the complainant's consent, unless the IG determines such disclosure is unnecessary or prohibited during the course of an inquiry or investigation.

(6) Time Limit. Complaints must be presented to an IG in a timely manner in order to be effectively resolved. A complaint presented more than 10 years after the event occurred is not timely and does not require action. TIG is the final authority. Not withstanding, the 10-year time limit does not apply to the requirement to report allegations against senior officials to DAIG IAW para 1-4b(5)(d) and 1-4c(4). The TIG must give the IG approval to work any IGAR presented more than 10 years after an event occurred. For example, if a complainant submits an IGAR to a local IG that is 12 years old; the IG, if he thinks there is enough evidence to work the case must get TIG approval before working the case. If in the same example the IG does not see any documents or other evidence available, the IG will inform the complainant that the IGAR is not timely. The complainant always has the opportunity to send the IGAR to TIG for final disposition. The TIG will be the final authority, in the event the complainant is not satisfied with the local IG's decision.

1-6. STEP 2 – Conducting IG Preliminary Analysis (IGPA)

a. IG Preliminary Analysis(IGPA) is a thought process used by an IG to determine how best to proceed. It may take a few moments, hours, or days. This process helps clarify matters of concern, identify issues, formulate allegations, and develop a course of action. It helps the IG determine who should resolve the problem and how to solve it. PA is the beginning of a process that may result in several courses of action for the IG. The IG may provide assistance; conduct an IG inspection or investigation; refer the case to another IG or agency; or recommend a follow-on investigation, using another investigative process, e.g., commander's inquiry, AR 15-6, Military Police Investigations (MPI), or CIDC. An IG is usually in PA until a course of action is selected.

b. Just as IGs look for the bigger issues when formulating allegations, the IG should look for bigger issues when providing assistance. Most assistance cases require that the IG turn a matter of concern over to another individual or agency. This requires being aware of the possible implications concerning the confidentiality of the complainant. A soldier who asks for help may not want his 1SG to know he made a complaint to the IG. While interviewing the complainant, the IG should be able to determine the circumstances and act accordingly. Referring the complaint to another agency usually means the IG will need to follow-up to determine the action taken and whether it addressed the complaint or not. The IG should request the individual or agency provide the response back to the IG. Reviewing the response enables the IG to ensure that all concerns were addressed before the complainant receives a final response. A response provided directly to a complainant, if not complete, may require additional time to completely resolve and may decrease the credibility of the IG.

c. If the IGAR involves more than simple assistance, the IG must determine the action necessary to resolve the issues or allegations -- referral, inspection, inquiry, or investigation.

d. The IG should take care to separate those concerns, which are expressions of dissatisfaction, resentment, discontent, or grief and that do not necessarily imply a violation of a standard, and which could best be handled by the chain of command from those allegations of wrongdoing by an individual, and issues involving the failure of a regulatory process, which are an appropriate area of IG interest.

e. Refer to AR 20-1 to determine whether an issue is appropriate for IG involvement. As a rule, the following are not appropriate:

(1) Serious criminal allegations (i.e., murder, rape).

(2) Issues which have other means of redress (see paragraphs 4-4j&k, AR 20-1).

f. If the individual used the appropriate redress procedures, advise them that IG involvement focuses on ensuring the complainant received administrative due process after redress issues have been resolved by the appropriate agency.

g. When presented with non-IG matters of concern, the IG should advise the complainant of the appropriate means to resolve the complaint; complete the DA Form 1559, and enter it into the IGARS data base detailing what the IG advised.

h. After the IG has determined that the matters of concern are proper for IG involvement, the following questions should be considered:

(1) Is the matter of concern clearly systemic in nature? If so, is an inspection warranted (based upon a trend or complaints in a particular area)?

(2) Is there any indication of general officer or senior employee service misconduct or violations of 18 U.S.C., 207(a), (b), or (c) (post employment violations)? Refer these allegations directly to the DAIG Investigations Division, by rapid and confidential means, within two working days of receipt.

(3) Do the matters of concern involve an allegation against an IG? If so, refer them, within two working days of receipt, to that IG's next higher echelon IG for appropriate action while also informing DAIG Assistance Division. Paragraph 8-3i&j, AR 20-1 provides guidance on IG action for allegations against other IGs and general officers or senior executive service civilian employees.

(4) Are the concerns within the purview of the IG's directing authority? If not, refer them to the IG of the appropriate organization.

i. At this point, the IG will have either disposed of the matters of concern or concluded they are proper for continued IG involvement. The IG must then determine if the issues presented can be properly worded in an allegation format. Complainants normally speak in broad terms of wrongdoing and not in the prescribed four elements of an allegation(see below). Although the standard may be easily identified (for example, law, regulation, standing operating procedures, etc.), sometimes the standard violated may be contrary to the customs and traditions of the service or ethical values. Additionally, a complainant

may only present issues that are indicators of, or parts of, a larger issue that may not have been recognized. Be alert to the possibility of larger issues when formulating allegations.

(1) Elements of an allegation. Carefully analyze the IGAR for any allegations or impropriety. The IG should write out the allegations. and may have to rewrite what the complainant said or from correspondence provided. There are four elements to an allegation:

(a) Who

(b) Improperly

(c) Did or did not do what

(d) In violation of what standard

(2) The standards. The standards used usually fall into three categories:

(a) Violations of regulatory guidance (non-punitive).

(b) Violations of law (UCMJ, Federal, state and local) and regulation (punitive).

(c) Violations of established policy, SOPs, standards.

j. Perspectives. IGs should always look for larger issues, systemic problems, implied allegations, and condoning of wrongdoing. If the preliminary analysis resulted in a decision to conduct an investigative inquiry or investigation, use Chapter 6, of this guide, as well as AR 20-1, Chapter 8, for the correct procedures.

k. Acknowledge receipt.

(1) Properly acknowledge all IGARs. IGs acknowledge, orally or in writing, individual complaints, allegations, or requests for assistance (see Appendix B). Modify the examples to fit the specifics of the case. An acknowledgment is simply a notification that the IG received the request, and may either open a case, refer the IGAR, or do nothing, in those cases when the issue does not meet criteria for IG action. In some cases, it may be appropriate to provide a more substantive acknowledgment based upon the merits of the correspondence.

(2) IGs receiving an oral IGAR may acknowledge it at that time, but make a written record of the acknowledgment in the case notes.

(3) IGs do not acknowledge anonymous complaints or requests for assistance. Members of Congress(MC) refer anonymous letters on behalf of constituents. Although the constituent is anonymous to the IG and maybe to the MC, IGs acknowledge receipt of the referral to the MC.

(4) An individual may ask an IG for assistance and at the same time seek help from a Member of Congress. Once a MC intervenes, the complainant will not receive a response from the IG. Rather, the MC will receive the IG response from Assistance Division, DAIG. The IG must, therefore, inform the complainant that they will receive a response from the MC and not directly from the IG.

(5) In acknowledging a request, inform the complainant that they will receive only information from the results of the inquiry or investigation that affect them directly and personally.

(6) Acknowledge (may be telephonic) IGARs referred from another IG except those received from DAIG, unless otherwise noted.

(7) The IG is not required to acknowledge receipt of information copies of letters addressed to other agencies, unless it is determined that the IG should take action.

k. Accept IGAR for Action. If the results of preliminary analysis indicate that the IGAR received is appropriate for IG action, the IG will accept the IGAR for action, and open a case file(see Appendix D). If not appropriate for IG action the IG will still open the case, state why not appropriate for IG action and what the IG did with the IGAR and then close the case in the IGARS data base. By going to the main menu, and selecting **Add A Case**, the IG can begin placing data into the computer pertaining to the case. Chapter 2, IGARS user's guide explains how to go through the entire process. IG action includes but is not limited to, investigative action, inspections, assistance, and/or referral. IGs could also determine that the case should be referred to another IG, agency, or recommend a follow-on investigation. Complaints/requests for assistance may be referred for appropriate action to the responsible Army leader, commander, or management official within the IG's command, to other Army IGs using IG channels, IG DoD, IGs in other Services, or to DoD, Army and non-military agencies.

1-7. Step 3 - Initiating Referrals and Making Notifications

a. Referral to the chain of command. The chain of command has the responsibility and the authority to address requests for assistance and complaints. Where appropriate, the IG should refer matters to the chain of command and then monitor to ensure that the chain of command takes proper action.

(1) If the IG refers/recommends a case to a commander for the commander to conduct an inquiry/investigation, the IG will keep the case open until the commander provides a copy of the inquiry/investigation. All referral documents sent to commanders requesting an inquiry/investigation be conducted will include all allegations written in the correct four part format (i.e. who, improperly did or did not do something, in violation of a standard). The referral document must also inform the commander that the IG requires a copy of the inquiry/investigation. Additionally, the commander will be informed that the subject/suspect of the inquiry/investigation will be notified by the IG of the results being posted in the IGARS data base. If the IG, in reviewing the inquiry/investigation, notes that information is missing, or all issues are not addressed, the IG will discuss the discrepancies with the commander, and ask for the corrections be made. If the commander refuses to address the missing issues or add the missing information, the IG will inform the commander that the IG will conduct an inquiry on only those areas that the commander refuses to address. If the IG, in reviewing the inquiry/investigation, disagrees with procedures followed for the conduct of the investigation, the IG will attempt to resolve the issues with the command, if he cannot, the IG will contact DAIG, Assistance Division for guidance before proceeding.

(2) If the commander refuses to give the IG a copy of his inquiry/investigation, the IG will explain to the command that IAW AR 20-1, paragraph 1-9(d), the IG is authorized a copy of the inquiry/investigation. If the IG requests the Directing Authority (DA) intervene, and the DA refuses, the IG will contact DAIG, Assistance Division for guidance before proceeding. If during an inquiry/investigation the IG feels that he will substantiate, the IG should inform the Directing Authority, and request that the DA do his own investigation. The IG keeps the case open and requests a copy of the investigation, then closes the case in the same manner as stated above. If the Directing Authority informs the IG to continue with the IG inquiry/investigation, and also directs his own investigation, and both do not come to the same conclusion, and the DA does not want the IG investigation placed into the IGARS data base, the IG will contact DAIG, Assistance Division for guidance before proceeding. If the IG is conducting an inquiry/investigation, and then finds out that a commander is conducting an inquiry/investigation on the same case, the IG will contact the

commander and inform him that he needs a copy of the commander's inquiry/investigation. If the commander complies, close the case in the same manner as stated above. If he does not comply, the IG will contact DAIG, Assistance Division for guidance before proceeding.

b. Referral to other agencies. The IG may elect to refer the issue to the appropriate agency on behalf of the complainant, but be mindful of confidentiality concerns. Provide the necessary information to the agency and determine whether to monitor the action until completion. For example, if an individual alleges criminal activity, the IG should refer the information to the local CIDC field office and request that office follow up with the individual and advise the IG of the results. The IG should retain a copy of the complaint. CIDC may not accept it and the IG may need to refer the allegation to Military Police Investigators (MPI) or to the chain of command for inquiry or investigation.

c. Notification of Individuals. If IGs select the course of action of initiating an inquiry or recommending an investigation, they will verbally notify appropriate commanders or supervisors and the subjects or suspects of the inquiry/investigation and inform them of the nature of the allegations. The notifications will be documented and enclosed to the ROI/ROII(See Chapter 6). There may be no requirement for the IG to notify any additional individuals while conducting an assistance inquiry.

1-8. Step 4 - Conducting IG Fact-Finding.

a. Fact-finding involves the process of obtaining factual information in the conduct of IG inspection, assistance and investigation functions to resolve the issues and allegations determined from an IGAR whether the IGAR is from a complainant or a request from a commander. The IG will use the assistance inquiry as the fact-finding process to gather the information needed to resolve the IGAR assistance issues.

b. The assistance inquiry. The assistance inquiry is an informal fact-finding process used to address or respond to a complaint involving a request for help, information or issues and not allegations of impropriety or wrongdoing.

c. Depending on the nature of the IGAR, the IG may complete the assistance inquiry or refer the issues to another agency to resolve and return to the IG. The IG should evaluate the facts and evidence received to ensure that all issues have been addressed before responding to the complainant. The information provided to the IG must lead to a reasonable conclusion or

recommendation. If there is a proponent available regarding information requested, the proponent should verify the information provided to the IG when appropriate. Regardless how the assistance inquiry is conducted, the IG is responsible for ensuring all issues have been addressed and/or resolved prior to notifying the complainant and closing the case.

d. Legal review. The IG might also obtain an opinion from the command's legal advisor or the DAIG Legal Advisor on the legal sufficiency of the assistance inquiry. The inquiry findings will be the basis for the notification to the complainant as well as the final reply.

1-9. STEP 5 - Making Notifications of Results.

At the completion of the assistance inquiry the complainant must be notified and informed of the results. Only information pertaining to the complainant regarding actions taken should be provided to the complainant. All notifications made will be annotated in the DA Form 1559 in the IGARS data base.

1-10. STEP 6 - Conducting Follow-up.

a. Follow-up ensures the IG thoroughly addressed all issues and fulfilled the responsibilities of an IG. This includes follow-up on any needed corrective actions. In this instance, the IG should keep the file open even if a final reply has been provided to the complainant. The IG may personally conduct the follow-up or refer the issue for inclusion in a future inspection. The IG may request the complainant contact him or the IG may contact the complainant when the problem has been resolved. (e.g. a soldier with a pay complaint may contact the IG, or the IG contact the soldier on payday to see if the pay problem was resolved.)

b. If the IG refers a complainant to another agency for resolution of a problem, the IG should check back with the soldier to ensure the complainant received assistance. Remember, IGs assist in resolving problems. If the problem is not resolved, the IG may not have not done the job correctly. Without follow-up, the IG may not learn whether the problem was resolved or not. Do not close a case until the complainant's problem is resolved or until satisfied the complainant has received fair and just treatment/consideration.

1-11. STEP 7 - Closing the IGAR.

Closing an IGAR consists of providing the complainant a final reply, closing the entry in the IGARS database, submitting the appropriate reports, and analyzing any developing trends. The complainant only has a right to know the results of any inquiry that pertains to them directly. The IG may advise the complainant to request any other information using FOIA procedures, although there is no requirement to do so.

a. Final replies.

(1) "Normal" correspondence. Make the final reply to the complainant orally or in writing. The complainant should receive, from the final reply, an understanding of the facts surrounding each allegation that directly involves them, and the rationale for the IG's conclusions. The response should be helpful, understanding, reflect established policies, express appreciation, and state corrective action as appropriate. The response should not contain any of the following:

(a) classified information,

(b) private information about third parties,

(c) unconfirmed or speculative information,

(d) information pertaining to the loyalty of an individual,

(e) information that could involve a breach of faith or violate a moral obligation to keep information confidential.

It is in the final reply that the IG has an excellent opportunity to teach and train. Often the complainant will not like the reply. In this case, the IG must be prepared to attempt to resolve the questionable issues with the complainant. If it becomes apparent that resolution in the complainant's favor is not possible, advise the individual that they can request the assistance of an IG at a higher headquarters.

(2) Presidential and Congressional Correspondence. DAIG makes the final response on all presidential and Congressional correspondence, except for cases received directly by ARNG IGs (see paragraph 7-7c(1), AR 20-1). Request a suspense extension if one is required. The IG should be thorough and accurate, even if it requires more time. Keep the Major Army Command (MACOM) informed of any suspense date extensions. DAIG will in turn send an interim reply to the complainant if the extended suspense date is beyond the original expected date of the DAIG reply. For DAIG referrals, always interview the complainant, if not, consult with the POC at Assistance Division, DAIG.

b. Other considerations.

(1) Records release. If the complainant asks for information from the IG record, refer to Chapter 3, AR 20-1. The IG may furnish the complainant a copy of the front side of the DA Form 1559, with continuation pages if used, or the statement, if submitted on separate paper.

(2) Records Release for Personal Use. Requests for release of records for personal uses are made under provisions of the Freedom of Information Act(FOIA). The FOIA allows anyone to request government records for private purposes. IGs commonly receive FOIA requests from subjects or suspects against whom they substantiate allegations. It is important that IGs understand how to process requests for information made under the FOIA.

(a) Requesters must submit their request in writing and must reasonably identify the actual records being sought. The IG may assist them in preparing their request to limit the volume of files that must be reviewed and processed.

(b) Acknowledge receipt of the requester's correspondence and explain the request was referred to TIG for direct reply. The acknowledgment must be in writing. Do not inform the requester where the files are maintained.

(c) Forward the original request, two collated copies of the requested records, and a copy of the acknowledgment to the complainant, to DAIG Records Release Office within 10 working days. Advise DAIG of any concerns the command may have about release of the records, identify witnesses by name who did not consent to release of their testimony, and indicate the source of any non-IG records being forwarded. Remember, IG conclusions, recommendations, and opinions are not evidence and will not normally be released for adverse action or under FOIA.

(3) Use of IG Records for Adverse Action. IG records should not be used for adverse action. To do so compromises the confidentiality built into IG fact-finding. Under legal due process, the suspect or subject will be provided copies of the evidence used to support the adverse action, including IG records if they are the basis for the action. The IG will encourage consultation between the commander concerned and the servicing legal office regarding the need for IG records as the basis for the action contemplated and the availability of other evidence to serve the same purpose. Under certain circumstances for example, cost, administrative burden, pending separation of the suspect, PCS of witnesses, a commander may wish to use IG records to support an adverse action. In those cases the commander must request TIG approval. Send the request to the DAIG Records Release Office, describing precisely what IG records are

required, why they are required, and the adverse action contemplated. As a rule, only the minimum records required are released. Normally this consists of selected transcripts and documentary evidence. Remember, IG opinions, conclusions, and recommendations are not evidence and should be protected and not released.

(4) Official Use of IG Records within DA. Most requests for IG records and information are official in nature and are within DA. IG records and information may be used within DA for official purposes. IGs are authorized, with restrictions, to release IG records for official purposes without TIG approval. During the course of an inspection/inquiry IGs will uncover problems that need to be fixed. These problems are documented in the inspection/inquiry. The IG will propose a recommendation to correct the problem uncovered. In such an event, the IG will initiate the release of information and records from the IG files to the agency or subordinate commander who will actually fix the problem.

(a) Restrictions:

(1) IG records may not be used for adverse action without TIG approval.

(2) IG records are not to be used for comparison of commands or commanders.

(3) IG records are not to be cited in evaluation reports, performance appraisals, award recommendations, or other evaluations maintained in personnel records.

(4) IG records released for official purposes are not to be converted to personal use.

(5) The contents of a ROI/ROII or inquiry are not to be released to subjects, suspects, or witnesses named in the report.

(b) Provide the minimum records and information required. Ensure that the records and extracts are appropriately marked. Refer to AR 20-1, paragraph 3-2.

(c) Ensure that the agency receiving the records understands that they are not to be reproduced without the IG's permission and that they are to be returned to the IG when they have served their purpose. Emphasize that the records are IG records "on loan" and will not be incorporated into another system of records that is subject to the Privacy Act. TIG must approve release of records outside DA.

(d) Additional restrictions are contained in Chapter 3, AR 20-1.

c. Folder content and filing. In closing the file, ensure that all relevant documents, including memorandums and collected evidence, are present. Review completed actions to ensure all allegations have been appropriately addressed. The file is complete if another IG, unfamiliar with the case, can determine the extent of the examination conducted and understand the factual content on which the conclusions were based and agree that the inquiry was complete and accurate. Following the review, file the case IAW AR 25-400-2 and AR 20-1. Closed IG case files are subject to quality assurance reviews by DoD IG. They look for objectivity, completeness, thoroughness, and timeliness. Additional information may be found in Chapter II.

d. IGAR coding. The next step in closing the IGAR is to code the case using the IGARS database. Give special attention to deciding which codes are appropriate for the request for assistance or allegation. The IGARS database must be useful to all IGs in the office. The data must also have meaning as it is rolled-up by MACOMs and DAIG. The function code selected characterizes the areas that the IG has received complaints, allegations, and request for help (assistance). Likewise, the determination codes are also important to the understanding what the data is showing. The determination codes are referred to as "SNA" codes. Remember, each allegation or request for assistance is represented by a function code.

(1) An allegation is substantiated **(S)** when the preponderance of the credible evidence establishes the impropriety is true.

(2) An allegation is not substantiated **(N)** when the preponderance of the credible evidence establishes the impropriety is untrue.

(3) Assistance **(A)** is used when advice or guidance is provided; the request for assistance is resolved by the IG, or when the complainant is referred to an agency other than the IG to resolve the problem.

When a case was referred to a Commander to conduct an inquiry/investigation, the IG will use the Commander's findings when coding the determination for the case (i.e. Commander substantiates on an AR 15-6 investigation, that becomes a substantiation in the IGARS data base, with the synopsis explaining that the commander did the investigation and results were from the AR 15-6).

e. The synopsis. The synopsis is the final item completed on the backside of the DA Form 1559 in the IGARS data base. It should describe the request for assistance as well as actions taken to resolve any issues. The entries should create a stand alone document that can be brought up from the IGARS database anytime in the future and understood by the IG reading it. The synopsis should not state "See inquiry", because the file copy of the inquiry will be destroyed in the future and will not be available. This synopsis will be part of the DA Form 1559 that will be retained in the DAIG IGARS data base for up to thirty years.

f. IGAR Analysis. The final process in closing an IGAR is analyzing trends that may be developing. The IG's objectives are to identify trends that affect the command and to identify and correct systemic problems or potential problem areas. The IG may also provide the commander and staff with information and insight for their use in improving the command.

(1) The following are some items an IG may look for:

(a) Most frequent categories or function codes.

(b) Most substantiated categories or function codes.

(c) Most frequent assistance categories or function codes.

(d) Total numbers.

(e) Source of IGARs.

(2) The IG should look for trends. Is there anything that suggests the need for an IG inspection or other command or staff action? How frequently should an IG conduct analysis? Consider the following: monthly, quarterly, and/or annual analysis; by major category and/or sub category; with comparison quarter-to-quarter and/or fiscal year-to-quarter.

(3) Here are a few guidelines:

(a) Do not compare units (outside of the IG office); start analysis with major categories and work down to sub categories; look for "good news" as well as bad; be observant for seasonal aberrations.

(b) A high level of not substantiated allegations may indicate areas that require more information and/or training.

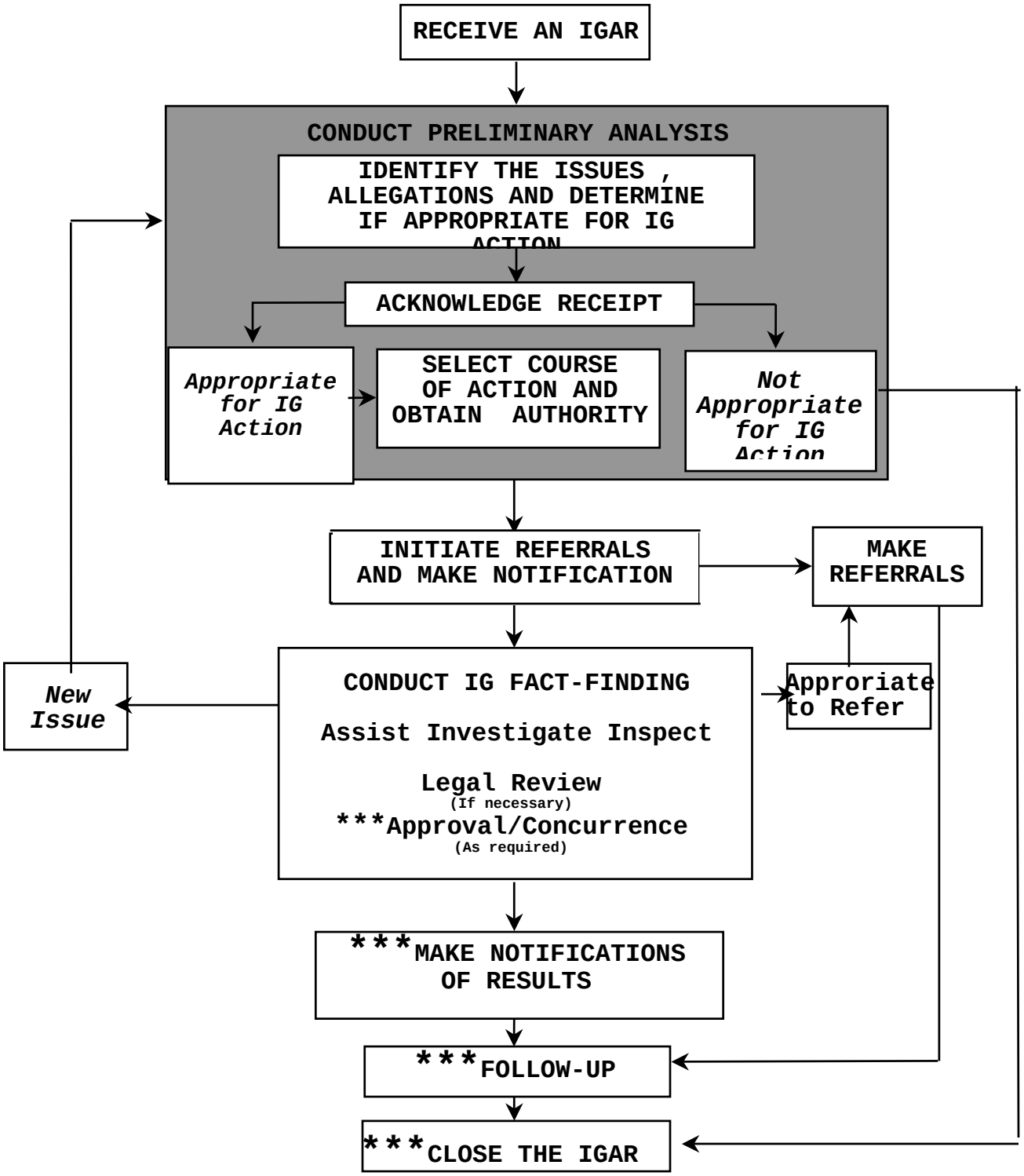
(c) Consult closely with the other IGs in the office on a regular basis to ensure similar cases are coded (determination and function codes) in a like manner.

(d) Look first at the coding process to explain wide variations in data.

(e) Do not be misled by small numbers -- they can hide significant problems, for example, sexual harassment and racial discrimination.

(f) Look at allegations most frequently substantiated in addition to most frequent allegations.

INSPECTOR GENERAL ACTION PROCESS (IGAP)



IG office of record will normally obtain or provide final approval, make official notifications of results, request or prescribe follow-up actions required and close the case in IGARs.

Chapter II – DoD Hotline Referrals

2-1. General.

a. This chapter of the Assistance Guide details the processing of DoD Hotline Referrals. The IG, DoD forwards Hotline cases to DAIG. The DAIG Hotline Coordinators, Assistance Division, receive all DoD Hotline cases and make referrals to MACOM IGs and Army Staff offices. A sample DAIG Hotline Referral memorandum is depicted on page 32.

b. DoD Hotline cases must thoroughly address the allegations and issues presented by the complainant. With the exception of congressional Hotline cases, DAIG has 90 days to open and close a case. Congressional Hotline cases have a 60 day suspense. Field IGs are given 60 days by DAIG to finish a case (this includes mail and delivery time); 30 days for congressionals. If the IG cannot meet the DAIG established suspense date, a DoD IG Progress Report is required. An example of the Progress Report is located on page 35.

c. DoD IG conducts formal Quality Assurance Reviews (QAR) of selected Hotline cases completed by field IGs(DODI 7050.8). A sample QAR begins on page 36. As with other IG actions, the IG's facts should support conclusions and the case file should "stand alone".

2-2. General Guidance for DoD Hotline Completion Reports

a. The basic reason for the Completion Report is to explain what was found during an inquiry or investigation. The thing to remember is this – the IG has to tell a concise, complete story to someone unfamiliar with the situation and applicable guidelines. The report must contain the following elements:

(1) An allegation which states "that someone improperly did something in violation of a standard." If the IG does not have all the parts of an allegation, it may only be an issue or a matter of concern. These must also be addressed.

(a) Always frame the allegation in the past tense. Framing the allegation in the present tense can create confusion and misunderstanding for those reviewing the report.

(b) Always use the word "improperly" or phrase the allegation or issue to show that the action was improper.

(c) The toughest part of many inquiries/investigations is determining the standard. The IG may have to change the standard, and the wording of the allegation, in the middle of the inquiry/investigation. It is all part of the process, and it is much more effective if the IG reworded the allegation instead of struggling with a poor one. The IG's best source for a good standard is the functional expert in the headquarters. That expert is the most familiar with the regulations and can quicklysteer the IG in the proper direction. The IG should also consult with the command legal counsel on the validity of the selected standard unless it is one which is a clear choice. Other good references are fellow IGs, MACOM IGs, DAIG Assistance, Investigations or Training Division IGs.

(2) A list of the people interviewed to obtain information about the allegation.

(a) The list which appears in the report should contain only the interviewees who provided information used to support the IG’s conclusion.

(b) If the IG talked to a large number of people who all said the same thing, and if their consensus is important, the IG should list them all and make the statement in the Discussion section to the effect that “.... all personnel interviewed were unanimous in their belief/feeling/understanding/etc., that ....”

(c) Talk to the complainant, if identified, and list him as a witness and discuss the testimony.(Most cases, however, are anonymous or confidential.)

(3) A list of documents reviewed.

(a) The same rules apply here; only those documents which are needed to support the IG’s conclusion should be listed. One major exception – the IG should always list the complainant’s letter, if any, and the document(s) containing the standard(s).

(b) List multiple versions of the same form with one entry. An example would be “DA Form 31, Request and Authority for Leave, for the periods 1-15 Jan 99, 2-6 Mar 99, ...”

(4) Presentation and discussion of the evidence.

(a) The IG should present the information provided by the complainant first, followed by the standard. After presenting those two items of evidence, the IG should present the remaining evidence in either the sequence in which the interviewees and evidence are listed or in chronological order.

(1) The IG should address each witness and document in a separate paragraph. The IG should present the evidence that supports the conclusion.

(2) After the evidence is presented, the IG should tie it together in the Discussion section. The last paragraph should explain why the allegation is substantiated or is not substantiated.

(b) The IG should use the past tense throughout the document to describe what was found during the inquiry.

(c) The IG should describe all the evidence from the interviews and documents in the Completion Report. The Completion Report must be a stand alone document. Only on a rare occasions is anything attached to the Completion Report when it is forwarded to DoD. If a document is attached, the IG should discuss it in the report (do not say, "See attached"), and ensure that any documents that are discussed in the report are releasable to IGDOD. Executive Summaries may not be submitted in place of the Completion Report.

(5) Conclusion. The conclusion paragraph should read "The allegation that (copy and paste the allegation here) was substantiated (or not substantiated).

(6) Disposition: If any allegations were substantiated, the IG should ensure corrective action(s)taken by the command is reflected here. Hotline cases must remain open until all administrative and/or punitive actions, if any, are taken by the command. If corrective action will be a lengthy process, the disposition paragraph should state that the case has been placed in a follow-up status pending the results of corrective action.

b. Modify the format as needed.

(1) The list of witnesses and documents can precede the allegations if the lists apply to several allegations.

(2) A background paragraph can be very helpful in setting the stage for an uninformed reader. The best place for it is just before the list of witnesses.

(a) One paragraph will usually suffice if the IG has a single listing of witnesses and documents and similar or related allegations.

(b) Background paragraphs for multiple, dissimilar allegations should be specific to and follow each allegation.

(c) The background should present general information about the environment in which the alleged violation took place. An explanation of command relationships or rating chain would be typical entries.

(d) Formats may be combined. If the IG has several similar or related allegations and one or more additional, dissimilar allegations, he can use one background paragraph and list of witnesses and evidence for the similar allegations and individual backgrounds and lists for the other allegations. The idea here is to reduce the unnecessary repetition of long lists.

(3) The Disposition paragraph should only be used to tell IG DoD that the case is completed, list any corrective action that has been taken, or advise that the case has been placed in a follow-up status.

(a) If the IG feels the responsibility for the follow-up should transfer to CID or DFAS, the IG should put the recommendation in the cover letter. The DAIG Assistance Division Hotline Coordinators will ensure the necessary transfers take place.

(b) If a case was originally split between a field IG and the CID, each prepares a Completion Report on the part that was worked by that office. The CID Completion Report will not show corrective action, so, if necessary, DAIG may contact the field IG to address the corrective action with the command.

(c) Address recommendations for actions in the command off-line; do not include them in the report unless necessary to show that a systemic fix was made. Recommendations for intermediate headquarters should be in the cover memorandum.

2-3. Sample Hotline Correspondence & Reports

Sample DAIG Hotline Referral Memorandum

S:
SAIG-AC (11-3A) (DATE)

MEMORANDUM FOR

SUBJECT: Hotline xxxxxxx/DIH 01-8xxxx

1. The enclosed correspondence is forwarded for inquiry or investigation into the matters presented IAW the Assistance and/or Inquiries & Investigations Guide.

2. The IG's final response in Hotline Completion Report format and a completed IGAR coding sheet (back side of DA Form 1559) will be forwarded to reach SAIG-AC by the above suspense. The Assistance & Investigation Guide can assist you in the proper preparation of the Completion Report. If the suspense date cannot be met, a Progress Report will be submitted to SAIG-AC. Final notification of subject/suspect and the MACOM will be accomplished by SAIG-AC. Initial notification of the subject/suspect/person requesting assistance and command is still the responsibility of the office conducting the Investiation, Inquiry or Assistance.

3. If fraud, waste, abuse, or mismanagement is substantiated, indicate corrective administrative, punitive, and management actions taken. Also include action taken to preclude recurrence.

4. This office is the IGARS office of record. Enter the case as referred on your IGARS database. Request you immediately notify this office if any field grade or senior officer/senior civilian is identified as a subject/suspect. Alegations against a COL(P), General Officer and Senior Executive Service will also be reported immediately to DAIG Investigations Division. Complete identification (name, SSN, grade/rank, unit/agency) is requested upon notification and required at case closure.

5. The point of contact at this office is the undersigned at DSN 329-1060/61, Commercial (703) 601-1060/61.

FOR THE INSPECTOR GENERAL:

Encl	Assistant IG
as	Assistance Division

Sample DoD Hotline Case

DEPARTMENT OF DEFENSE HOTLINE
ACTION CASE REFERRAL
RECORD OF CALL

****
HOTLINE CASE NUMBER: 75457
REFERRED FOR ACTION TO : Department of the Army

Tracking and response to the hotline is required by DoD Directive 7050.1, January 4, 1999, Subject: Defense Hotline.
****

ALLEGATION: UNFAIR TREATMENT AND LACK OF DUE PROCESS

On 3 January 1999, an anonymous caller contacted the Defense Hotline and claimed that the 579 Tank Division had just processed LTC Ronald Sweet for involuntary discharge. He is an outstanding officer and the reason behind the discharge is the officer is a Buddhist.

The officer was not afforded the right to appeal because he was not informed of his appeal rights. The Board action was approved by the CG, MG Melvin Brownstone.

(Note: This case was fabricated. It points out the IG's responsibility to ensure due process and the necessity to consider if the allegation involves a GO. This does require some initial research and coordination.)

Enclosure 1

Sample DoD Hotline Progress Report

DoD HOTLINE PROGRESS REPORT
AS OF (date)

1. Applicable DoD Component: **ARMY**

2. Hotline Control No: **7XXXX/DIH 01-8XXX**

3. Date Referral Initially Received: **(enter the date of the DAIG tasker.)**

4. Status:

a. Name of organization conducting examination:

b. Type of examination being conducted: **Inquiry or Investigation**

c. Results to date: **If you have some definite results, then place them here. If not, just enter "None".**

d. Reasons for delay: **Do not use the excuse that more time is needed. If more time is needed, then explain why (i.e., additional testimony is required; documentation is still being reviewed; inquiry is completed, but more time is needed to write completion report; etc.)**

5. Expected Date of Completion: **Enter your best estimate of when the Hotline Completion Report is expected to reach SAIG-AC.**

6. Action Agency Point of Contact:

Rank, Name
Organization
DSN and Commercial phone

Sample DoD Quality Assurance Reviews

Quality Assurance Reviews
(DoDI 7050.8)

1. IG, DoD conducts formal QARs of selected completed Hotline cases and examines the areas listed below. Therefore, all Hotline inquiries and investigations should be conducted and Completion Reports written utilizing the following guidelines to ensure a quality product as well as to be prepared for possible inclusion in the Qar:

a. The timeliness of the inquiry/investigation. Adherence to the established Hotline suspense is essential. Where the extablished suspense cannot be met, an interim Progress Report must be submitted to SAIG-AC requesting a new suspense date and the reasons for delay.

b. The independence and objectivity of the examining official. Independence is generally not a problem in cases conducted by detailed IGs. DoD is concerned that IGs be objective and that there is no perception of intimidation by high ranking officials of IGs conducting inquiries/investigations.

c. The adequacy of the documentation in the file to support the conclusions. Adequate documentation must be maintained in the file to support the findings and conclusions. The official examination file shuold contain the following:

(1) The names of those interviewed, date, time, and place of the interviews, and notes or summary of the discussion.

(2) Identification of all records/documents reviewed, findings, their location and the person assisting the IG. All documentation produced must be maintained as a part of the file for two years after the case has been declared closed.

(3) A copy of the DoD Hotline complaint (referral).

(4) A copy of the Completion Report.

(5) Investigator notes.

(6) Case generated memoranda and correspondence.

(7) Description of all other evidence collected.

d. The overall adequacy of the inquiry. Consider the following to determine if the completed report will be adequate when reviewed:

(1) Was the Examining Official independent and qualified?

(2) Were all the allegations and issues addressed?

(3) Was the examination timely?

(4) Were all the key individuals interviewed?

(5) Were all the relevant questions asked?

(6) Was all the relevant documentation collected and reviewed to support the conclusions?

(7) Was a legal or techncal review requested when necessary?

(8) Did the Exmining Official demonstrate common sense in the approach to answering the allegations?

(9) Are the findings and conclusions accurately reflected in the report?

(10) If appropriate, was corrective action taken and reported?

Sample DoD Hotline Completion Report

DoD HOTLINE COMPLETION REPORT
AS OF (date prepared by IO)

1. Name of Examining Official: John Doe

2. Rank/Grade of Examining Official: GS-12

3. Duty Position and Telephone of Examining Official: Assistant Inspector General, DSN XXX-YYYY

4. Organization of Examining Official: U.S. Army Materiel Command Inspector General Activity **(You don't need the address here; it's in para 10.)**

5. Hotline Control Number: 7XXXX/DIH 01-8XXX

6. Scope of Examination, Findings, Conclusions, and Recommendations:

OPTION 1 – Multiple, similar allegations

a. Background:

b. I interviewed the following people during this inquiry:

(1) Complainant.

(2) Indicate if interview was in person or by phone.

(3) If release is a consideration, indicate here.

c. I reviewed the following documents during this inquiry:

(1) Complainant's letter.

(2) Document containing the standard.

d. Allegation 1: That someone improperly did something in violation of a standard. **(Replace someone, did something and standard with specifics.)**

(1) Presentation of evidence:

(a) Present the evidence provided by each of the interviewees and documents. Unless there is more than one source

which provide the same information, limit each paragraph to evidence presented by a single source.

(b) An option is to present the evidence provided by each source as that source is listed in paragraphs 6.b and 6.c. This procedure allows the IG to launch immediately into the discussion of evidence in the next section.

(2) Discussion:

(a) Discussion paragraphs are used to tie the items of evidence together. The IG should discuss the lowest levels of evidence and build toward the combination of facts which will support the IG's decision.

(b) The last paragraph in this section should be a statement explaining why the allegation was or wasn't substantiated.

(3) Conclusion: The allegation that someone improperly did something in violation of a standard was/was not substantiated.

e. Allegation 2:

(1) Presentation of evidence:

(2) Discussion:

(3) Conclusion:

OPTION 2 <u>-- Multiple, dissimilar allegations</u>

a. Allegation 1: That someone improperly did something in violation of a standard. **(Replace someone, did something and standard with specifics.)**

(1) Background:

(2) Witnesses interviewed:

(3) Documents reviewed:

(4) Presentation of evidence:

(5) Discussion:

(6) Conclusion:

b. Allegation 2:

(1) Background:

(2) Witnesses interviewed:

(3) Documents reviewed:

(4) Presentation of evidence:

(5) Discussion:

(6) Conclusion:

<u>OPTION 3 -- Combination</u>

a. Background:

b. I interviewed the following people during this inquiry:

c. I reviewed the following documents during this inquiry:

d. Allegation 1: That someone improperly did something in violation of a standard. **(Replace someone, did something and standard with specifics.)**

(1) Presentation of evidence:

(2) Discussion:

(3) Conclusion:

e. Allegation 2:

(1) Presentation of evidence:

(2) Discussion:

(3) Conclusion:

f. Allegation 3:

(1) Background:

(2) Witnesses interviewed:

(3) Documents reviewed:

(4) Presentation of evidence:

(5) Discussion:

(6) Conclusion:

g. Allegation 4:

(1) Background:

(2) Witnesses interviewed:

(3) Documents reviewed:

(4) Presentation of evidence:

(5) Discussion:

(6) Conclusion:

7. Cite Criminal or Regulatory Violations Substantiated: (None. -or- Repeat them verbatim.)

8. Disposition: Recommend this case be closed, no further action is necessary. **-OR-** Pending corrective action, IG action is complete. The pending corrective action/conduct a Commander's inquiry/AR 15-6 investigation/etc. will require the case to be placed in follow-up status. The case will not be closed at the local IG level.

9. Security Classification of Information: This report is FOR OFFICIAL USE ONLY as an Inspector General Report.

10. Location of Field Working Papers and Files: (e.g. U.S. Army Materiel Command Inspector General Activity, ATTN: AMXIG-IA, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001.)

11. Additional Notification Information:

a. All subject/suspect mailing addresses (whether or not allegations were substantiated):

b. Was Inquiry or Investiation conducted? (Specify which one)

c. Was the appropriate Commander notified if an Inquiry or Investigation was to be conducted? (YES or NO)

d. Name and mailing address of Commander of subject/suspect.

LTC JONES
Inspector General (Name of person who conducted the inquiry?investigation)

Chapter III -- Nonsupport IGARs.

3-1. General.

This chapter of the Assistance Guide details the processing of nonsupport IGARs.

3-2. IG actions on nonsupport.

IGs will take the following actions IAW AR 20-1, paragraph 7-4b. A decision matrix, on page 67, graphically illustrates IG actions in nonsupport cases. The actual circumstances of each case will determine IG actions.

a. IGs provide assistance to ensure immediate needs of the family are met.

b. Determine if the soldier's spouse (or other dependent) has forwarded a complaint through command channels informing the soldier's commander of the problem. If not, offer assistance in formulating and properly routing the complaint.

c. If the complainant has corresponded with the commander, continue assistance only if the responsible commander has not responded satisfactorily. In the case where the commander is not in the immediate area, use IG technical channels, but only to the extent necessary to ascertain that the commander has fulfilled his obligations required by law or regulation.

3-3. Commander's Actions.

Commanders' responsibilities are detailed in, paragraphs 1-4e, 1-4f, and Chapter 3, AR 608-99. An IG should review the information in those chapters and paragraphs as an aid in determining if the commander's actions meet the "standard" of AR 608-99.

a. If the complainant provides sufficient information, the commander should:

(1) Review the complaint and respond to all requests received under the provisions of AR 608-99 within 14 days (chapters 3 and 4, AR 608-99 contain guidance regarding the timeliness and content of the response);

(2) Establish and monitor procedures to ensure compliance with AR 608-99;

(3) Ensure soldiers and subordinate commanders, if applicable, are thoroughly familiar with the provisions of AR 608-99;

(4) Notify the soldier of the nature of the inquiry or complaint;

(5) Soldier will be given the opportunity to complete the DA Form 5459-R, Authorization to Release Information from Army Records on Nonsupport, Child Custody, or Paternity Complaints;

(6) Counsel the soldier and take other actions, as appropriate IAW AR 608-99 (see para 3-10, AR 608-99);

(7) Determine, when asked to do so by the soldier (or the immediate commander when applicable), whether specific provisions of AR 608-99 release the soldier from requirements of the regulation;

(8) Sign replies received under AR 608-99 (the Battalion Commander will sign complaints pertaining to repeated or continuing violations and the Company Commander will sign those pertaining to initial complaints);

(9) Consult with the SJA.

b. If the complainant provides insufficient information, the commander should:

(1) Review the complaint,

(2) Acknowledge receipt,

(3) Explain that the information provided is insufficient to take action on the complaint and explain what information is needed before a complete reply may be provided,

(4) Answer any policy or procedural questions that have been asked.

c. Upon completion of action with the soldier and coordination with SJA, advise the complainant courteously and promptly of information that would not constitute a "clearly unwarranted invasion of personal privacy." Each reply to an inquiry will contain the specific information required by AR 608-99, paragraphs 3-6 through 3-9, as appropriate, together with the following information:

(1) The name, rank and organization of the commander who personally counseled the subject of the inquiry;

(2) Postal mailing address;

(3) Commercial telephone number (and DSN if the reply is sent to a person within the military);

(4) Whether or not the soldier has been counseled concerning the subject of the inquiry (if not why, the date counseling will take place and date when a final reply will be sent);

(5) Date(s) the soldier was counseled;

(6) A statement as to whether or not the soldier authorized the release of information obtained from the record outside DoD, that is the soldier's decision as recorded on the DA From 5459-R;

(7) A statement as to whether or not the soldier admits an obligation to take action under AR 608-99 and if so, the nature of that action and if not, why not;

(8) Replies to family members, or agencies acting on behalf of family members, should include advice on other courses of action beyond AR 608-99 that may be taken to obtain relief.

3-4. Basic Family Support Requirements.

a. A soldier must provide financial support to family members that meets at least the minimum support requirements stated in AR 608-99, paragraph 2-6, in the absence of a court order or written financial support agreement. Support obligations are stated depending on the number of dependents involved, whether the family unit is single or multiple, and the spouse's military status. Look at each case individually. Consult with the SJA when determining the minimum amount of support.

b. The soldier must comply with court imposed obligations;

c. The soldier must obey court orders and AR 608-99 on child custody and visitation rights (AR 608-99, paragraph 2-8.);

d. The following methods are available to resolve nonsupport issues with family members:

(1) Oral agreements

(2) Written support agreements

(3) Court orders

3-5. Support Agencies

a. Staff Judge Advocate

b. Army Community Services

c. Army Emergency Relief

d. American Red Cross

e. Finance and Personnel Offices

f. Chaplain

g. Local Social Services

3-6. IG Proactive Measures

a. Learn chapter 2, AR 608-99 requirements.

b. Briefings with commanders prior to or on assumption of command

c. Presentations at commander's and 1SG's courses

d. Orient newly assigned personnel (as appropriate) on their responsibilities to provide support and how nonsupport matters are resolved.

e. Use local IG publications, for example, newsletters and bulletins, to inform the command of general information.

f. Establish a system for the processing of nonsupport complaints for the community or post.

g. Use the World Wide Locator or IG technical channels to obtain the soldier's current unit for the complainant.

h. Use the chain of command in responding to an IG request for assistance (Note: AR 20-1 is specific on IG involvement in nonsupport cases). If an IG experiences problems with members of the chain of command, for example, company, battalion, or brigade, the IG should elevate the problem to the level needed to resolve and ensure compliance with AR 608-99.

i. Use the commander's inquiry provisions of AR 608-99, paragraphs 3-1 through 3-6 in working the IG case.

j. Facilitate communications between the commander and family requesting IG assistance.

k. Use the command’s SJA. The SJA is the proponent's local representative. Paragraph 1-4, AR 608-99, outline specific SJA responsibilities.

l. Be responsive, but not over zealous.

3-7. Cautions

a. Do not become personally involved or take sides against another family member--remain objective. An IG’s emotional attitude may be more apparent when the spouse is in a different command or is geographically distant.

b. IGs should control the comments made to the family member being assisted. Do not offer opinions or be judgmental in their presence.

c. When using IG technical channels, remember the other IG will be trying to assist. Do not develop an adversarial relationship with the other IG.

3-8. Use of IG Technical Channels

a. AR 20-1 limits IG involvement in nonsupport cases to circumstances where the commander's response is not satisfactory or the commander has not responded to the complainant. Beyond this, the complainant has the responsibility of communicating nonsupport problems through command channels to the soldier's commander. An IG may offer assistance in formulating and routing the complaint. The IG must remember soldier compliance with AR 608-99 is a command responsibility.

b. In considering referral to another IG, particularly OCONUS IGs, consider time as it relates to the geographic location of the soldier, relative to the IG's location, and unit training requirements (soldier availability for problem resolution).

c. Where a referral is appropriate, ensure essential information is given to the IG who is to work the case.

d. Make referrals, depending upon the IG's location, by either of these means:

(1) Telephone (voice or fax)

(2) E-Mail

(3) Surface mail

(4) Personal contact (messenger)

e. The IG who is the office of record makes the IGARS database entry and therefore selects the appropriate function/determination codes for the DA Form 1559. That IG is the office of record because the commander within his command is responsible for resolving the problem (NOTE: See AR 20-1 for definition of IG Office of Record). An IG who actually refers the case, will close the case in his database and make the following entries in the Function Information section on the backside of the DA Form 1559: Function Code, "Nonsupport of Family"(ZD5), AGCMD Agency(Against Command Agency), the IG Agency Code for the IG office with responsibility for the soldier not supporting the family member, Determination Code "A", because that IG only provided assistance in referring the IGAR to the appropriate IG for action. The IG who receives the referred IGAR should open and work the case as a referred IGAR, then close the case using the function code "Nonsupport of family"(ZD5), determination code "A" for assistance. If the request for assistance also includes an ALLEGATION that the COMMANDER of the soldier is not enforcing AR 608-99, the IG closing the case will include an additional function code relating to the allegation as well as a determination code of either "S" substantiated, or "N" Not Substantiated. This does not preclude the referring IG from providing the information to the spouse(complainant). The IG who has received the referral will complete the case and respond to the complainant, keeping the case open until follow-up has been completed. Coordination between the two IG offices can ease this process by having the IG who worked the case send the results to the referring IG, using technical channels. The referring IG can then respond to the complainant, informing the IG who worked the case, when this is completed. Follow-up should be conducted to ensure the support issues were resolved. The follow-up can be conducted by either IG. (NOTE: The IG office of record has the responsibility of follow-up. Coordination with the referring IG can establish a follow-up procedure where the referring IG contacts the complainant and the IG working the case contacts the unit commander to follow-up on the actions of the soldier. Remember to keep the case open until proper follow-up has been completed.)(See Matrix on pg. 66 for steps to be taken when resolving nonsupport cases)

3-9. General Information. This information should be helpful with the IG's interaction with the chain of command and the SJA.

a. Child Support Enforcement. The subject of child and spousal support is of command interest, but enforcement of support matters is merely an incidental function of the Department of Defense. Many commanders are unaware of the

extensive multi-billion dollar civilian support structure specifically created by Congress to enforce family support issues, and are unable to advise spouses on how to obtain the assistance provided by law. The United States Department of Health and Human Services (HHS) is funded to administer statutory programs under Title 42, United States Code, that include monetary grants of tax dollars to the States to provide for the operation of State Offices of Child Support Enforcement. Each of the 50 States has such an office, with branch offices located in all large cities and also at most county seats. These offices are normally found in the county court house or the local county or state office building, often collocated with the "welfare" office. While State laws vary in detail and specific procedures, every State provides child support collection assistance, normally at no cost to the requesting spouse. All states do this for child support; many also do it for spousal support and alimony.

(1) A soldier's spouse who is not receiving child support from the military sponsor should contact the nearest Office of Child Support Enforcement. Each of these offices has the funded mission of obtaining support payments by use of the State's legal system. Typically, where court ordered support payments are two months (sometimes three) in arrears, the office will initiate support collection efforts on behalf of the children and spouse. If voluntary payment is not made, the office may either issue an administrative payment order that has the full force of law to the Defense Finance and Accounting Service--Indianapolis (DFAS-C) to require involuntary garnishment or allotment of soldier pay or retired pay for support, or can, through the County or District Attorney, obtain a State court order to the same effect. Sections 659 and 665 of Title 42, US Code, implemented at 32 Code of Federal Regulations(CFR), Part 54 and Sections 584.8 and 584.9, provide for direct payment of support collection by DFAS-C to the supported spouse (or to the State support collection unit for the benefit of the supported family members) when such State orders are properly served upon DFAS-C. Such payments, once begun, will only stop:

(a) When a superseding court or administrative order is served upon DFAS-C, or

(b) Where the order was for a specific total amount only, when that amount has been paid in full through involuntary collection of soldier pay.

(2) State Offices of Child Support Enforcement will assist both spouses and former spouses, with or without support agreements, alimony or child support orders, and each State will normally apply its own standards, not Army standards, of the

amount of support required, based upon the State's own laws and regulations. The amount of support required by a State under its procedures may exceed the Army's minimum of BAQ at the "with dependents" rate. The State Offices can also issue notices through HHS under 42 U.S.C., 664 against the Internal Revenue Service to seize a tax refund of the soldier spouse and apply these amounts to support in arrears. State Offices can also request of HHS that the Treasury Department approve involuntary collection of support in arrears by levy against the soldier spouse's pay, as provided in 42 U.S.C., 652(b).

(3) The State's Office of Child Support Enforcement or local District or County Attorney can also initiate actions under the Uniform Interstate Family Support Act (UIFSA) to transfer enforcement authority of court-ordered support from the state in which the supported spouse resides to the state of the soldier spouse's duty station, by registry of the court decree in the local court of the duty station state. In addition to all of the foregoing, this procedure can also provide for the alternative enforcement method of seeking a contempt order from the court nearest the duty station in lieu of action under 42 U.S.C., 659 or 665, to permit the arrest and jailing of the soldier for contempt of court for continuing refusal to pay court-ordered support.

(4) In cases where the supported spouse is destitute, the State's welfare authorities can in some cases also provide for subsidized housing and child care, food stamps, job training, and state monetary aid (paid in large part from HHS federal grant money). The State Office of Child Support Enforcement will refer qualifying cases to the State's welfare authorities, while still pursuing support from the soldier spouse.

(5) In large cities and in cities near large military installations, the State offices and County or District Attorneys are highly knowledgeable in these matters, but elsewhere the local officials may be unfamiliar with the federal regulatory and statutory provisions and procedures for involuntary collection (32 CFR and 42 U.S.C., 659 and 665) so it may be necessary for commanders, ACS personnel, and legal assistance attorneys to make them, as well as the supported spouse, aware of the HHS statutory remedies at their disposal. Doing so will put chronic nonsupport cases into the channels designed and funded by Congress for their proper resolution, and relieve the command of an administrative burden that Congress never intended DoD or the Services to assume.

b. Garnishment. Military and Federal Civil Service pay (and retired pay) may be garnished for payment of alimony and child support. The federal statutory authority is Section 659 of

Title 42, United States Code. Its procedures are set forth at Section 584.8 of Title 32, Code of Federal Regulations. A County or District Attorney can provide copies of these provisions, and explain how they operate, to the extent that your state does not have an administrative procedure established to pursue this remedy. Understand that the federal procedures are mandatory; similar state procedures cannot be substituted.

c. Home Addresses. The home addresses of Department of Defense or Army personnel are exempt from disclosure under the Privacy Act without the written consent of the individuals concerned. However, Section 453, Public Law 93-647 established authority for the U.S. Department of Health and Human Services, Federal Parent Locator Service (FPLS), to obtain information from Department of Defense and to provide locator information to State Child Support Enforcement Officials. City or County Child Support Enforcement officials should contact the appropriate State agency for policy information or locator assistance. Many States operate a similar locator and have a direct line to FPLS.

d. Involuntary Allotment. Military pay and military retired pay can be diverted by involuntary allotment when court ordered support is two months in arrears. The procedures are similar to, but slightly different from, the garnishment procedure. The federal statutory authority is Section 665 of Title 42, United States Code. Its procedures are found in Title 32, Code of Federal Regulations, at Part 54 and Section 584.9 and AR 608-99, Chapter 9. As in garnishment actions, the federal procedures must be scrupulously followed. Garnishment is the predominant method used by the State Child Support Enforcement Officials when diverting pay for court ordered support. For more information regarding garnishment and involuntary allotments see the DFAS web site at: http://www.DFAS.mil.

e. Locator Service.

(1) Agencies frequently have no idea how to ascertain the current duty station and unit assignment of a soldier. The Army maintains a world-wide locator service for active duty soldiers. Send the request to:

Army World Wide Locator
U.S. Army Enlisted Records and Evaluation Center
8899 E. 56th St.
IN 46249-5301

The following is required:

(a) Full name and SSN are needed or date of birth (numerous soldiers with the same name are often listed).

(b) Requires advance payment of a $3.50 fee per person for locator service.

(c) When a certificate is required (that is, Soldiers Certificate) a $5.20 fee must be paid in advance of service.

(d) Make check or money order payable to: Finance Office.

(e) Other inquires should be made directly to the installation commander where the service member is stationed.

(2) Former soldiers may use the Parent Locator Service of the U.S. Department of Health and Human Services, by going through the main State Office of Child Support Enforcement. The Parent Locator Service can access the database of the Internal Revenue Service, Social Security Administration, Department of Veteran's Affairs and states such as driver license records and motor vehicle registries.

(3) To obtain the city or town and the country for an APO address, contact your local Postmaster. The Postal Service publishes an APO directory.

(4) Address Army Reserve or Retired Personnel inquiries to:

Commander
U.S. Army Reserve Personnel Center
Attention: DARP-IMG-F
9700 Page Boulevard
St. Louis, MO 63132-5200

(5) Address former Army personnel inquiries to:

Director
National Personnel Records Center (NPRC)
Attention: NRP-MA-S
9700 Page Boulevard
St. Louis, MO 63132

(6) Former personnel are those who have been discharged and have no further Army service obligation or status. NPRC is an element of the National Archives and Records Administration.

(7) Address Army National Guard personnel inquiries to the appropriate state Adjutant General.

f. Overseas Parental Child Abduction. In cases where a non custodial military parent has taken, or retained after a visit, a child overseas, the Army has no authority to return the child forcibly. Only the civil authorities have such power. However,

commanders are required to process this type case IAW AR 608-99, paragraphs 2-8, 2-9; 3-8 and 3-10. The soldier may be returned at Army expense to the U.S. port of entry nearest his overseas duty station, for delivery to the appropriate state law enforcement agents if a charge of kidnapping or abduction is filed against the soldier, or the soldier is either found in contempt of court or ordered to show cause why he should not be held in contempt, and if the presiding judge issues a warrant of arrest. Interstate extradition may be necessary to return the soldier from the port of entry state to the prosecuting state. The federal statutory provision is Section 814 of Title 10, United States Code. The federal implementing regulations are found at Title 32, Code of Federal Regulations, Section 503.2. Commanders must ensure they comply with AR 608-99, paragraph 3-10. In order to secure return of the child, it may be necessary to contact the civil authorities of the country wherein the child is located. The formal procedure follows the Hague Convention on the Civil Aspects of International Child Abduction of October 25, 1980. The United States has implemented the treaty at Title 42, United States Code, Sections 11601-11610. The treaty can be found in Title 22, Code of Federal Regulations, Part 94. For additional information, contact the U.S. Department of State, Office of Citizens Consular Affairs, Washington, DC 20520.

g. Pay Information. For pay information, write to: Military Pay Customer Service Center, ATTN: DFAS-CN/FJED, Room 324W, 8899 E. 56th St., Indianapolis, Indiana 46249-0801.

h. Service Members in Germany. For assistance in Uniform Reciprocal Enforcement of Support Act (URESA) and child custody issues in the Federal Republic of Germany, agencies may contact the German Federal Institute for Guardianship Affairs at this address:

Deutsches Institut Fuer Vormundschaftswesen
69125 Heidelberg 1
Zahringerstrasse 10
Postfach 102020
Federal Republic of Germany
Comm. 011-49-6221-98180

i. Service of Process. There is no central Army Liaison office to facilitate the service of civil process. Pursuant to Section 516.7(b)(3)(ii) of Title 32 of the U.S. Code of Federal Regulations and Army Regulation 27-40, a commanding officer, upon receipt of civil process for service upon a member of his/her command, will ask the soldier whether he/she agrees to voluntarily accept service. If the soldier declines, the commander must advise the plaintiff, court, etc. that mandatory

service cannot be effected by the Army, and that service by other means must be pursued.

j. Service of Process Overseas. Many agencies have no idea how to effect service of process on a soldier stationed overseas. If a soldier is not properly served, the court is without lawful jurisdiction over the soldier.

(1) Method 1: Title 32, Code of Federal Regulations, Part 516, Section 516.7(b)(4). Forward process to soldier's commanding officer for voluntary acceptance of service. A soldier cannot be served by the Army unless he consents to accept service.

(2) Method 2: State "long arm" statute. Permits service upon a designated officer of your state's government. May or may not be effective in support cases; it depends on your state's laws.

(3) Method 3: The 1965 Hague Convention of The Service Abroad of Judicial and Extra judicial Documents in Civil or Commercial Matters. This international treaty provides for official service of foreign process by the civil authorities of each signatory nation. The United States Marshals Service has the necessary forms.

(4) Method 4: Personal Service. Under the Status of Forces Agreements in effect with the countries in which U.S. forces are stationed, provisions are made to facilitate the personal service of process on U.S. installations. By consulting the telephone directory of the nearest city to the U.S. military installation, civilian attorneys and process servers who speak English can be contacted to effect personal service upon the soldier for an agreed fee. Where the state cannot authorize funds for this, the complainant spouse or guardian may have to pay the service fee.

k. Soldiers and Sailors Civil Relief Act. A federal statute enacted in 1940 to provide certain procedural protections to service members. The statutes are found in Title 50 Appendix, United States Code, Sections 501-591. In peacetime, the protections include:

(1) A requirement to inform the court in the initial petition whether the defendant is a service member.

(2) For the court to consider a request for delaying the case, or requiring appointment of counsel to represent the service member if the case must proceed, but he cannot appear and

defend due to the nature of his military duties or assignment. This applies only in judicial and not administrative hearings.

(3) Consider stay of execution requests by the service member for the same reasons.

(4) Permitting the service member a period of time after return from military service to request reopening and reconsideration of default decrees entered when the service member could not appear and defend for the same reasons. None of the foregoing precludes a peacetime support case from proceeding to judgment solely because of military status of the defendant. The laws merely require the judge to afford certain procedural protections to the service members who cannot personally appear, after having been properly served with notice of the lawsuit.

l. Uniform Reciprocal Enforcement of Support Act. All 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands have adopted the Uniform Reciprocal Enforcement of Support Act (URESA), with minor variations. Your state's Office of Child Support Enforcement was provided a complete digest of these statutes in 1989 by the National Institute For Child Support Enforcement. The Federal Republic of Germany and the United Kingdom of Great Britain and Northern Ireland also have reciprocal enforcement statutes recognizable under URESA, and their courts will accept URESA actions. A URESA action is an appropriate method to accomplish a garnishment or involuntary allotment of military pay for alimony or child support by order of the local court nearest the soldier's current duty station.

3-10. Nonsupport Proponent

a. The proponent of AR 608-99 is:

Legal Assistance Policy Division
The Judge Advocate General
2200 Army Pentagon
Washington D.C. 20310-2200

b. Contact that office by calling DSN 425-6718 or commercial (703) 588-6718.

c. They can assist by interpreting policy and providing guidance on unresolved or complex cases.

3-11. Sample Nonsupport Letters

a. An IG may obtain the Handbook on Child Support Enforcement In The Military from the U.S. Department of Health and Human Services, Office of Child Support Enforcement. The handbook is a "how-to" guide for getting child support payments owed to a parent. They have another book titled Paternity Establishment that may help a complainant who has paternity questions. Refer the complainant to the Office of Child Support Enforcement, telephone (202) 401-9383. Their address is 370 L'Enant Promendade S.W., Fourth Floor, Washington D.C. 20447.

b. Following are sample letters that IGs may use for replies to individuals who have sought Army assistance on a nonsupport matter. Also included are samples of Defense Finance and Accounting Service (DFAS) letters sent to individuals who have inquired about involuntary support allotments and garnishment of U.S. Army pay.

SAMPLE COMMANDER'S INQUIRY MEMORANDUM

Office Symbol

MEMORANDUM FOR Commander

SUBJECT: Request for Commander's Inquiry (Nonsupport, AR 608-99)

1. Request you conduct an inquiry into the allegation (Encl.) of failure to provide financial support to family members by
(Name)_____,_____(SSN)_____,_____(Unit)_____
IAW AR 608-99, review the allegations, determine all relevant facts and evidence (e.g. allotment forms, canceled checks, court orders) and provide us a response by_____. Consultation with your SJA legal advisor concerning the amount of financial obligation and necessary proof of payment is highly recommended.

2. A commander's inquiry will protect the rights of the soldier and the best interests of the Army, and is the best method to handle this sensitive issue since adverse administrative or UCMJ action (AR 608-99, paragraph 1-6) could result should the allegations be substantiated. IG records, as a rule, cannot be used as the basis for adverse action against an individual.

3. This memo is an IG record and contains privileged and confidential information. ____(Name)_____ consented to the release of his/her name in the interest of resolving this issue. However, as an individual requesting IG assistance, _____(Name)____ is entitled to confidentiality and to certain safeguards; among these is the right to register complaints with the IG, free from restraint, coercion, discrimination, harassment or reprimand.

4. The use or attachment of these records as exhibits to records of other offices or agencies within DA is not authorized without the written approval of TIG. UNAUTHORIZED REPRODUCTION OR RETENTION OF IG DOCUMENTS IS STRICTLY PROHIBITED. Return this document with the results of your inquiry.

5. If you need additional information, please contact _____ at ext. (xxx-xxxx).

2 Encls
1. Complainant's Letter
2. AR 608-99 Extract

(Action Officer)
(Rank), U.S. Army
Inspector General

FOR OFFICIAL USE ONLY. Dissemination is prohibited except as authorized by AR 20-1.

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA Exemption 5 & 6 apply.

SAMPLE REPLY TO A BASIC REQUEST FOR ASSISTANCE RELATING TO MINIMUM SUPPORT

Month xx, xxxx

Installation Support

(ADDRESS)

Dear _____:

This is in reply to your inquiry concerning the support obligations of _ (name)_____.

The Army expects soldiers to provide support to their legal dependents. However, the determination of what is adequate or reasonably sufficient support is a highly complex and individual matter. In the absence of a court order, the Department of the Army has established a minimum support policy as an interim measure until the parties involved resolve their differences by mutual written agreement, or the matter is resolved by court action.

Army officials must assume that adequate support is provided to family members unless a complaint is received. Therefore, arrears for past support under the Army's minimum support policy must be addressed during the periods of verified nonsupport.

When a complaint arises regarding support, Army Regulation 608-99 requires a commander to take action, and you may correspond with the soldier's commander at ____(unit address)___. Be advised, however, that while he will be counseled to provide the required amount of support, and certain adverse personnel or disciplinary actions may be taken against him for noncompliance, the Army cannot actually force a soldier to make payment.

Your correspondence has been sent to the soldier's commander. The commander will reply directly to you. If you are not satisfied with the commander's answer, you should pursue the matter through the civil courts.

We have enclosed information papers which you may find helpful.

Sincerely,

Enclosures

SAMPLE REPLY TO A LETTER CONCERNING [CONUS] COURT ORDERED SUPPORT OBLIGATIONS

Month xx, xxxx

Installation Support

(ADDRESS)

Dear _____:

This is in response to your letter concerning the court ordered support obligations of _____(name)_____.

Army Regulation 608-99 requires a commander to take action in nonsupport cases. You may correspond with the soldier's commander at ___(unit address)___. However, while the soldier will be counseled to provide the required amount of support, and certain adverse personnel or disciplinary action may be taken against him for noncompliance, neither the commander nor the Department of the Army can actually force a soldier to pay. Only the civil courts can do this.

Congress has enacted two federal statutes (Sections 659 and 665 of Title 42, United States Code), which permit the civilian courts to order the Army to make an involuntary collection of support from military pay. The procedures are published in Title 32 of the United States Code of Federal Regulations at Part 54 and Sections 584.8 and 584.9. Each state has laws and regulations to implement these federal procedures. However, the party seeking to collect support must initiate these actions. The Army cannot do this. These provisions are in addition to the contempt powers of the civil courts to order a soldier's arrest and to impose monetary fines for refusal to pay court ordered support.

Your correspondence has been sent to the soldier's commander who will reply directly to you regarding the soldier's court ordered support obligations. If you are not satisfied with the commander's response, you should pursue the matter as outlined above.

We have enclosed a handbook on child support enforcement and information sheets which you may find helpful. Also, more information regarding involuntary collection of support from military pay may be found on the DFAS web site at: http://www.dfas.mil.

Sincerely,

SAMPLE REPLY TO A LETTER CONCERNING GERMAN OR OCONUS COURT ORDERED SUPPORT OBLIGATIONS

Month xx, xxxx

Installation Support

(ADDRESS)

Dear _____:

This is in response to your inquiry regarding the court ordered support obligations of _____(name)_____.

Army Regulation 608-99 requires a commander to take action in nonsupport cases, and you may correspond with the soldier's commander at _____(unit address)_____. While the soldier will be counseled to provide the required amount of support, and certain adverse personnel or disciplinary actions may be taken against him for noncompliance, neither the commander nor the Department of the Army can actually force a soldier to pay. Only the civil courts can do this. You should pursue the collection of support through the courts since you possess a court order.

Congress has enacted two federal statutes (Sections 659 and 665 of Title 42, United States Code), which permit the civilian courts to order the Army to make an involuntary collection of support from military pay. The procedures are published in Title 32 of the United States Code of Federal Regulations at Part 54 and Sections 584.8 and 584.9. Each state has laws and regulations to implement these federal procedures and require, in cases where the soldier is no longer stationed with the NATO forces in Germany, the action of a United States state court in order to process a German support order. However, the party seeking to collect support must initiate these actions. The Army cannot do this. These provisions are in addition to the contempt powers of the civil courts to order a soldier's arrest and to impose monetary fines for refusal to pay court ordered support.

Under the United States Uniform Reciprocal Support Act (URESA), which, with some minor differences has been adopted by almost all of the United States, support orders of the courts of a foreign nation which has a law similar to URESA may be registered in a URESA state and enforced through that state's legal system. Germany has such a law.

The civil court procedure requires the legal services of an attorney to represent you in the United States. You may be required to provide documentation such as:

a. A number of copies of each signed court order, certified by apostille in accordance with the Hague (den Haag) Convention of 1961 and English translations (translator swears to accuracy before a notary),

b. A copy of the German statute, with sworn and notarized English translation, and

c. A sworn and notarized written statement from you (in English) verifying the dollar amount of your claim and the details of such, to include the soldier's full name, social security number, etc.

Once your court orders are registered, and it is shown that support is in arrears, the attorney can obtain a court order that directs the Defense Finance and Accounting Service to pay directly to you the support in arrears and future support. The order can be worded to apply to future retired pay as well as active duty pay.

In the meantime, your correspondence has been sent to the soldier's commander. The commander will reply directly to you regarding the soldier's court ordered support obligations. If you are not satisfied with the commander's answer, you should pursue the matter as outlined above.

We have enclosed a handbook on child support enforcement and information sheets which you may find helpful. Also, more information regarding involuntary collection of support from military pay may be found on the DFAS web site at: http://www.dfas.mil.

Sincerely,

Enclosures

SAMPLE TASKER ON COURT ORDERED SUPPORT

<Office Symbol> (AR 608-99)

MEMORANDUM THRU Commander,

FOR Commander,

SUBJECT: Nonsupport of Family Members/Court Order

1. The attached correspondence is a complaint of noncompliance with a court ordered support obligation and is forwarded for your action. Reply directly to the writer and include a POC's name and commercial telephone number.

2. Per Army Regulation 608-99, counsel the soldier on his/her court ordered obligations. If he/she cannot produce proof of payment, the soldier is not in compliance with Army requirements and is expected to commence payment of the court ordered amount promptly. An argument from the soldier that he/she intends to go back to court should not be entertained; a court ordered support amount is the required amount until and unless a superseding court order, a modifying court order, or a court ordered modification is produced.

3. Assist the soldier in obtaining the advice and counsel of a legal assistance attorney, but ensure he/she understands that he/she must make support payments. If the soldier's attorney asserts that the soldier is not legally obligated to pay, the commander will seek immediate review from the Staff Judge Advocate. The soldier should be advised that Army policy requires strict compliance with valid court orders. If the soldier refuses, and cannot produce proof of payment, request information pertaining to the corrective action taken.

4. If there are any questions regarding the Army's support policy, you may call your local SJA.

Sincerely,

Encl.
as

SAMPLE INSTALLATION SUPPORT TASKER ON MINIMUM SUPPORT

<Office Symbol> (AR 608-99)

MEMORANDUM THRU Commander,

FOR Commander,

SUBJECT: Nonsupport of Dependents/Minimum Support

1. The attached correspondence is a complaint of noncompliance with the Army's minimum support policy concerning the above named soldier and is forwarded for your action. Reply directly to the writer and include a POC's name and commercial telephone number.

2. Per Army Regulation 608-99, counsel the soldier on his minimum support obligations. If he/she cannot produce proof of payment, the soldier is not in compliance with Army requirements and is expected to commence payment promptly. An argument from the soldier of an intent to go to court should not be entertained. Support "in kind" should not be accepted as the required amount unless a court order to that effect is produced or it meets with the limited provisions of paragraph 2-7d, AR 608-99.

3. Assist the soldier in obtaining the advice and counsel of a legal assistance attorney, but ensure that he understands that he must make support payments. If the soldier refuses, and cannot produce proof of payment, request information pertaining to the corrective action taken.

4. If there are any questions regarding the Army's support policy, you may call your local SJA.

Sincerely,

Encl.
as

3-12. Nonsupport Questions and Answers

These are included to give you an idea of responses to nonsupport complaints. The references are to AR 608-99. The solutions are not "cookie cutter" solutions and are not the only way command or the Army may respond to particular nonsupport situations.

QUESTION 1:

A spouse and one child are separated from the soldier. The spouse makes more money than the soldier. How much does the soldier have to pay?

ANSWER:

The soldier does not have to support the spouse, if released from the obligation by the Battalion Commander. Based on a pro-rata share, the soldier has to provide one-half of his BAQ at the "with dependents" rate for the child. (Paragraph 2-11.b.(3))

QUESTION 2:

Since my husband (a soldier) is making my car payment, he says that he does not have to pay me support. Correct or incorrect?

ANSWER:

Incorrect. Unless mutually agreed upon, the soldier must make direct payments to the spouse. (Paragraph 2-7.d)

QUESTION 3:

I have a court order that says my wife (a soldier) should be paying me $250 a month. What can I do about it?

ANSWER:

Soldiers are required to provide financial support IAW a court order. Compliance with minimum support requirements of AR 608-99 will be enforced by administrative and criminal remedies as appropriate. Individuals should go to their unit commander for action. Garnishment action or involuntary allotment action (through a civil court or appropriate civilian agency) can also be taken (IAW (Paragraphs 1-8.a. and 3-10.).

QUESTION 4:

My husband (a soldier) has not been supporting me for the last year since he has been in Korea. How can I get my back money?

ANSWER:

If there is a court order or a written separation agreement establishing an amount for support, then it must be pursued in civil court. However, in the absence of either of these documents, the soldier cannot be ordered to pay arrears. He can, however, be punished for failure to comply with the minimum support requirements, and recoupment action can be taken for BAQ previously received, but not used for the support of family members.

QUESTION 5:

My husband and I are physically separated. On reassignment, he took our child to his new post. Can he get away with this?

ANSWER:

Army policy is violated only if a valid court order exists granting custody to someone other than the soldier. (Paragraph 2-8.b.)

QUESTION 6:

A soldier and I had a child. He acknowledges the child through letters and money. This month, I didn't get any money. Can you make him send me my child's money?

ANSWER:

No action can be taken on the claim of paternity in the absence of a court order. The court order must identify the soldier in question as the father of the child. Also, the court order must direct that the soldier provide financial support to the child. (Paragraph 3-7.c.(1)).

QUESTION 7.

A female soldier calls and says that she and her husband (also a soldier) are not getting along. She took the two children and got an apartment downtown. He refuses to send any money. What can be done? What does he have to do?

ANSWER:

A soldier married to another soldier is not required to pay spousal support. However, the non-custodian soldier parent will provide the custodian soldier parent an amount equal to the difference between the "with" and "without" rate for the non-custodian soldier's rank. (Paragraph 2-6.d.(4)(a)).

QUESTION 8:

A soldier writes and says she has a child by another soldier. They are not married. Can the Army make the soldier (alleged father) pay for child support? The alleged father does not recognize the child as his.

ANSWER:

No. (Paragraph 3-7.c.(1)).

QUESTION 9:

A spouse calls in and says she and her husband are separated. The husband refuses to send her support money. Her husband says his commander told him he didn't have to. Can the commander do that?

ANSWER:

No. A commander has no authority to excuse a soldier from complying with the interim minimum support requirements under these circumstances (Paragraph 2-10.a. and b.).

QUESTION 10.

A lady calls and says her husband won't support her because he claims she deserted him. His commander said that's right -- he doesn't have to. Is this correct?

ANSWER:

Alleged desertion or other marital misconduct on the part of a spouse has no effect on a soldier's obligation to provide financial support. (Paragraph 2-10.d)

QUESTION 11.

A grandmother writes that she is taking care of the two children of her son-in-law (a soldier). The soldier is not giving her any money but, instead, is sending it to his wife. Can you get her support for the children?

ANSWER:

If the family members are not residing together, the soldier will ensure each family member receives their pro-rata share. (Paragraphs 2-6.b. and 2-6.d.(3)).

QUESTION 12:

A man calls in and says his former wife is now married to a soldier. He states she took his kids with her and her new husband to Germany. He wants the children back. What can Army officials do?

ANSWER:

First, it depends on who has legal custody. If the former wife has custody, then the Army will not intervene. If the former husband has legal custody, the Army has only limited capabilities to intervene. Since the authority that the Army has is almost exclusively over the soldier, the wife of the soldier is simply a citizen and not subject to Army jurisdiction. However, as a matter of practice, the Army will forward the inquiry to the unit commander of the soldier and inform the ex-wife, through the soldier, of the allegations and encourage the family to resolve this issue. (Paragraph 2-8, 2-9)

QUESTION 13:

A spouse is not satisfied with the amount of support specified in a written agreement (not court ordered) and asks for assistance in obtaining an increase of support. How can Army officials help her, and what can she hope for?

ANSWER:

Army officials can advise her to obtain a modified agreement in writing and signed by both parties, or, to obtain a court order specifying a greater amount of support to be provided by the soldier. Absent a court order, the commander may advise the soldier to provide support in an amount not less than BAQ at the with dependents rate (Paragraph 2-3.).

QUESTION 14:

A former wife calls saying her husband (a soldier) has missed the last 6 months of court-ordered support payments. She wants the Army to take this money directly from his pay. What do you tell her?

ANSWER:

She must go back to court and obtain an actual garnishment order. DFAS-C will then process the order. (Paragraph 1-8)

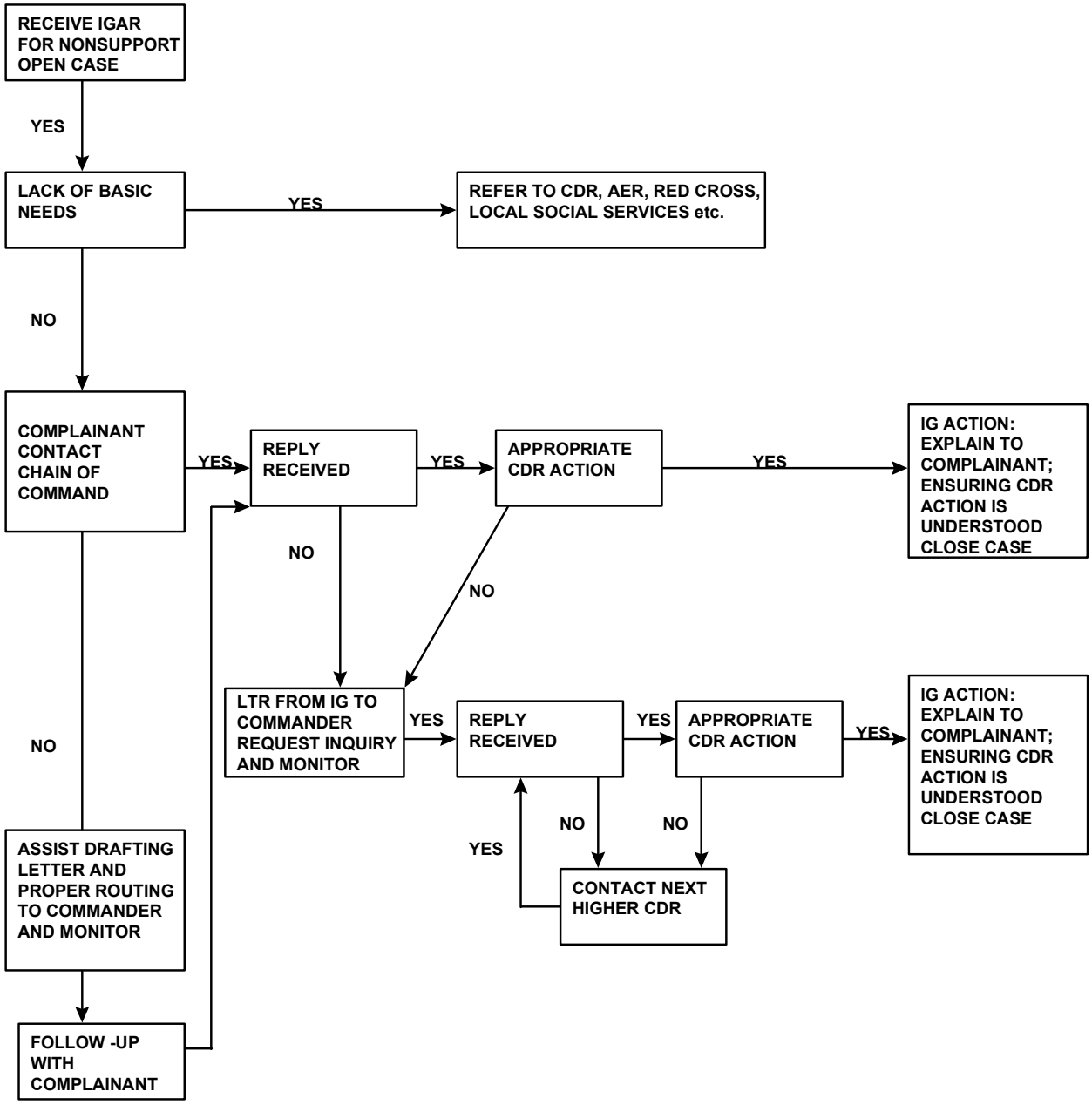
QUESTION 15:

A former wife calls saying her husband (a soldier) has missed 3 months of court-ordered support payments. She asks what can be done.

ANSWER:

Public Law permits involuntary allotments from pay and allowances from AD soldiers as child, or child and spousal support payments when the soldier has failed to make payments
under the court order for 2 months or in a total amount equal to or in excess of the support obligation for 2 months. (Paragraph 1-8)

IG DECISION MATRIX FOR NONSUPPORT COMPLAINT



Chapter IV -- Civilian Personnel IGARs.

4-1. General.

This section of the Assistance Guide details the processing of civilian personnel IGARs. Code of Federal Regulations, Department of Defense Civilian Personnel Manual (CPM), Army regulations, and local collective bargaining agreements include procedures for processing grievances, appeals, and equal employment opportunity (EEO) complaints. These complaints pertain to all aspects of their employment. As the IG, your role in these cases usually involves determining the nature of the complaint and where the person should take the complaint for action. In most situations, these complaints are not appropriate for IG actions except to ensure due process, unless they fall into the fifth category below. AR 20-1, paragraph 4-4k, describes the four broad categories of civilian complaints as follows:

a. Categories.

(1) Refer grievances within the purview of the DOD CPM and the local collective bargaining agreement to the Chief, Civilian Personnel Advisory Center (CPAC) for information and assistance.

(2) Refer appeals of adverse action within the purview of 5 U.S.C., 7701-7703 to the CPAC for information and assistance.

(3) Refer EEO complaints, including reprisals, for protected EEO activity, within the purview of 29 CFR, 1614 and AR 690-600, to the local EEO counselor for action and resolution.

(4) Refer complaints of retaliation or reprisal ("Whistleblower") within the purview of 5 U.S.C., 2301 and 2302 to the Office of Special Counsel (OSC). In the case of Non-appropriated Fund employees, refer them to IG, DoD.

(5) AR 20-1, para 4-4k(2), describes a fifth category of civilian complaints involving matters that do not directly affect the employment situation or well-being of the individual. Examples include complaints or allegations against third parties, reports of alleged misconduct, mismanagement, or other matters requiring command attention.

b. IG Actions.

The IG must analyze a complaint on receipt to determine the category and IG appropriateness. To do this, the IG should consult:

(1) The SJA,

(2) The Chief, Civilian Personnel Advisory Center,

(3) The EEO officer,

(4) Army regulations and public laws.

c. If the IGAR is a grievance or appeal, the IG will:

(1) Refer the employee to the CPAC for information and assistance.

(2) Advise the employee of procedures and time lines provided by regulation.

d. If the complainant, understanding due process and presenting valid reasons for not exercising the employee grievance channel, insists on IG involvement, the IG may, as an exception to policy, accept the IGAR and work it. The IGAR should be in writing. If a locally negotiated grievance procedure exists, it must be used. An IG inquiry or investigation can only determine the facts of the case. Subsequent correction of the record or change of a personnel action may still require submission of a request by the civilian to the appropriate agency.

e. If the IGAR pertains to a complaint based on discrimination or allegations of reprisal, harassment, or intimidation for filing such a complaint, the IG:

(1) Should advise the complainant to contact the EEO officer or counselor for information and assistance in processing the complaint.

(2) Will not accept EEO complaints per AR 20-1, paragraph 4-4k(3)b.

f. If the complainant alleges retaliation or reprisal for lawful communication of information (Whistleblowing), refer the complainant to Office of Special Counsel (OSC).

g. If the IGAR pertains to matters other than those categories listed in paragraph 1.a.(1) through (4) above which directly affect the employment situation or personal well-being, the IG should employ "normal" Inspector General Action Process procedures (those used for "regular" complaints [described in chapter 4, AR 20-1]). Complaints of this "other" type fall into the fifth category of civilian complaints.

h. Commanders (or State AGs) may require an IG inquiry or investigation into complaints which fall into one of the four categories discussed in paragraph 1.a. above, even though the complaint or grievance is being processed through appropriate channels. The inquiry or investigation must clearly be a separate action. The IG works for the commander, not the employee. Neither action may interfere with or delay the other. Coordinate closely with the local CPAC and SJA.

4-2. Definitions.

Defined below are categories of employees, agencies and activities, taken from the Army Command and Management: Theory and Practice Reference Text, which will be useful to IGs in responding to complaints from DoD civilian employees.

a. Categories of Employees.

(1) Appropriated Fund (APF) employees are U.S. citizens paid from funds appropriated by the Congress of the U.S. and governed by federal civil service laws. The Office of Personnel Management (OPM) administers the laws governing APF employees.

(2) Nonappropriated Fund (NAF) employees are paid from funds generated through the sale of goods and services.

(a) They are civilians, usually from the local labor market, or off-duty U.S. military personnel who compete for employment on the basis of merit.

(b) NAF employees play an important role in providing morale and recreation services to military personnel and their family members.

(c) Army clubs, guest houses, child care centers, craft shops, bowling centers, swimming pools, gymnasiums, and many other NAF activities employ a considerable number of employees at most Army installations.

(d) They are not governed by most laws and regulations administered by OPM. AR 215-3: NAF-Personnel Policies and Procedures, establishes policies and procedures applicable to DA NAF employees.

(e) These policies are designed to maintain uniform, fair, and equitable employment practices in keeping with the Army's traditional concept of being a good employer.

(f) Activity CPACs provide guidance and personnel support to NAF managers who are responsible for administering the NAF personnel program.

(3) Local National employees hired in overseas areas. Federal law and DoD policy are consistent with requisites of the applicable Status of Forces Agreements that form the basis of these employment systems. Within this framework, administration must be consistent with host country practices and with U.S. law and the management needs of the Army based upon DA requirements.

b. Civilian Personnel Agencies or Activities.

(1) Office of Personnel Management (OPM) is the central personnel agency of the Executive Branch with delegation of authority from the President to administer most federal laws and executive orders dealing with all aspects of personnel administration and related subjects.

(a) Some laws and executive orders place certain personnel management responsibilities directly on agency or department heads, subject to OPM policy and review.

(b) In other cases, OPM has authority by statute and delegation to establish specific program standards and regulate and control the means of carrying out major aspects of agency/department personnel management.

(c) OPM accomplishes the following:

1. Develops proposals for federal personnel legislation and Executive Orders

2. Develops and publishes specific policies, procedures, and regulations implementing federal personnel laws and Presidential Directives.

3. Provides testing, evaluation, and referral of job applicants to agencies.

4. Evaluates agency personnel management systems.

5. Provides advice and assistance to agencies in developing effective personnel management programs.

6. Develops standards by which jobs are classified and qualifications determined.

7. Administers retirement, health, and life insurance programs.

(2) Equal Employment Opportunity Commission (EEOC) has responsibility for:

(a) Monitoring federal agencies in development and implementation of affirmative action employment programs to increase the representation of minorities, women, and handicapped individuals.

(b) Developing policy and providing guidance to federal agencies on the processing of EEO complaints and conducting hearings on complaints of discrimination.

(c) Issuing recommended decisions to agencies, and evaluating program effectiveness.

(3) Federal Labor Relations Authority (FLRA) accomplishes the following:

(a) Administers the federal service labor-management relations program.

(b) Resolves questions of union representation of employees.

(c) Prosecutes and adjudicates allegations of unfair labor practices.

(d) Decides questions of what is or is not negotiable.

(e) Reviews decisions of arbitrators on appeal.

(4) U.S. Merit Systems Protection Board (MSPB) monitors the civil service system and hears and decides allegations of merit principle abuses and other civil service appeals. It is also responsible for deciding appeals of personnel actions and mixed cases. Mixed cases involve cases of personnel actions that are alleged to have been taken because of discrimination. It can order corrective and disciplinary action against an agency or an employee when it finds abuse or unfair personnel practice.

(5) Office of Special Counsel (OSC) investigates any allegation of a prohibited personnel practice (5 USC 2302), e.g., discrimination based on race, color, religion, sex or national origin, to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited practice has occurred, exists, or is to be taken. Also, OSC investigates whistleblower allegations and alleged violations of the Hatch Act. OCS prosecutes these matters to the MSPB.

(6) Civilian Personnel Management Service (CPMS) was established in August 1993 as a result of a recommendation of the National Performance Review. CPMS develops and implements DoD civilian personnel policy and program guidance, including:

(a) classification appeals,

(b) discrimination appeals,

(c) discrimination complaints,

(d) special pay rate determination,

(e) injury and unemployment compensation.

(7) Office of Complaint Investigation (OCI) was also established as a result of a recommendation of the National Performance Review. OCI conducts discrimination and (when requested) grievance investigations on a fee for travel and administrative cost basis. Their clients do not include active duty, Title 32 National Guard personnel, DoD contractor employee, AAFES or local national employees.

(8) Deputy Assistant Secretary(Civilian Personnel Policy) assigned to the Assistant Secretary of the Army for Manpower and Reserve Affairs, HQDA, is responsible for developing and implementing Army civilian personnel policy and program guidance and operational support to the military and civilian communities in the management of the Army’s civilian personnel management program.

(9) U.S. Army Community and Family Support Center (CFSC) is a Field Operating Agency (FOA) of the ACSIM, HQDA. CFSC's mission is to develop and administer systems and programs for the Army family and community activities, including morale, welfare, and recreation (MWR) activities, and child development centers. The CFSC develops issues and interprets NAF personnel policies, regulations and procedures, and provides advice and assistance to commanders on their proper applications. CFSC also administers a central referral program for specified MWR managerial jobs (both AF and NAF).

(11) U.S. Army Civilian Personnel Evaluation Agency (USACPEA) is a FOA of the Assistant Secretary of the Army for Manpower and Reserve Affairs responsible for conducting civilian personnel management and administration, EEO program surveys and special reviews Army-wide. The purpose of these surveys and special reviews is to fulfill the Secretary of the Army's oversight responsibility by assessing program effectiveness, efficiency and compliance.

(12) Equal Employment Opportunity Compliance and Complaints Review Agency (EEOCCRA) develops and administers DA EEO complaints decisions and ensures compliance with the DA complaints policy and regulations as well as Equal Employment Opportunity Commission (EEOC) complaint decisions. The Agency manages and operates the Army discrimination complaint system for individual and class complaints from Army Civilian employees and applicants. It also processes and prepares final Army decisions on individual and class complaints of discrimination for approval by the Secretary of the Army or his designee.

(a) EEO officers provide commanders advice and assistance for program implementation. Army activities are responsible for development of Affirmative Action Program Plans (AAPP) for minorities, women, and handicapped by the EEOC and DA.

(b) The CPAC normally takes the lead in development of the AAPP for handicapped individuals, and the EEO Officer takes the lead in the development of the AAPP for minorities and women.

4-3. Caution.

Note that paragraph 4-1d. of this chapter states the IG may, under certain circumstances, accept and process an IGAR from a civilian complainant as an exception to policy.

a. Be very careful in making the decision to grant an exception to policy. An IG may inadvertently deprive an employee of his right to due process.

b. If there is a procedure or system in place with either CPO, EEO, or the union, the IG must know the applicable procedure or system (e.g., written policy, negotiated agreement) as it relates to grievance procedures.

c. In most cases, a period of 15 days is set for the employee to file a grievance. If the grievance or complaint is not filed in the specified time period, it will likely be rejected as “being untimely.”

d. In such a case, the employee (complainant) suffers (loses) whether the grievance or complaint had merit or not, if through an inadvertent IG oversight, IG action delays official grievance submission.

4-4. References. Listed below are references which an IG may need to review to respond to complaints from DoD civilian employees.

SUBJECT	REFERENCE
Administering the Labor Agreement	AR 690-30
Army Personnel Proponent System	AR 600-3
Career Management	AR 690-950
Classification under the General Schedule (Chapter 511)	AR 690-500
DoD Administrative Grievance System (Chapter 771)	CPM 1400.25-M
Equal Employment Opportunity Discrimination Complaints	AR 690-600
Guide to Civilian Personnel Management	AR 690-11
Hours of Duty, Pay, and Leave (Book 531, Subchapter 4)	AR 690-990-2
Incentive Awards	AR 672-20
Labor-Management Relations (Chapter 711)	CPM 1400.25-M
Planning for Use and Management of Civilian Personnel in Support of Military Contingency Operations	AR 690-11
Nonappropriated Funds and Related Activities	AR 215-3
Performance Management (Chapter 4302)	AR 690-400
Position Management (Chapter 312)	AR 690-300
Promotion and Internal Placement (Chapter 335)	AR 690-300
Reduction in Force (Appeals, Grievances, etc.) (Chapter 351	AR 690-300
Reduction in Grade and Removal Based on Unacceptable Performance (Chapter 432)	AR 690-400
Senior Executive Service (Chapter 920)	AR 690-900

4-5. Telephone Numbers. Listed below are telephone numbers, and web site addresses of some of the agencies defined in paragraph 4-2 above.

a. Civilian personnel telephone numbers and directories are posted on the Internet at http://cpol.army.mil/libraries/directories.

b. Equal Employment Opportunity Commission (EEOC) Federal (vs. Private) Sector Complaints----------(202) 663-4844

c. Federal Labor Relations Authority (FLRA)(202) 482-6600

d. Office of Personnel Management (OPM) Inspector General----------(202) 632-7746

e. Office of Special Counsel (OSC)---------(202) 653-7188
http://www.access.gpo.gov/osc

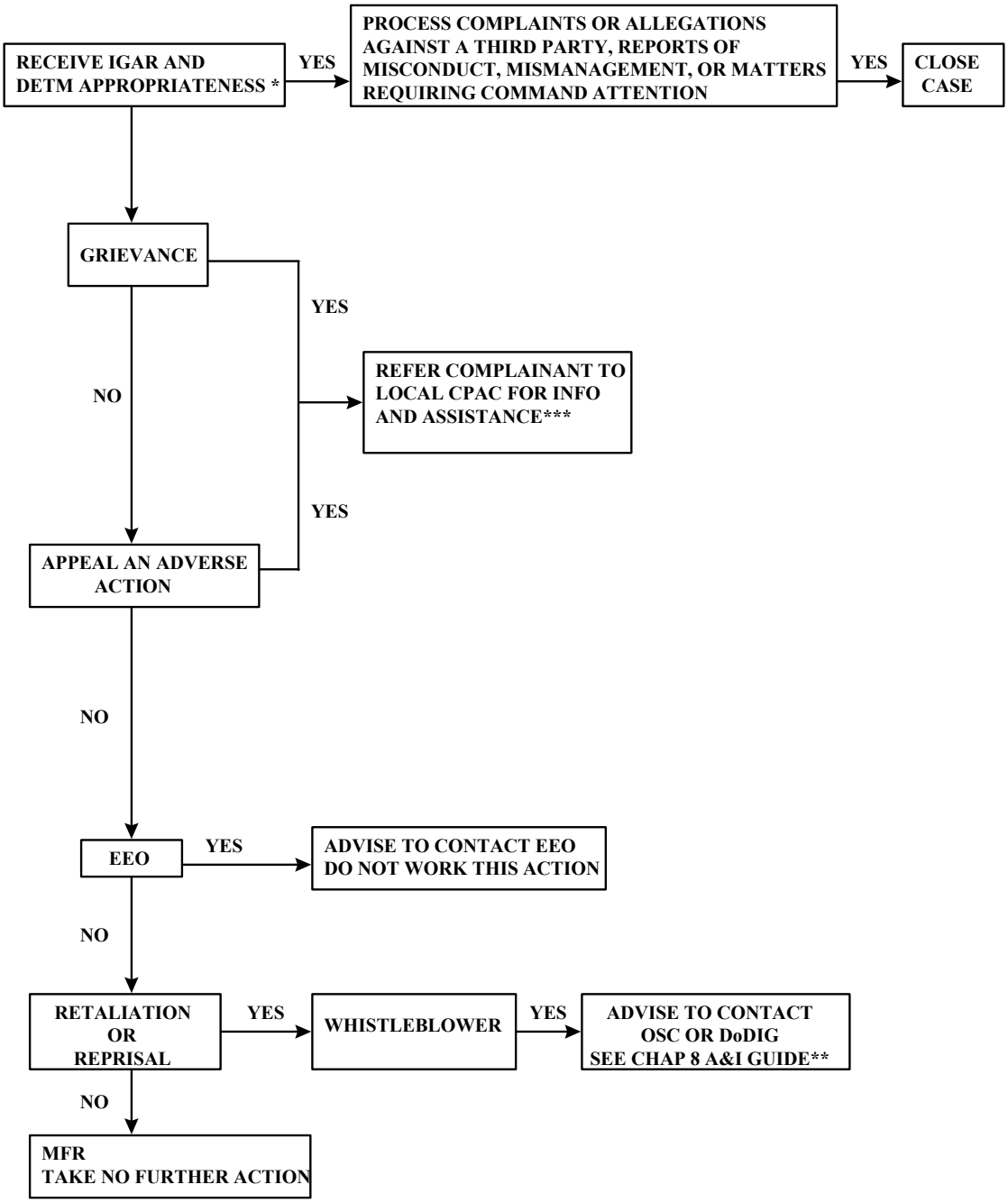
f. PERSCOM Civilian Personnel Management---DSN: 221-0614

g. Office of Complaint Investigation-------(703) 325-1423

h. U.S. Army Community and Family Support Center (CFSC) Nonappropriated Funds CPO---------DSN: 221-6123

i. U.S. Merit System Protection Bord (MSPB)-(202 653-7200
http://www.access.gpo.gov/osc

IG DECISION MATRIX FOR DoD CIVILIAN COMPLAINTS



*** SEE AR 20-1, PARA 4-4k(4) IF COMMANDER DIRECTS IG TO INVESTIGATE OR INQUIRY INTO ALLEGATIONS ASSOCIATED WITH A COMPLAINANTS'S GRIEVANCE THAT IS BEING PROCESSED THROUGH APPROPRIATE CHANNELS.**

**** APPROPRIATED FUND CONTACT OSC**
NONAPPROPRIATED FUND CONTACT DoDIG

***** IF COMPLAINT INSISTS ON IG WORKING CASE; SEE AR 20-1; PARA 4-4k(3)(a)**

SECTION II

INVESTIGATIVE INQUIRES AND INVESTIGATIONS

CHAPTER I--Introduction

1-1. Purpose.

a. The purpose of this section of the guide is to provide IGs with recommended procedures and techniques for implementing the regulatory requirements relating to IG investigations and investigative inquiries IAW Army Regulation (AR) 20-1.

b. If in the process of resolving Inspector General Action Requests (IGARs), preliminary analysis (step 2) reveals possible wrongdoing by an individual, the fact finding process (step 4) will be either an inquiry or an investigation. In this section of the Guide, we describe the principles and philosophies of IG investigative inquiries and investigations, as well as the techniques used to conduct them. The techniques discussed are based on field experience and are effective, but cannot be applied inflexibly. Every case you encounter will be unique -- the facts and circumstances will differ. Consequently, you must apply sound judgment based upon your training, experience, knowledge of the case at hand, and the desires of your commander while ensuring you adhere to the provisions of AR 20-1.

c. Before conducting an investigation, you should review The Inspector General Investigation Function, Chapter 8, AR 20-1, to ensure you are familiar with the requirements for an investigation and an investigative inquiry.

1-2. Definitions.

a. Investigation.

(1) AR 20-1, para 8-1b(1), states an IG investigation is "A fact-finding examination by a detailed IG into allegations, issues or adverse conditions to provide the directing authority a sound basis for decisions and actions. IG investigations normally address allegations of wrongdoing by an individual and are authorized by written directives." Conduct of IG investigations involve systematic collection and examination of testimony and documents, and may incorporate physical evidence. The results are reported using the Report of Investigation (ROI) format addressed in Chapter 8 of AR 20-1." Occasionally, IG investigations are used to look into systemic issues, especially when the possibility of some wrongdoing exists. For example, you might investigate an allegation that the development of a weapon system is fraught with fraud, waste and abuse.

(2) The characteristics associated with an IG investigation are:

(a) An investigation directive issued by the commander providing written authority to examine the issues or allegations in question.

(b) A mandatory process providing a road map of how to proceed. These steps standardize procedures, protect individual rights, ensure proper command notifications, and protect the confidentially of individuals and the IG system.

(c) A required format for documenting the results in the ROI.

b. Investigative Inquiry.

(1) AR 20-1, para 8-1b(2), defines an IG investigative inquiry as an informal fact-finding process. "An investigative inquiry is the fact-finding process followed by IGs to gather information needed to address allegations of impropriety against an individual that can accomplish the same objectives as an IG investigation. Command and State IGs normally use this investigative process when the involvement of the directing authority is not foreseen. This does not preclude directing authorities from directing an investigative inquiry. The command or State IG typically directs the investigative inquiry and provides recommendations to their commander or to subordinate commanders as appropriate. The investigative inquiry is the primary fact-finding process used by IGs to address allegations."

(2) IGs conduct investigative inquiries to gather information needed to respond to a request for assistance or resolve allegations or issues concerning alleged misconduct on the part of an individual(s). An IG investigative inquiry is also done when investigative techniques are appropriate but circumstances do not warrant an IG investigation. An investigative inquiry has no requirement for a written directive from the commander. You may employ investigation techniques (sworn recorded testimony, for example) when conducting investigative inquiries. These techniques enhance the thoroughness of the fact-finding process. Chapter VI of this section provides recommended techniques for conducting and documenting investigative inquiries. The results are reported using the Report of Investigative Inquiry (ROII) format addressed in Chapter 8 of AR 20-1.

<u>INVESTIGATION VS. INVESTIGATIVE INQUIRY</u>

- INVESTIGATION IS FORMAL - REQUIRES A DIRECTIVE FROM THE COMMANDER
- INVESTIGATIVE INQUIRY IS INFORMAL - DOES NOT REQUIRE A DIRECTIVE
- BOTH ARE THOROUGH
- BOTH ARE FAIR AND IMPARTIAL
- BOTH SUPPORT A DECISION

- BOTH ARE PROPERLY DOCUMENTED
- INVESTIGATION RECOMMENDATIONS - DETAILED IG MAKES RECOMMENDATIONS TO DIRECTING AUTHORITY
- INVESTIGATIVE INQUIRY RECOMMENDATIONS - DETAILED OR ASSISTANT IG MAY MAKE RECOMMENDTIONS TO SUBORDINATE COMMANDERS

(2) Field IGs frequently conduct investigative inquiries in response to allegations of impropriety. They conduct investigations less frequently. Both forms of fact-finding have the common characteristics of fairness, impartiality, confidentiality, and thoroughness.

1-3. Commander's (Directing Authority) Options.

a. Commanders have several options available to resolve allegations of wrongdoing. They may elect to do nothing, pass the allegations to a subordinate commander, refer the case to another investigator (AR 15-6, UCMJ Rule 303, Military Police Investigations (MPI)/Criminal Investigations Division Command (CIDC), civil authorities), or conduct either an IG investigative inquiry or investigation.

b. The decision whether to conduct IG fact-finding or to conduct a non-IG investigation rests with the commander and is usually based on the recommendations of the IG and the Staff Judge Advocate (SJA). Ensure you coordinate your recommendations with the SJA before you bring allegations to your commander for a decision.

c. Often your purpose for initiating an <u>investigative inquiry</u> into allegations is to determine if a non-IG investigation is appropriate. It is important that you understand your commander. There will be certain types of allegations about which your commander will want to be informed immediately. Also, your commander will probably want to be informed immediately when allegations are made against key individuals in the command. On the other hand, your commander may permit you to inquire into some allegations without informing him beforehand. Many commanders provide guidance to their IG concerning those topics on which they can initiate investigative inquiries without prior approval. As your relationship with your commander evolves, you will gain a better understanding of those issues important to him. The key point here is to avoid “blind-siding” your commander.

1-4. Rights and Protections.

a. IG investigative inquiries and investigations afford individuals against whom allegations are made, a broader range of rights and protections (both legal and administrative) than are afforded individuals in a criminal investigation. Chapter II of this section discusses these rights and protections.

b. IG investigations and investigative inquiries are administrative, not legal, actions. AR 20-1, para 8-6, specifies the administrative due process afforded during investigations as:

- Advising the subject or suspect of the allegations made against them;
- Advising the subject or suspect of the unfavorable information against them;
- Giving the subject or suspect the opportunity to comment on unfavorable information which will be used against them;
- Protecting the right of all persons to avoid self incrimination.

c. Whether conducting an investigative inquiry or an investigation, the dual role of the IG is to protect the best interests of the U.S. Army and protect the rights and confidentiality of all individuals involved.

1-5. Nature of IG Investigative Inquiries and Investigations.

a. Fair and Impartial. Your commander will base decisions on the facts you present. Therefore, you must investigate thoroughly and make an accurate, timely, impartial, and complete report. As an impartial fact-finder, you must also report both sides of the story, not just the evidence that supports your conclusion. Additionally, IG investigations and investigative inquiries are always conducted in an overt manner; covert methods are never appropriate for IGs. IGs conducting investigative inquiries or investigations are always concerned with confidentiality, and must be discreet in the conduct of investigative inquiries and investigations.

b. Limited Distribution of Information. Many allegations by their very existence, whether substantiated or not, have the potential of being disruptive and having a traumatic effect upon the individuals or units concerned. You can minimize these effects by maximizing your protection of confidentiality and limiting distribution of information about the investigation to only those who need to know. Chapter 3, AR 20-1, and Chapter VII, section II, of this Guide discuss procedures for release of IG records.

c. Confidentiality. All Department of the Army (DA) personnel have a duty to cooperate with IGs (see Chapter II, section II, of this Guide). Individuals who provide you information have the expectation that you will safeguard their

identity and the nature of their testimony to the maximum extent possible. Successfully protecting the confidentiality of those with whom we interact is a key component of the IG System as it protects individual privacy and precludes retaliation. This objective also maintains confidence in the IG System, encourages voluntary cooperation and willingness to ask for help or to present a complaint for resolution. However, you must not imply a "guarantee" of confidentiality. Information and testimony provided to IGs is used within the Army for official purposes and may be released outside the Army if required by law or regulation.

d. Non-adversarial. Conduct IG investigations in a non-adversarial manner. IGs must conduct themselves professionally, tactfully, and in an non-judgmental manner. IGs must conscientiously avoid becoming biased during the course of an investigation or investigative inquiry. An IG conducting an investigative inquiry or an investigation <u>is not</u> a prosecutor conducting a trial. Remember, the IG’s role is to protect the best interests of the government as well as the rights and confidentiality of all involved individuals. This is accomplished through a dogged pursuit of the truth in a given matter.

e. No Recommendations for Adverse Action.

(1) IGs do not recommend adverse action in the ROI/ROII. Should you determine during the course of an investigative inquiry or investigation that allegations will be substantiated, and that adverse action might be appropriate, you will normally recommend handing off the case to another investigating officer or agency (e.g., AR 15-6 investigating officer, CIDC, UCMJ Rule 303). (See hand-off rules, paragraph 3-4, AR 20-1.)

(2) IGs assess facts, draw conclusions, and make recommendations. As stated above, should you conclude that allegations of wrongdoing are substantiated, you might recommend the commander refer the case to a follow-on investigator. Prior to rendering a report to the commander, you should request the SJA review the ROI, and in some cases an ROII, for legal sufficiency. Accordingly, the SJA may then provide specific recommendations to the commander regarding subsequent action.

(3) IG records may be used as the basis for adverse action only with approval of the Secretary of the Army, Under Secretary of the Army, Chief of Staff of the Army, Vice Chief of Staff of the Army, or The Inspector General; (see paragraph 3-3, AR 20-1). IGs should advise the commander on the possible consequences such action may have on the perceived confidentiality of the IG System. Should IG records be approved for use in adverse action, the records may have to be released to the individual against whom the action is taken. The confidentiality normally afforded to witnesses may be reduced or eliminated.

(4) As a general rule, a Suspension of Favorable Personnel Action (flag) is not initiated during IG investigations. Subjects and suspects of IG investigations do not normally have favorable personnel actions suspended as this could compromise confidentiality. A flag is initiated by the unit commander and would identify, in a non-confidential environment, the individual as the object of an IG action. If personnel actions are pending, the IG should inform the commander of the allegations and status of the investigation so the commander can make an appropriate decision regarding the personnel action. When an investigation is turned over to another investigator (non-IG), or adverse action is being considered, then a flag may be appropriate.

f. IGs Identify Problems. If during an investigative inquiry or investigation you discover issues or problems not specifically related to the allegation, you can initiate corrective action by bringing the issues to the attention of the commander or the appropriate staff agency. This should be done without compromising confidentiality. An acceptable method would be an extract of pertinent data without revealing protected information.

Example: After investigating allegations of travel claim fraud, the IG determined that travel claims are not properly processed within the command. The IG could alert the commander and provide the local Finance and Accounting Officer an extract of the pertinent information without revealing confidential information.

1-6. Issues & Allegations Often Resolved by IG Investigative Inquiry or Investigation.

a. Experience has shown that IGs normally look at three classes of issues: violations of established policy, SOPs and standards; violations of regulatory guidance (non-criminal); violations of law (UCMJ, punitive regulations).

b. IGs normally do not investigate criminal offenses (defined as offenses punishable by fine or imprisonment) that traditionally fall in the category of felonies. However, there are certain violations of criminal law that typically are not investigated by criminal investigators, but do reflect on the credibility of the command. Therefore, you may find that your commander directs you to investigate these allegations.

c. Violations of Standards of Conduct are among the most typical allegations investigated by IGs. Department of Defense (DOD) Joint Ethics Regulation (JER)5500.7R, is our standard for ethical conduct. The JER specifically charges DOD component IGs with investigating ethics matters within their components. All violations of punitive regulations are normally treated as criminal, although they are frequently investigated by IGs.

d. Some Uniform Code of Military Justice (UCMJ) violations are usually investigated by IGs. Adultery is a typical example of an allegation not normally investigated by the CIDC even though it is a criminal violation of the UCMJ. You should coordinate with law enforcement officials and the SJA in cases where you receive allegations that are criminal. Examples of alleged offenses investigated recently by inspectors general are listed at Appendix T.

1-7. Comparison of Investigative Inquiries and Investigations.

While investigative inquiries are an informal fact-finding process and investigations are formal, the two are actually very similar. In both, the IG must analyze the situation at hand, decide if standards have been violated, determine what evidence must be gathered, gather the evidence, analyze the evidence, draw conclusions and recommend appropriate action. The differences between the two processes lie chiefly in the requirement for a signed Directive and transcribed verbatim testimony in an investigations. Many times IGs begin fact-finding using an investigative inquiry and initiate an investigation should the situation warrant.

a. Purpose. Inquiries are frequently conducted during the assistance function as part of the process for help and information in resolving IGARs. IG investigative inquiries and investigations are processes designed specifically to look at allegations of wrongdoing n the part of a person. All three provide a sound, factual basis for decision making.

b. Thoroughness. Investigative inquiries and investigations are equally thorough and correct. A common misperception is that investigations are more thorough than investigative inquiries. The detail with which you gather and evaluate evidence is determined by the nature of the case, not the fact-finding process you select. Conduct each investigative inquiry and investigation in accordance with AR 20-1 and the procedures in this Guide to ensure you are thorough as well as fair and impartial.

c. Difficulty. Some IGs believe that it is inherently more difficult to conduct investigations. It is true that an investigation entails more administrative details, e.g. one must prepare an action memorandum with directive and a formal report and arrange for the verbatim transcription of testimonies. However, the documentation required for an investigative inquiry might be equally voluminous. In some cases, it is actually easier to conduct an investigation. The commander's authority, as evidenced by the signed directive, "energizes" the command.

d. Directing Authority. Any detailed or assistant IG may initiate an investigative inquiry. Many IG offices have a local policy that outlines who may inquire into what type of

allegations. Only the commander may direct an IG investigation. This is usually done upon the recommendation of the IG.

e. Who Conducts.

(1) Detailed IGs and assistant IGs may conduct investigative inquiries. Only a detailed IG (commissioned officer) may conduct an investigation. While this sounds like a significant difference between the two processes, it is not. Assistant IGs routinely assist detailed IGs in all phases of investigations (normally two IGs are assigned to an investigation). The only task an assistant IG may not perform is administering the oath to a witness. The TIG directed that only detailed IGs and command Warrent Officers may administer the oath to a suspect, subject, or witness. An Acting IG may not conduct or assist in the conduct of interviews, give oaths, or write reports. An Acting IG is limited to providing administrative support only for investigative inquiries and investigations.

(2) Outside experts, such as medical doctors, psychologists, military or DA civilian lawyers, Equal Opportunity Staff Officers, auditors, or contracting specialists may also be required to assist in investigations or investigative inquiries. Normally, these types of individuals are called as expert witnesses. If they are needed to assist throughout the investigative inquiry or investigation, they may be made Temporary Assistant IGs. Administer Temporary Assistant IGs the IG oath IAW paragraph 2-5, AR 20-1, and limit their duties to their areas of expertise.

f. Evidence. Oral statements from witnesses provide the bulk of the evidence in both investigative inquiries and investigations. In investigative inquiries these are normally statements made in informal interviews. In investigations, witnesses will provide sworn recorded testimony. However, there are circumstances under which sworn testimony is appropriate in investigative inquiries. Unsworn statements in investigations are done by exception.

g. Protections. Investigative inquiries and investigations must provide protection for the IG, the persons involved, and the command. Protections are built into the investigation process. They include: administrative due process; rights; consent to release under the Freedom of Information Act (FOIA); and confidentiality. Additionally, the directive protects IGs from civil liability as long as the investigation is conducted in accordance with AR 20-1. Although protections are not built into the investigative inquiry process, you must ensure you provide individuals administrative due process and the rights to which they are entitled. As long as you act in accordance with AR 20-1, you need not fear civil liability, even if conducting an investigative inquiry.

CHAPTER II--Rights, Non Rights, and Witness Cooperation

2-1. Categories of Individuals.

People involved in IG investigative inquiries or investigations are classified as witnesses, subjects, or suspects. A witness is someone whom we believe has information that supports or refutes an allegation. A witness may also be an expert in some field in which you need to acquire knowledge concerning a law, regulation, process or procedure. A subject is someone against whom a non-criminal allegation has been made. A suspect is someone against whom a criminal allegation has been made. Individuals, to include witnesses, may become subjects or suspects during an investigation based on evidence developed during the case (including information given by the individuals themselves). The rights individuals have in an IG investigative inquiry or investigation depend partially upon their category. For example, military suspects in IG investigations have the right to know their legal rights under Article 31, UCMJ.

2-2. Rights of Individuals Involved in Investigations.

a. Right to Comment.

(1) Administrative due process in Inspector General investigative inquiries and investigations (para 8-6, AR 20-1) afford a suspect or subject the right to know and comment on unfavorable information which may result in an adverse information included in the ROI/ROII. This administrative due process should not be confused with legal due process which occurs during a criminal proceeding in which an accused has a right to face his accuser. The suspect in an Inspector General investigative inquiry or investigation does not have the right to know who made the allegation.

(2) In an investigative inquiry, ensure you afford the suspect or subject the opportunity to know and comment on the allegations made against him (See paragraph 8-6, AR 20-1). Advise the subject or suspect of the allegations if you or your commander think it is fair or beneficial to the case for them to know the allegations. As a minimum, if you develop substantiated allegations in an investigative inquiry which you will make a matter of IG record, you must inform subjects or suspects of the nature of the allegations and provide them the opportunity to comment. Consider whether it is fair to deny individuals the right to know allegations against them and tell their story during an investigative inquiry, when they would have that opportunity if you were conducting an IG investigation.

(3) There is a commonly held belief that individuals who have allegations made against them will not be willing to comment. Experience has shown the opposite to be true. The IG investigative process is often the subject's and suspect's only chance to rebut the allegations and therefore they are often willing to provide information. While there are exceptions, the subject or suspect is interviewed last so that they have an opportunity to comment on the allegations and any unfavorable information you have gathered.

b. Right to Counsel.

(1) Witnesses, subjects, and suspects should be afforded an opportunity to consult with a lawyer if they so desire. However, only the suspect has a right to have an attorney present during questioning. The right to legal counsel in IG investigations is related to the right to remain silent and not incriminate oneself. If you are going to question someone who has a criminal allegation against him or whom you believe may have committed a criminal offense, you must advise him of his rights using a DA Form 3881, Rights Warning Procedure /Wavier Certificate, (Appendix N), before questioning. If during an interview, a witness or subject says something that makes you believe he has committed a criminal offense, before continuing questioning, you must warn him of his rights using the DA Form 3881. Once advised, an individual has the right to seek the advice of a lawyer, have a lawyer present during questioning, and to remain silent.

(2) If a witness or subject requests that a lawyer be present during his interview, it is your decision to allow it or not. Experienced IGs, comfortable with the IG investigation process and with conducting interviews, allow a lawyer to be present. It usually makes the interviewee more comfortable and cooperative. Remember that the lawyer's only function in an IG investigative inquiry or investigation is to advise the client. Do not allow the lawyer to answer questions for the interviewee or control your interview. You should explain these "ground rules" at the beginning of the interview. If a lawyer attempts to control an interview or advise you on the process, you may terminate the interview and seek SJA advice. You must exercise care in this situation to ensure your termination of the interview does not result in the subject or suspect being denied the right to comment on the allegations and unfavorable information.

c. Right to Union Representation.

(1) The Civil Service Reform Act of 1978 created a right to union representation for federal civilian employees whose term of employment is governed by a union contract. This right exists during interviews with a federal employee in connection with IG investigative inquiries or investigations if the employee

reasonably believes that disciplinary action will be taken against him as a result of the interview.

(2) The Civil Service Reform Act does not require an IG to advise an employee of the right to union representation before an interview. The act merely requires management to inform its employees annually of this right. This is frequently done in an installation's daily bulletin. However, some local union contracts have been negotiated wherein the management of an installation has agreed to provide notice before each interview. Therefore, exercise caution when interviewing federal (not just DA) employees to ensure you are not violating the terms of a local contract. You can accomplish this easily by asking the SJA what the local bargaining agreement specifies. Additionally, your installation may have more than one collective bargaining agreement or union contract. Find out before your interview.

(3) The basic rules that apply to legal counsel in an interview apply to union representatives as well. The representative may advise the employee but may not ask or answer questions. An individual may have both a union representative and legal counsel present in an interview.

(4) In some cases, the right to union representation has been extended to other IG activities such as sensing sessions. You should check with the SJA and the local labor relations representatives, Civilian Personnel Advisory Center (CPAC) or Civilian Personnel Operations Center (CPOC) before conducting interviews or sensing sessions with any federal employees.

d. Right of Individuals to Confidentiality.

(1) IGs always strive to provide confidentiality to protect privacy, maintain confidence in the IG System, and minimize the risk of reprisal. This is a key component of the IG System because it encourages voluntary cooperation and willingness to present complaints for resolution. Confidentially is maintained by protecting the identities of all persons involved from unnecessary disclosure, as well as protecting the nature of their contact with the IG. However, as an IG, you must ensure that people who seek your help understand that while protecting confidentiality is a concern, it cannot be guaranteed. Identities of individuals and the information they provide may be disclosed if required by law or regulation, or by direction of The Inspector General. Confidentiality also can not be guaranteed because the Freedom of Information Act (FOIA) allows members of the public to request government records for unofficial purposes. IGs should inform individuals of the provisions of the FOIA and ask if they consent to the release of their testimony for unofficial purposes. This applies to both investigative inquiries and investigations.

(2) The primary threat to confidentiality is an individual's voluntary disclosure of the matters being investigated by the IG.

Consequently, IGs should conclude each interview (during investigative inquiries and investigations as stated in the interview guides, Appendix O) by admonishing the individual not to discuss the matters under investigation with anyone except his attorney, should he choose to consult one, without the permission of the investigating officers.

2-3. Non-rights.

a. Frequently persons involved with IG investigative inquiries or investigations have confused administrative due process with legal due process. These common misperceptions are called non-rights.

b. Identity of Witnesses. In an IG investigation or investigative inquiry, neither the suspect nor the subject have the right to know who made allegations against them or to know the names of witnesses or other individuals who provided information.

NOTE: When an IG record is used as a basis for adverse action, the subject or suspect may become entitled to the legal due process right to see the IG record, know who made the allegations and who provided evidence during the course of the investigation or investigative inquiry.

c. Question Witnesses. In an IG investigation or investigative inquiry, subjects and suspects do not have the right to question other witnesses or be present for the interviews of witnesses. Individuals being interviewed do not have the right to know the names of other witnesses, specific allegations, the identity of subjects or suspects or the results of the investigative inquiry or investigation.

d. Tape Record or Take Notes. In an investigative inquiry or investigation, individuals do not have the right to take notes during an interview or to record their testimony. Should an individual request to take notes or record the interview, stress the importance of confidentiality. You should stress the need for confidentiality and offer the individual the opportunity to review his testimony in your presence and receive a copy of it once the case is complete. (See paragraph 8-4h, AR 20-1)

e. Have a Friend or Family Member Present. No one has the right to have friends or Family Members present during interviews. Should such a request be made, you may grant permission based upon your assessment of the benefit gained (a more relaxed individual). If you accede to the request, do not permit the friend or Family Member to advise the witness or otherwise participate in the interview. You must counsel the friend or Family Member regarding confidentiality and the importance of not disclosing the matters under investigation.

2-4. Duties of Individuals Involved in Investigations.

a. Active Duty Military Personnel and DOD Civilians. Soldiers and DA civilians are required by AR 20-1 to cooperate in an IG investigations and inquiries. Witnesses, suspects and subjects with a duty to cooperate cannot lawfully refuse to answer questions unless the answers are incriminating or privileged. Those who refuse to cooperate can be ordered by their commander or supervisor to do so. Non-DA military and civilian personnel are not bound by AR 20-1 and cannot be compelled by an Army IG to cooperate. However, DOD civilians, other Federal civilian employees, and military personnel from other services may have a duty to cooperate. Before interviewing anyone from outside the Army, make sure you coordinate with the individual's Service or department supervisory chain if you have any doubts about the individual's obligation to cooperate.

NOTE: Do not order individuals to cooperate. To do so is to put yourself in an adversarial position with the individual whom you desire to interview. Seek assistance from the individual's supervisor or commander and your SJA when necessary.

b. Reserve Component Personnel. Members of the Reserve Components, both Army Reserve and Army National Guard, if not on Federal status, are not required to cooperate with an IG. They are governed by AR 20-1 when they are performing Federal duties or engaging in any activity directly related to the performance of a Federal duty or function. However, if the member of the National Guard is on State status (Title 32, USC), AR 20-1 does not apply to them since they are governed by state regulations. In those cases, the IG should coordinate with the ARNG chain of command. USAR and National Guard soldiers can be ordered to Federal status (Title 10, USC) to provide testimony to an IG. Review Appendix P prior to interviewing reserve component personnel.

NOTE: Most members of the Reserve Components, as well as Active Component personnel, are fully willing to cooperate with an IG, regardless of their status at the time of the interview. Only infrequently will you have to seek chain of command assistance in gaining cooperation.

c. Civilians.

(1) Civilians not connected with the Federal government (commonly referred to as civilian-civilians) have no requirement to cooperate with Army IGs. Civilians not connected with the government cannot be compelled to cooperate with an IG conducting an investigation or investigative inquiry. IGs have no authority to investigate civilian-civilians. Family members are civilian-civilians unless they are employed by DOD in some capacity. Individuals employed by companies under contract to DOD are also civilian-civilians.

(2) If a witness is not military or is not a government employee, then you are not required to treat them as a suspect or give them the same right to comment (due process) as a member of the military or a DA civilian. You are not required to execute a rights warning even though they may have criminal allegations against them. However, you may choose to treat them as a suspect and advise them of their rights if you believe it is the best and fairest course of action. For example: You receive allegations that a civilian contractor may have given a bribe to a military contracting officer. This is considered a gratuity for the military officer (violation of the JER) and might be a violation of Federal law, 10 US Code, Section 2207, by the civilian. While we would not investigate the civilian, we would desire to interview the individual to gain information about the allegations against the military officer. During this interview, it is our choice whether or not to provide them a rights warning, however consulting your legal advisor prior to the interview should reduce any doubt concerning the correct course of action. If you do decide to advise the civilian of his rights, execute a rights warning by using the DA Form 3881 as you would with military personnel or with DA civilians.

(3) Remember, IGs do not investigate civilian-civilians. Should you develop criminal allegations against a civilian, turn them over to your SJA, local CIDC, or MPI. In the contracting example used above, if the allegation was substantiated, the matter would be reported to procurement officials. The civilian contractor might be barred or suspended from further government contracts as well as face possible civilian court action.

(4) Since non-governmental civilians (civilian-civilians) have no requirement to cooperate, you have limited recourse should they request to take notes, record interviews, or have friends present. As with military personnel, your best approach is to convince them of the need for confidentiality. As with military personnel and DA civilians, you may offer civilian-civilians the opportunity to read their testimony while the case is ongoing or receive a copy of their testimony after the case is complete. Some IGs have convinced interviewees to allow them (the IGs) to hold an interviewee’s tapes until the case was completed. If a civilian refuses to interview without taping or having a friend present, then you must decide whether the individual's testimony is crucial enough to warrant conducting the interview under those conditions. Even though civilians are not required to cooperate with you, it is a violation of Federal law under Title 18, US Code, Section 1001 for them knowingly to give you false testimony under oath.

CHAPTER III--Evidence

3-1. Overview.

Investigative inquiries and investigations are both focused searches for evidence to substantiate or refute allegations. The "bottom line" of an investigative inquiry or investigation is the conclusions IGs draw from evaluating the credible evidence they gathered. Consequently, it is essential that IGs have a good understanding of the nature of evidence.

3-2. Categories of Evidence. Evidence generally falls into one of four major categories: documentary, physical, oral statements/testimonies and the IG's personal observation. Most investigations depend upon the testimony of witnesses. Some investigations require extensive use of documentary evidence and sometimes physical evidence (This is very rare).

a. Documentary Evidence. Documentary evidence includes written items (including DA Forms 2823, Sworn Statement, from witnesses, if used), photographs, maps, sketches, regulations, laws, records (travel vouchers, evaluation reports, medical records), other investigation reports (AR 15-6, MP, etc.), and other types of written material. Nearly all investigative inquiries or investigations include some documentary evidence. Gather it early in the investigative inquiry or investigation, and identify it by showing the date obtained, whether it is an original or copy, location of the original, identity of the custodian and signature of the investigating officer. When practical, use copies of documents, and leave the originals with their proper custodians. One of the most important pieces of documentary evidence in any investigative inquiry or investigation is the standard upon which the allegations are based.

b. Physical Evidence. Physical evidence consists of objects or conditions which establish facts. It is the least common category of evidence found in investigative inquiries or investigations. Physical evidence may or may not accompany the ROI/ROII.

(1) Normally, an object is not required to accompany an ROI/ROII. If you do need to forward an object with an ROI, securely attach it to ROI/ROII and identify it by showing:

(a) The name of the object.
(b) Where and when the object was obtained.
(c) Custodian or from whom obtained.
(d) Its function, if applicable.
(e) Serial number, size, make, brand name, or other identifying information.
(f) Monetary value, if applicable.
(g) Description of container, if appropriate.

(h) State of serviceability.

(2) Most physical evidence will not be included with the ROI/ROII because of size, perishability, monetary value, or other reasons. Photograph, sketch or describe these objects in a memorandum for record (MFR) which contains the information and attach it as an exhibit to the ROI/ROII.

c. Oral Statements. An oral statement is evidence given orally by a competent witness. Oral statements are the primary means of gathering evidence in the IG investigative inquiry or investigation. Oral statements fall into two categories, testimony and statements.

(1) Testimony.

(a) A sworn, recorded oral statement is called testimony. Individuals who do not wish to swear an oath may affirm that their testimony is truthful. Testimony is the primary means of gathering evidence in investigations and may be used in inquiries. Recorded testimony is normally transcribed verbatim. Verbatim transcripts can be prepared by court reporters (sometimes available from the SJA), contract transcriptionists, or typed by the IG. Verbatim transcripts are time consuming and expensive to prepare and review, but provide the most accurate record. The IG who conducted the interview normally must certify the accuracy of the transcript by reading it and making corrections as he listens to the tape.

THE OATH
"DO YOU SWEAR THAT THE TESTIMONY YOU ARE ABOUT TO PROVIDE SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD."

(b) Verbatim testimony may not always be practical. If assets or time are limited, take sworn, recorded testimony, and initially prepare a summary (see Appendix I for recommended format). If you turn the case over to a follow-on investigator a transcription may not be necessary. Should you determine a transcript is necessary as the case proceeds, you can prepare it at that time. Another alternative is to only transcribe the testimony of key witnesses (complainant and subject or suspect, for example). You can summarize evidence from other witnesses using the memorandum for record format.

NOTE: When taping interviews, if possible use two tape recorders or a court reporter and a backup system (many court reporters have their own backup). Keep in mind the purpose for recording is to make an accurate record of the interview. For accuracy, you may tape interviews even if you do not intend to prepare a verbatim transcript. When in doubt, tape!

(2) Statements.

(a) Information gathered during an interview which is not sworn is referred to as a statement. The interview may be conducted as part of either an investigative inquiry or an investigation and may or may not be recorded. The statement can be documented as a summarized statement by the IG who conducted the interview. When you prepare the summary, you must be extremely careful to write what the witness actually said, not what you think the witness said. Claims by witnesses that they were misquoted by IGs occur occasionally. Draft the summary immediately following the interview to avoid having to rely upon your memory several hours or days later. You may also ask the interviewee to verify your summary of the interview. For accuracy, you may tape verbal statements even if they are not sworn. This is particularly important if the issues or allegations are serious, complex, or conflicts in the evidence exist. When taping a telephonic interview, ensure you inform the interviewee that you are recording.

(b) If you are unable to obtain an oath, you must evaluate whether administering the oath is necessary or appropriate. Some considerations are the nature of the allegations or issues and the expected evidence the witness might provide. Swearing-in the witness adds formality to the interview and may enhance the accuracy of the information presented by the interviewee. The oath creates the belief and expectation in the witnesses' mind that they must be truthful or suffer the consequences. For military personnel, a false official statement (sworn or not sworn) is a criminal offense. For non-government civilians, false sworn statements are a violation of federal law. When evaluating evidence, sworn statements are generally given more weight than unsworn statements.

d. Personal Observation.

(1) You can document physical conditions you observe in a MFR. These may include vehicle damage, unsanitary dining facilities, overcrowded troop quarters, the state of building maintenance, etc. Your observations or measurements in an MFR can supplement or provide background for reports or testimony by technicians or authorities whose expertise may be better evidence than your non-expert observation alone. Certain observations or events that occur during an interview (witness comments while off-tape, for example) may be worthy of a MFR.

(2) Investigating officers should minimize the use of personal observation. By introducing personal observations as evidence, you make yourself a witness in the case (perhaps opening yourself to allegations of bias). As an alternative, you might have another individual observe the conditions in question and then interview the other individual as a witness.

3-3. Types of Evidence.

a. Direct Evidence. First-hand knowledge, or direct evidence, proves or disproves an issue through the use of facts. For example, if a witness states "I saw the subject's car at the headquarters on day x at time y," you have direct evidence that the subject's car was at the headquarters at that date and time. Direct evidence should be verified (corroborated) by other evidence, if possible.

b. Circumstantial Evidence. Circumstantial evidence tends to prove or disprove an issue by inferences. The statement, "I saw the subject's car parked in front of the headquarters on day x at time y," is circumstantial evidence that the subject was inside the headquarters at that time. Circumstantial evidence is not an inferior kind of evidence to be used only when there is no direct evidence. It may not have the weight of direct evidence, but it is still valid evidence. It can be used with direct evidence to establish a fact. Some issues such as command climate and unit morale are seldom established by direct evidence. Frequently, they are established by circumstantial evidence alone.

c. Hearsay Evidence. Hearsay is what one individual says another person said. It is an acceptable source of information in IG investigative inquiries and investigations. However, you should attempt to verify hearsay by contacting the person having direct knowledge of the information (the person who said whatever the witness heard).

d. Opinion. Opinion, a person's belief or judgment, may be used as evidence. Opinions of qualified experts are commonly used as evidence in IG investigations. You may ask witnesses for their opinions, but you need to develop the reasons why they reached their opinions. Some investigative inquiries or investigations, especially those concerning unit morale, esprit de corps, and command climate must rely heavily on witnesses' opinions. Clearly identify such oral statements as opinion.

3-4. Facts.

IG investigations and investigative inquiries are "fact-finding." Facts include events that are known to have happened and things that are known to be true. Some matters are easily established as facts, while others are difficult. In solving a disputed issue, use judgment, common sense, and your own experience to weigh the evidence, consider its probability, and base your conclusions on the most credible evidence. A general guide when attempting to establish facts is to obtain the testimony of two or more sworn, competent witnesses who independently agree on a single point. A fact is also established by a combination of testimony, documentary evidence, and physical evidence which agree on a single point.

3-5. Evaluating Evidence.

a. The critical analytical task performed by the IG in each inquiry or investigation is the evaluation of the evidence. To draw a conclusion, the IG must determine if there is a preponderance of credible evidence as viewed by a reasonable person. Preponderance is defined as "superiority of weight." In layman's terms, preponderance means "more likely than not." The preponderance of credible evidence is a lesser standard than “beyond a reasonable doubt,” which is used in criminal proceedings. A preponderance of credible evidence is sufficient to reach an IG conclusion and resolve an allegation.

b. AR 15-6, “Procedure for Investigating Officers and Boards of Officers,” uses the same standard of proof and has this discussion: "The weight of the evidence is not determined by the number of witnesses or volume of the exhibits, but by considering all the evidence and evaluating such factors as the witness's demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and other indications of veracity."

c. To evaluate the evidence, you must first determine the facts that must be supported or refuted to indicate whether or not the allegation occurred. You must then collate the evidence pertaining to each fact and determine the credibility of each item of evidence. This is often a difficult task. Some witnesses provide inaccurate information, others fail to provide the whole truth or slant the truth to their advantage, and a few lie outright. You must look for and address voids and conflicts in the evidence. You must seek corroboration. You must assign a relative value to each item of evidence -- some evidence is more important that other evidence. Finally, you must determine if a preponderance of the credible evidence substantiates or not substantiates the allegation. This is a highly subjective process. Remember, the more thorough you are in gathering pertinent evidence, the more likely you can be objective in evaluating the facts.

d. You repeat this evaluation process for each of the facts essential to the allegation. Finally, given a set of supported or refuted facts, you must determine whether a preponderance of credible evidence exists regarding the allegation as a whole. If a preponderance indicates that the allegation occurred, the allegation is substantiated. If a preponderance indicates that the allegation did not occur, the allegation is not substantiated. If there is no preponderance of credible evidence, the allegation is neither substantiated nor refuted. Neither-nor conclusions are not authorized. When faced with a neither-nor situation you should evaluate your process and attempt to gather additional evidence which will substantiate or refute the allegation. If your neither-nor situation still

exists after searching for more evidence, then the allegation(s) are not substantiated.

e. An IG is not bound by the rules of evidence that apply in a court of law. Nor must an IG prove an allegation beyond a reasonable doubt. But the process of evaluating evidence is not easy -- few cases are black and white; most are gray. Thoroughness, objectivity, and good judgment are critical aspects of an IG's evaluation process in every investigation or investigative inquiry.

CHAPTER IV--The IG Interview Process

4-1. Overview.

The predominant category of evidence gathered by IGs is oral statements. The method used to gather this evidence is the interview. In every interview, the IG has three major concerns: the rights of the individual being questioned; confidentiality; and the evidence to be obtained. The process used by IGs to conduct interviews is designed to protect rights and enhance confidentiality. The IG's preparations and skills as an interviewer affect the quantity and quality of the evidence gathered. In investigations, the IG usually gathers sworn, recorded testimony by conducting formal interviews. In investigative inquiries, statements, gathered via informal interviews are common. This section describes the process used by IGs to conduct both formal and informal interviews.

4-2. Preparation for Interviews.

As with most activities, preparation is vital to success. Preparations fall into two areas: administrative and substantive.

a. Administrative. Ensure that you have the proper administrative details completed prior to the interview. These include selecting the right interview guide from Appendix K and filling in the blank spaces with information from the action memorandum and directive. If you are going to request a social security number, have a copy of the Privacy Act Statement available. If you are interviewing a suspect, complete the front side of a DA Form 3881. If taping, have a Transcript Information Sheet (a header sheet for tapes provided at Appendix M) available. Set up and test your tape recorders; have extra batteries and a sufficient number of blank tapes on hand. (As a matter of routine, once you complete a case, erase your tapes, remove the old labels and affix new blank labels.)

b. Substantive. Prepare an interrogatory (list of questions) for the interview. The process of building an interrogatory begins with your assessment of the evidence you believe the witness possesses. You then craft questions to gather that evidence. Wargame possible answers the interviewee might provide. The interrogatory provides you a road map for the interview and helps ensure you do not forget to ask questions on all key points. If you plan to have the interviewee comment on documentary evidence, ensure that you have the documents at hand in the order that you plan to introduce them during the course of the interview. (See Interviewing Techniques in Chapter V in this section or the guide for additional information.)

4-3. Interview Process.

Depending on the nature of the allegations, sensitivity of the case, and location of witnesses, your interview may be anything from a very brief, informal telephone call (documented in a summary) to a formal recorded session lasting several hours.

a. Investigative Inquiry vs. Investigation. Most of your interviews in an investigative inquiry will be informal. In an investigative inquiry, formal, recorded interviews are not the rule, but in certain situations, they may be the best way to proceed. Generally, the more serious the issues, the more formality is appropriate. Sworn recorded interviews are also useful in situations when you have conflicting evidence from different sources or when the allegations and issues are complicated. The sworn verbatim transcript will provide an accurate record of what was said. During investigations IGs take sworn testimony. There are circumstances, however, when sworn tape recorded testimonies are not required, such as interviews with reluctant civilian-civilian witnesses.

b. Testimony. Formal interviews are conducted in four parts: Pre-tape briefing; Read-in; Questioning; Read-out.

(1) The Pre-tape briefing is an informal briefing given by you to the interviewee. It serves several purposes. It familiarizes the witness with the interview process and helps to put them at ease (most witnesses have never been involved in an investigation or investigative inquiry). It provides you an opportunity to establish a dialog with the witness. A skillful interviewer uses the pre-tape briefing to condition the witness to respond to questions. Most importantly, the pre-tape explains key information, administrative details, and answers any questions the interviewee may have concerning the interview process off tape (saving transcription time and expense). These include:

(a) Advising the witness of the Privacy Act. (Required when you ask for personal identifying information such as the witness's social security number, home address, or home telephone number.)

(b) Advising the witness of the FOIA and that his testimony may be requested for unofficial purposes.

(c) <u>Emphasizing confidentiality, but not guaranteeing it</u>. Witnesses must understand that their testimony can be used for official purposes.

(d) Advising suspects of their rights.

(2) Appendix K provides an outline of a Pre-tape briefing. Use this as a guide -- become familiar with the contents and

brief the witness in your own words. Ensure you can explain the reasons for each item. Witnesses will ask. This comes easily with experience and provides you the opportunity to establish rapport with the witness and condition him to respond to your questions. The following paragraphs amplify the outline contained at Appendix K.

(a) Introduce yourself and show your credentials. Your credentials include a Letter of Identification and your ID card. An example of an IG Letter of Identification is at Appendix J. Many IGs reduce this memo to ID card size and laminate it.

(b) Explain that the interview will be conducted in four parts (Pre-tape briefing, Read-in, Questions and answers, and Read-out) and explain that the procedures are standard for IG investigations.

(c) Explain your role as a confidential fact-finder, and that both “hearsay” and “opinion” evidence can be accepted in testimony. You may have to define the terms hearsay and opinion.

(d) Explain how the IG System protects the confidentiality of the witness, but that law or regulation may in some instances result in the release of the testimony. For example, a court may order the release of an IG record or the commander may want to use the case file for adverse action which would result in the release of the testimony to the suspect and the chain of command.

(e) State that the interview will be conducted while the witness is under oath or affirmation and that it will be recorded. Do not ask the witness whether they want to be recorded or take the oath. If they raise the question, explain the importance of taking sworn, recorded testimony.

(f) Explain that a prepared script is used during the Read-in and Read-out portions of the interview to ensure the witness' rights are explained as required by law and regulation. These scripts are contained in the Interview Guides at Appendix O.

NOTE: A guide exists for each type of interview.

(g) Explain that you will ask questions and give the witness time to respond.

(h) Explain that at the end of the interview you will again read from a prepared script and the witness will be given an opportunity to present additional material that pertains to the investigation.

(i) Tell the witness because the interview is recorded, all responses must be verbal; not to speak while anyone else is speaking; and to avoid actions, such as tapping on the table, which might obliterate words in the recording.

(j) Caution the witness to discuss classified information only if necessary and to identify any classified information given. Instruct the witness to ask you to turn off the tape recorder prior to discussing classified information so you can determine whether the information is necessary to the case and needed in the transcript. If any portion of the tape contains classified information, then the tape must be classified. And, if any classified information is used in your report, the report also must be classified and protected as appropriate. If you use court reporters, make sure they have appropriate clearances and have taken the IG oath.

(k) Explain that the final product of the investigation will be a report to the directing authority.

(l) Explain that FOIA allows members of the public (anyone) to request any government record. This includes IG records, such as the transcript of the interview or the report of this investigation. Explain that IG records (testimony and any information extracted from testimony and included in the ROI/ROII) can be protected from a FOIA release if the witness wants it protected. Explain that at the end of the interview, as part of the Read-out script, you will ask the witness whether or not they consent to release. A "yes" will mean they consent to release and a "no" means they do not consent to release, should there be a request. Should there be such a request, you will forward the entire record to DAIG because The Inspector General of the Army is the lowest level that can release IG records for unofficial purposes (FOIA requests are unofficial). You should explain that while IG records are protected from unnecessary release, the records can be used for official purposes as necessary throughout the Federal government and that FOIA consent has nothing to do with that use.

(m) Be sensitive to the fact that many witnesses misunderstand the FOIA release question. Some witnesses believe you will think they are trying to hide something if they do not consent to release. Do not advise the witnesses how to answer this question, but do make them aware of what it means. Additionally, you should tell them that you draw no inference about whether they are truthful or not from their answer regarding FOIA. This is strictly an administrative matter for you.

(n) Provide the witness a copy of the Privacy Act Statement summary (Appendix L) and allow him to read it. Ask if the witness has any questions. This will save time after you start the interview. If there are questions, tell the witness that the purpose of providing the summary is to explain our authority to request personal information and that the release of their social security number is voluntary. This statement is not a consent to release to a third party and does not have to be signed. It will be referred to in the Read-in.

(o) Have the witness complete the applicable information on a Testimony Transcript Information Sheet ("header sheet") (See Appendix M). Explain that the header sheet is designed to assist whoever does the transcribing. During the interview, correct spellings of proper names and acronyms will be recorded on this sheet. The person transcribing often has difficulty with those items. After the interview, fold the header sheet and secure it around the tapes from that interview with a rubber band. This organizes your tapes and ensures the transcription is not attributed to the wrong witness' testimony.

(p) Explain you can turn off the recording devices and discuss points off tape, but that everything said is considered on the record and may be used in the investigation regardless of whether the tape is recording. Explain you can turn the tape recorders off for any breaks as required.

(q) If appropriate, you may want to verify the status of the witness (Active Army, USAR, ARNG, Federal technician, State technician, or civilian) to determine his rights and whether he is subject to the UCMJ (See Appendix P).

(r) While not required, you may explain to civilian Federal employees their right to have a union representative present as described previously in Chapter II of this section.

(s) If you are interviewing a <u>suspect</u>, execute the DA Form 3881, Rights Warning Procedure/Waiver Certificate, during the Pre-tape briefing (See Appendix N). You will refer to it during the Read-in. If possible, ensure the SJA reviews the DA Form 3881 for legal correctness.

(3) The READ-IN is a formal script that is used to begin the interview. Appendix O contains initial and recall interview guides for witnesses, subjects, and suspects. Before an interview, you should select the correct interview guide, fill in the blank spaces with the correct personal data and information from the investigation's Action Memorandum and Directive. If you are conducting an investigative inquiry and have no action memorandum or directive, fill in the allegations about which you are inquiring. During the interview, complete the Pre-tape briefing, turn on the tape recorder, and read the Read-in script <u>verbatim</u>. This ensures and documents that you fully and correctly advised the witness, subject, or suspect of the process and their rights.

NOTE: The Read-in and Read-out scripts were carefully prepared to ensure that they are technically correct. <u>Do not</u> paraphrase the material in them. The only modifications you should make are if an individual advises you that he will neither swear nor affirm (you indicate that the testimony is not sworn) or if you are conducting a recall interview and the previous testimony was not sworn (add the oath to the recall Read-in).

(4) The QUESTIONS are the "meat" of an interview. During preparation, develop an interrogatory (a set of questions), to elicit the anticipated evidence from the witness. Once the interview begins, be flexible. You may have to alter the questions, or the order in which you ask them, based upon the topics introduced by the witness, the mood of the witness and variances in the information actually presented. You should be flexible. A detailed list of questions is essential for a good interview. Try to anticipate the witness' answers and have follow-on questions prepared. It helps to have another IG participate in the interview. Your partner should ensure the questions are answered clearly and completely. You must be prepared to ask "hard" or embarrassing questions in a calm, forthright, and professional manner. The elements of proof from your standards will guide your question development. When interviewing a subject or suspect, you must ask questions that allow the subject or suspect to comment on the allegations and all adverse information that will be used in the report, even if only to deny the allegations.

(5) The READ-OUT is a formal script that closes the interview. Read-outs follow Read-ins in the interview guides at Appendix O. A key portion of the Read-out is advising the witness of the FOIA and having them respond "yes" or "no" on tape to indicate whether or not they consent to release of their testimony. Another key item is the admonition to the witness regarding confidentiality.

c. Statements. Informal interviews consist of three phases: an introduction, questioning, and a closing.

(1) INTRODUCTION. The introduction is very similar to the Pre-tape briefing when taking testimony. In fact, you may wish to use all or part of the outline at Appendix K to guide your introduction when obtaining a statement. Using the standard outline helps to ensure that each witness gets the same information, that you cover all essential topics, and that your presentation is smooth and confident. As a minimum, you should discuss the investigation/investigative inquiry process, the IG role, Privacy Act, FOIA, and rights warning (if required).

(2) QUESTIONS. There is <u>no difference</u> between questioning when taking a statement and questioning when taking testimony. The evidence that you expect to gather affects the questions you draft in your interrogatory. The information you receive and the demeanor of the witness affects how you actually ask the questions. These factors are independent of the type of interview you conduct. Remember both are equally as thorough.

(3) CLOSING.

(a) Once you complete your questioning, you must close out the interview. You should close out with some type of statement

that allows the individual to know what to expect. Be candid. If you don't think you will ever contact the witness again, say so. If you sense the possibility that the witness fears retribution for cooperating with the IG, tell them to contact you or your office if they become the target of retribution (we would treat that like any allegation we receive).

(b) When conducting an interview, do not speculate on the outcome of a case or commit yourself to a milestone for its completion. Ask the witness whether he consents to release his testimony in response to unofficial requests under the FOIA (See the READ-OUT portion of the investigations interview guide.). If you do not ask the question, and there is a request for the record, the information he provided must be treated as releasable. Finally, you should request that the individual not discuss the case with anyone except an attorney should they choose to consult one.

4-4. Modes of Interview.

a. Face to Face. This is the most efficient method of communication and is the ideal method for conducting IG interviews during both investigative inquiries and investigations. Face-to-face interviewing allows you to observe the non-verbal reactions of the individual, enhancing your ability to establish and maintain rapport and ask effective follow-up questions. You should always attempt to interview your key witnesses and the subject or suspect face-to-face.

b. Telephonic Interviews.

(1) You may obtain both a statement and testimony over the telephone. A telephonic interview is an excellent time and money-saving method for interviewing distant witnesses. While you cannot observe the witness' non-verbal communications, you can often gain insights from the witness' inflection or tone of voice.

(2) Normally, you must contact witnesses in advance to schedule telephonic interviews. Many witnesses are not prepared to devote the required time to you when you first contact them. Also, you must be concerned about confidentiality. If you call them at work, they may not have the desired degree of privacy in their office. You should always strive to speak to the witness in a location that provides confidential setting in which the witness feels free to speak openly during the interview.

(3) Consider having an IG, if there is one, at the witness' location, contact the witness and set a time for the interview. This may help put the witness at ease and establish your identity. The IG may also provide a private location in his office for the witness to speak with you during the telephonic interview.

(4) If you are conducting a formal interview, just prior to calling, have the IG at the witness' location conduct a Read-in on tape using the appropriate interview guide from Appendix O. Once the call is placed, the IG who read the Read-in script verifies the witness's identification and the fact that the witness has been properly sworn and advised of their rights. If you do not have an IG present at the witness' location, you may do the oath and read-in over the telephone. Close the interview by use of the script in the appropriate interview guide. Either you or the other IG can do the Read-out.

(5) In some cases, you may want the IG at the witness' location to remain in the room or even on the telephone with the witness. The IG can later provide you feedback on the non-verbal reaction of the witness to your questions. In other sensitive cases, you may want the IG to give the witness complete privacy for the interview.

(6) A detailed list of questions prepared in advance is essential for a successful telephone interview. Try to anticipate the witness' answers and have follow-on questions prepared. It helps to have another IG participate in the interview using an extension telephone. Make sure you inform the witness of all parties on the telephone at your location.

(7) If you record a telephonic interview, you must inform all parties that the call is being recorded. Taping telephone conversations without the knowledge of all parties can violate Federal and/or State law. You can purchase simple devices through the supply system that allow your tape recorder to adapt to a telephone. You may also use a speaker phone if available. This allows you to record the conversation and aids in the process when another IG is present. You are not required to ask whether someone consents to a recorded telephone interview. Military and DA civilians must cooperate. A civilian not connected with the military is not required to cooperate. Therefore, they may decline being recorded just as they may decline the interview altogether. If the individual seems uncomfortable with the telephonic interview process, regardless of whether they are required to cooperate, you have a problem you must overcome.

NOTE: When tape recording a telephonic interview using a speaker phone ensure the microphone is not voice activated. Voice activated microphones will cause the first one or two words in a sentence not to be recorded. This could change the entire meaning of an entire testimony.

c. Interviews by Others. In some cases you may coordinate for another IG to interview witnesses for you. You must provide the interrogatories and enough background information so the IG can conduct intelligent interviews. It is helpful to provide the IG with anticipated answers that you expect from each witness.

Also provide the IG a copy of your Directive as well as copies of any documentary evidence they might need during the interview. After the interviews are completed, the assisting IG sends you the tapes or copies of the transcripts. After you have acknowledged receipt of the testimony, the assisting IG destroys all file material.

4-5. Witness Availability and Cooperation.

a. Within DA. AR 20-1 requires DA personnel to cooperate with IGs. If you have a witness who is reluctant to cooperate in either an investigation or an investigative inquiry, the best course of action is to persuade them that cooperation is in their best interest as well as their organization's. If unsuccessful, you should seek the assistance of the witness' commander or immediate supervisor. The witness' commander or immediate supervisor can order or direct the individual to cooperate. Do not order or direct the individual yourself. It could cause you to loose your IG impartiality.

b. Witnesses From Other Services. You may have occasion to interview witnesses from other branches of the Armed Forces. Make arrangements in the same way you do for Army witnesses. If you anticipate or have problems arranging interviews with members from another Service, coordinate through DAIG Assistance Division.

c. Civilian-Civilians. You cannot compel civilians not employed by DOD to cooperate with you. You have no authority to subpoena civilian witnesses. Contact your Legal Advisor or SJA for advice.

d. Control of Witnesses. It is difficult to conduct an investigation if the witnesses talk to each other about the case. Ensure you inform each witness of the requirement not to reveal to anyone the questions or topics discussed during the interview.

4-6. Other Participants in Interviews

a. Court Reporters. If a court reporter not assigned to your IG office is used to record testimony, you must instruct the reporter on his duties and responsibilities. Caution the reporter about the privileged nature of the investigation. Provide instruction for taking the testimony, and direct the reporter to make a verbatim record of the testimony. Also, require the reporter to save notes and give them to you with the verbatim transcripts. At the beginning of the investigation, administer the following oath to the reporter:

OATH: "Do you, _____, solemnly swear (or affirm) that the testimony taken in the case under investigation will be truly taken and correctly transcribed to the best of your ability; and that all knowledge of the case coming to you will be held in confidence; that all stenographic notes, carbon paper, spoiled sheets of testimony, or other papers, and all transcriptions thereof, will be carefully safeguarded and delivered into my hands, or otherwise disposed of as I may direct, so help you God?"

NOTE: Have the court reporter set up the equipment neatly but inconspicuously. The court reporter should test it before you begin interviewing.

b. Interpreters. If an interpreter is required, caution him on the privileged nature of the investigation. You may administer the IG oath for a Temporary Assistant IG (See paragraph 2-5, AR 20-1). Immediately prior to the interpretation administer the following oath at the beginning of the investigation, but do not repeat it for each witness:

OATH: "Do you, _____, solemnly swear (or affirm) that you will interpret truly the testimony you are called upon to interpret, so help you God?"

c. Attorneys.

(1) Suspects have a right to have an attorney present during their interview. You may choose to allow witnesses or subjects who request the presence of a lawyer during an interview to do so; however, they have no right to demand the presence of a lawyer. Remember, the purpose of a lawyer in an IG interview is only to advise the witness, subject, or suspect. You must prohibit a lawyer from answering questions for the suspect or from advising you on the conduct of the interview. If you encounter difficulties with an attorney during an interview, take a break and contact SJA for advice. It is always best to explain the ground rules to both the suspect and the attorney during the pre-tape. This often precludes problems later during the interview.

(2) If a witness or subject demands his right to have a lawyer present during the interview, what should you do? Explain that an IG interview is not a court of law and the proceedings are administrative in nature. Additionally, they do not have a right to have a lawyer present because they are not a suspect and do not have criminal allegations against them. You may allow the individual to have a lawyer present during the interview. Should a witness or subject request to see a lawyer during an interview, it is again your choice. In most cases it is best to allow them to do so. To not allow them to do so could cause them to become very defensive and reluctant to answer questions.

d. Friends. Persons being interviewed may request to have friends present. No one has a right to have a friend present. If you choose to allow a friend to be present, you must control him. The friend is for moral support of the witness only, and should remain silent. Inform the friend of confidentiality and ask that he not reveal information.

e. Union Representatives. Some civilian employees of DA may have the right to have a representative from the union at your installation present during their interviews. Others may request a union representative, even if it is not their right. It is your responsibility to control a union representative at your interview, whether they are there by right or with your permission. In most cases, the role of the union representative is to observe and advise the witness. Check with SJA regarding the collective bargaining agreement at your installation.

4-7. Self Incrimination.

You must always be alert for the witness or subject who, while testifying, implicates himself as a suspect. The admission of possible criminal wrongdoing need not be related to the case you are investigating. This also applies to suspects who may implicate himself in an area outside the scope of your investigation. If an individual implicates himself in criminal activity: stop, read and execute the rights warning procedure and waiver on DA Form 3881, and continue the interview only if the individual waives his rights.

4-8. Rights Warning

a. Use the DA Form 3881, Rights Warning Procedure/Waiver Certificate, to advise suspects and witnesses; who incriminate themselves, of their rights (See Appendix N). Consult your SJA concerning its proper use. The general procedures are to have the suspect read the front side, Part I, which you will have filled out in advance. Then, read the back side, Part II, aloud while the suspect reads a copy. Ask the suspect the four waiver questions. If the suspect chooses to waive his rights, have the suspect sign the waiver in Section B. You must also sign the appropriate block in Section B. Ensure the name of any witness of the execution of the waiver is placed in the appropriate boldk in Section B.

b. Should you have to execute a DA Form 3881 during an interview and you are not sure what to put as the charges, take a break and call your SJA. If the SJA is unavailable, a general description of the charges, in your own words (i.e., failure to follow a regulation; misuse of government equipment) will suffice. If you question a suspect a second time on the same allegation(s) for which you already completed a DA Form 3881 (and they waived their rights), you do not have to complete a new

DA Form 3881. However, if you are questioning the suspect concerning new allegations, you must complete a new DA Form 3881 including any new allegations or suspected violations. The original copy of the DA Form 3881 should be included with the suspect's testimony in the ROI/ROII.

4-9. Taking Breaks.

Should you or the witness need to take a break for any reason while recording testimony, state for the record (on tape) the circumstances and time before shutting off the recorders. When ready to resume the interview, turn on the recorders, state the time and whether the people in attendance are the same or not. If someone has departed or someone new is present, give their names and briefly explain the reason for the change. As an example, a lawyer who was not there at the start of the interview may be present after the break.

4-10. Interview Sequence.

Determining the sequence in which you will conduct interviews is a key step in the planning process.

a. Usual Sequence.

(1) Experience shows that the best sequence is to first interview the complainant, then experts, witnesses, followed by suspects or subjects last. Naturally, the sequence of interviews will vary based on the nature of the allegations and on the availability of the witnesses, subjects or suspects. Many inexperienced investigators are inclined to resolve cases quickly by talking to subjects or suspects first. Avoid that pitfall by following the recommended sequence which will:

- Give you information needed to ask the right questions of the subject or suspect.
- Enhance truth telling (i.e., people are more likely to be truthful if they know you have done your homework).
- Enable you to immediately challenge statements that are inconsistent with other evidence or appear untrue.
- Allow you to advise subjects or suspects of all unfavorable information against them and allows them an opportunity to comment. You will have more unfavorable information at the end of an investigation than at the beginning. Remember, you must allow the subject or suspect to comment on all unfavorable information you intend to use in your report!
- Decrease the likelihood for a recall interview. An interview conducted too early in the investigative inquiry process increases the likelihood of the need for a recall interview and may unnecessarily consume more of your time.
- Protect the legal rights of all persons involved. Because you will become more progressively knowledgeable about the case, you are more likely to protect the legal rights of all persons

involved. For example, you are less likely to interview someone as a witness when they should have been treated as a suspect.

(2) You should also consider the order in which you will interview witnesses. Frequently, investigators will group witnesses by the evidence they are expected to provide. For example, all witnesses who observed a specific event might be interviewed sequentially. Another alternative is to interview witnesses in chronological order.

b. Exceptions. There are circumstances which may cause you to interview the subject or suspect early in the investigation or inquiry. These are:

(1) You have anonymous allegations and cannot readily identify any witnesses.

(2) You have vague or anonymous allegations that the subject may be able to clarify. The subject or suspect may provide you the names of witnesses.

(3) The subject or suspect has information not readily available elsewhere that you need early in the inquiry.

(4) The subject or suspect is about to retire or permanent change of station (PCS) to a distant location, and flagging is not appropriate.

(5) You believe this is one of those rare occasions when the need for speed justifies the risk.

4-11. Time.

Another key planning consideration is the time it will take to conduct each interview. There are no hard and fast rules -- some interviews move along quickly, others drag. As a minimum, you should plan for the following:

a. Rapport Building. Set aside a minute or two to put the witness at ease before you begin your interview.

b. Pre-tape or Introduction. Plan to spend 5-15 minutes covering the points of your pre-tape, if formal; or introduction, if informal. More time is required if you must execute a rights warning certificate.

c. Questions and Answers. Always consider the possibility of unexpected issues or allegations arising during the interviews and allow a few extra minutes.

d. Protect Confidentiality. Provide adequate time to allow one witness to leave and another to arrive without violating confidentiality. As a contingency, you should plan on what to do when you have a witness in your interview room and another

waiting outside to be interviewed. Many IGs take a break and leave their interviewee in the interview room while they move the person waiting outside to another location.

e. Administration. Plan time for you and your partner to compare notes, prepare for the next interview, and take care of personal needs. Experience has shown that an interview that turns out being shorter than planned is far better than an interview that takes more time than scheduled.

4-12. Location.

You can conduct interviews almost anywhere. The major consideration in choosing a location is privacy. Some locations, however, offer other advantages as well.

a. Your IG office. Experience has proven that an IG office is often the best place to conduct interviews.

(1) You control the environment. You can avoid interruptions such as ringing telephones and people entering unannounced. Your office personnel can control other witnesses who may come early for an interview. Should you sense that a witness is going to be difficult, you may be able to ask for assistance from a more experienced IG or an IG in a higher rank.

(2) Confidentiality. Your office is probably located away from the subject or suspect's workplace. Witnesses can discreetly visit your office.

(3) Efficiency. Conducting interviews at your office maximizes your efficiency. You do not have to spend time traveling and you have your administrative support immediately available.

b. Witness' Workplace. Another choice is to interview at the suspect's, subject's, or witness' office. The advantages are that the interviewee may be more at ease, more willing to cooperate, and more willing to share their information. Often, your willingness to come to the witness' location for the interview can help establish a rapport with a reluctant or defensive witness. They may also have ready access to information, records or documents. The disadvantages are that many people at that office may find out that you are there, and rumors could result. Additionally, you have little control over privacy and probably cannot prevent unwanted interruptions. A subject or suspect may want you to conduct the interview in their office because they feel more in control. If you have interviewed the proper witnesses, gathered the facts, and prepared for the interview, it will make little difference.

c. Hotel or Motel. There will be times when you may need to travel, and your interviews may have to be conducted at a motel

or hotel. This can be done effectively if you plan ahead. When possible, arrange for a neutral interview location (have your orders cut to allow you to rent a conference room, extra room, or business suite). When notifying someone that you will interview them at a motel, set up an initial meeting in a public place such as the lobby. There you can properly identify yourself and make the interviewee more at ease.

NOTE: While you are not prohibited from interviewing one-on-one, even if the interviewee is of the opposite sex, having a partner while interviewing may make the interviewee more comfortable and provide everyone involved with a measure of protection from possible allegations or misconduct.

d. Other Installations. If you must travel to another installation, you can request that the local IG provide you an interview room. You need to ensure they are aware of your needs and requirements. Additionally, consider asking the local IG to make witness notifications for you. They are known in the command, know the local environment, and can possibly enhance the confidentiality of your inquiry or investigation. Consider using a Reserve Center or National Guard Armory as an interview location if there is no installation nearby. Coordinate with the local IG.

e. Witness' Home. At times you may have to interview a witness (usually a civilian) at their home. This can be undesirable because you lack control. Interviews conducted in a home are fraught with distractions. Additionally, the physical characteristics of the site may not be good. In all cases you want to ensure that your interview location is private enough to ensure that you can protect confidentially of witnesses and preclude unnecessary disclosure of the details of the case.

CHAPTER V--Interviewing Techniques

5-1. Importance of Interviewing.

The basis for the resolution of many IG cases is intelligent, careful questioning. Effective questioning can only be accomplished by skill, preparation, and experience. It is the nature of IG business that we deal with perceptions and the "why" things occurred. Therefore, IGs conduct interviews with a question and answer period rather than taking written statements. The previous section focused on the process of conducting interviews. This section focuses more on the "art" of interviewing. Unless otherwise noted, the word witness in this section refers to subjects and suspects as well.

5-2. Preparation.

There is no substitute for detailed preparation! Know what you are talking about; know what evidence you want; keep in mind the who, what, when, where, why, and how of the case. You must have sufficient background knowledge about the witness to select the correct approach to questioning, to assess the witness' truthfulness, and to demonstrate the thoroughness of your investigation.

5-3. Attitude and Demeanor of Investigating Officers.

Attitude and demeanor contribute immeasurably to the success or failure of the interview. Remember each witness is unique and will react differently. Therefore, you must adapt your technique accordingly. In questioning witnesses you should:

a. Gain and maintain the witness' respect. Be professional!

b. Adopt an objective and friendly, but not familiar, attitude.

c. Try to put the witness at ease and then direct the conversation to the matters being investigated. If the witness proves to be hostile, adopt a firmer attitude.

d. Be courteous, sincere, and self-confident. Do not deceive, browbeat, threaten, coerce, or make promises. Do not apologize for doing your job.

e. Remain an impersonal, calm, objective fact-finder. Do not shout, lose your composure, or otherwise show emotion.

f. Maintain an attitude of fairness.

5-4. Formulating Questions.

a. A well thought out interrogatory is the key to a successful interview. Use care when determining the order of your questions. You can put the witness at ease by asking background questions first in order to establish rapport. Your interrogatory should include the anticipated answers or right answers. If you cannot anticipate the answer, be ready to follow-up with other prepared questions. Try to avoid being surprised, but don't let surprises upset you. Do not hesitate to take a break to think your way around surprises or develop changes in your line of questioning. A well thought out question is better than a reactive question.

b. Get to the point at the appropriate time during the interview. There is a real art form in asking the hard questions at the correct time. You need to establish background information and put the witness at ease before getting into difficult areas which could cause the witness to become defensive. The best approach is usually to first ask background questions which are pertinent, but not controversial, then work the witness toward the more difficult subjects. A defensive witness may not want to answer your questions and a defensive suspect may invoke his right to not incriminate himself. Waiting too long can appear to be "beating around the bush" or "fishing" which can be just as bad.

c. Word your questions so the information comes from the witness. Providing too much information in your question may identify your source to the witness. Avoid questions that can be answered by yes or no. For example, if you want to know if the witness was at a certain place on a particular day, do not ask them if they were there. But rather, ask where they were that day.

d. Ask one question at a time, then patiently wait for the answer. If the witness hesitates, don't immediately start rephrasing the question -- he simply may need time to think. In many instances, a witness starts to answer a question and one or both investigators interrupt with another question or clarification before the witness has completed answering the original question. Write a note, and ask the question when the witness finishes the answer. Usually if a witness does not understand a question, he will ask for clarification.

e. Avoid making detailed statements followed by "Is that correct?" Do not put words in the mouth of a witness. However, it may be appropriate to summarize to the witness what you think he said.

f. Use language the witness understands and try to persuade the witness to avoid jargon or slang. If jargon, slang or acronyms are used, clarify them during the interview.

g. Rephrase the question if the answer you receive is incomplete or not to the point.

h. Do not ask compound questions -- they elicit incomplete answers, and it is difficult to determine later which question the witness answered.

i. Should you ask about locations or positions, it is frequently helpful to have the witness draw a rough diagram or sketch. This diagram or sketch can be entered into the ROI as an exhibit where it can help a reader to better understand the testimony.

5-5. Control.

a. Maintain absolute control of the interview.

b. Allow discussions of unrelated matters to place witnesses at ease, but never allow a witness to take the initiative.

c. Listen attentively, evaluate the information received, and resolve inconsistencies with follow-up questions. The investigating officers should agree prior to the interview as to who will concentrate on the prepared interrogatory and who will listen for unanticipated leads and information. This agreement also lessens the chance of one investigator unnecessarily interrupting the other and possibly changing the thrust of the original question.

d. Allow the witness to give testimony freely and without fear, but do not permit him to give flippant or evasive answers, or to become argumentative.

e. Determine the basis for the witness' opinion.

f. Ask questions for clarification when answers contain trade names, technical wording, acronyms, slang, or colloquial expressions. However, do not interrupt by asking how to spell a name or to obtain other identifying data. This interruption of the witness train of thought often causes loss of the thought. Jot a note, and ask the question after the witness finishes the answer or at the end of the interview.

g. Determine the source of hearsay evidence so that direct evidence may be obtained.

h. Pursue the issue when an answer, tone of voice, or non-verbal signal indicates the witness has additional information.

i. Guide the talkative witness to the issues and pertinent answers.

j. Use simple, direct questions to elicit information when the witness is hostile or reluctant.

k. Appeal to military witnesses' sense of duty to overcome their normal reluctance to make adverse statements about others.

l. Persuade civilian witnesses to cooperate by appealing to their patriotism or desire to see justice done, and tell them how valuable their cooperation is to the Army.

m. Continue to question a witness who avoids answering questions by saying, "I don't remember." Point out that they may be failing to remember facts that persons would normally recall.

n. Use skill and tact to confirm or deny suspicions that a witness is untruthful. Confront the untruthful witness with proof of their falsehood in order to elicit a change in their testimony. Experience has shown that it is best to read the witness the advisement concerning false swearing, also known as the “Liar’s Paragraph” as a last resort. Only do so when you are sure and have the facts. Remember it is not necessary that you have someone who is a subject or suspect admit his wrongdoing. If you have the preponderance of evidence that substantiates an allegation, the only purpose for talking to a subject or suspect is to get their side of the story (administrative due process right). The fact that a witness has lied to you during a case can be important and should be addressed in your report.

o. Ask yourself if all pertinent points been covered. Are the answers complete? If you have any doubt as to what the witness is saying, ask, "What I hear you saying is . . . ." or "Do you mean by that . . . ?", then repeat your understanding to the witness.

p. Just prior to the end of the interview, you may want to summarize important answers with such statements as "I understand that what you have testified to is this: one, . . . ; two, . . . ; three . . . ." This technique is specifically applicable when it concerns an element of essential information. You will want to be careful. Be sure you are accurate. A witness will tend to believe and agree with whatever you say even if incorrect. This is especially true when the witness feels overwhelmed and nervous about the interview process or really wants to please you.

q. Ask the hard questions which concern the witness' specific role in what has been alleged. Do not allude to the subject matter -- be specific. If you mean sexual intercourse, say sexual intercourse -- not "affair." If the hard question is not asked, it most likely will go unanswered. Often the questions can be embarrassing or sensitive to you and the witness. Preparation will make you comfortable, and your comfort will put the witness at ease with the "hard" questions.

r. Demonstrate military courtesy, but do not be intimidated by a senior official whom you are questioning.

5-6. Interviewing Non-DA Civilians.

a. You do not have the authority to require the appearance or testimony of non-DA civilian witnesses. Your techniques in dealing with non-DA civilians will frequently determine if you can gain their cooperation and testimony. Consider these techniques when dealing with civilian witnesses.

(1) Adopt an objective, empathetic attitude.

(2) Explain the procedures that will be followed and the rationale, because some civilians may not understand your role or may view the investigation more as an inquisition. Anticipate potential problems. Do not use military jargon and acronyms.

(3) Attempt to conduct all interviews at your location. If the witness does not agree to this, then conduct the interview at a neutral place like a hotel or motel conference room. If the witness still refuses, it is permissible to conduct the interview where the witness suggests. However, make sure you take appropriate measures to avoid the appearance of impropriety. Be aware of the impact you and your partner have, as IGs, when you go to a person's place of business to conduct an interview. There may be rumors which adversely affect the witness. If you make witnesses aware of this, he often will change his mind about interviewing at his place of work. Civilian clothes could be appropriate when interviewing civilian witnesses at their home or work place.

(4) Explain the IG concept of confidentiality and the methods used to protect the rights of all those involved in the investigative process.

(5) Should the witness be very reluctant to participate a formal interview, explain the emphasis on the IG process of sworn, recorded testimony. If the witness remains reluctant, then continue the interview without recording the session. Complete a summary of the information provided.

(6) Consider other alternatives if there is continued reluctance to testify after repeated explanations. For example, if a witness refuses to give oral testimony, ask for a written statement. Ask yourself if this witness' testimony is critical to your investigation. Can this information be obtained from another source? A decision not to interview a reluctant witness is sometimes best.

5-7. Observations by Interviewer.

Your observations are of value when developing follow-on questions and may be of value when weighing the evidence or credibility of a witness. During the questioning, continuously evaluate the mannerisms and emotional state of the witness. Hesitation, evasive answers, body movements, and fidgeting may indicate the witness is not telling the truth or is concealing information. Such behavior may only mean that the witness is nervous with the interview process. This is where your ability to put the witness at ease is very important. You are better able to judge when a specific question causes the witness obvious discomfort. It may be worth rephrasing the question, or it may be appropriate to direct your question to their discomfort. For example: "I sensed a change in your voice when I asked that question, why?" When appropriate, write an MFR which describes physical mannerisms. Use caution, however, in interpreting physical mannerisms, and avoid attaching undue or unfounded significance to them.

5-8. Memorandum For Record.

a. An MFR is a suitable way to record your observations, to identify exhibits, or to record other information important to the investigation. Remember, when you include an MFR with your observations in your report, you become a witness in your case.

b. Prepare MFRs while the matters are fresh in your mind. Take a few minutes after the interview to either make notes on the testimony transcript information sheet or dictate your observations on the tape immediately after the recorded testimony.

c. The MFR should contain:

(1) What was observed; where, when, and how, if applicable.

(2) Why the action was recorded.

(3) What was found.

(4) Explanatory notes, comments, or comparisons.

(5) The signature of at least one investigating officer.

5-9. Use of Polygraph.

The polygraph, commonly termed "lie detector," is not an appropriate method for gathering evidence in an IG inquiry or investigation. An investigation that requires the use of the polygraph has gone beyond the scope of what is appropriate for an IG. Consider turning this case over to a criminal investigator. Consult with your SJA.

5-10. Interviewing DOs and DON'Ts.

DOs
DO maintain a high standard of professional conduct.
DO get the witness to fully explain his answers.
DO develop facts.
DO honor the rights of the witness.
DO be fair.
DO be thorough, objective, and discreet.
DO ask the hard questions.
DO thoroughly research the standard.
DO prepare for the unexpected.

DON'Ts
DON'T browbeat, mislead, threaten, or intimidate.
DON'T make promises.
DON'T advise or counsel.
DON'T guarantee testimony cannot be used for adverse action.
DON'T lose your temper or patience.
DON'T argue or make snide remarks.
DON'T tell an untruth to get a truth.
DON'T unnecessarily reveal the identity of other witnesses.
DON'T be embarrassed by silences; give the witness time to think.
DON'T ask long, multiple, or involved questions.
DON'T lead the witness.
DON’T put words in the witness’ mouth.

CHAPTER IV--The IG Inquiry and Investigation Process

6-1. Fact Finding.

a. Refine the Allegations. In Step Two “Conducting IG Preliminary Analysis” of the 7 Step IG Action Process (IGAP), the IG must identify the issues and develop the allegations. If step 2 of the IGAP process revealed an impropriety, then fact finding (Step 4 of the 7 Step process) is either an investigative inquiry or an investigation. This decision making approach is detailed, structured and requires additional analysis of the allegations. The process builds upon the analysis performed as part of a preliminary analysis (PA). While additional analysis may appear redundant, it is important. Not properly identifying the issues and allegations is the number one problem encountered by IGs when they conduct investigative inquiries and investigations.

(1) Complainants do not normally write allegations in a manner that is useful for fact-finding purposes; this responsibility consequently falls to the IG. The IG must take the information from the complainant, research the standards and for each issue raised by the complainant write a concise allegation that contains four elements: who, the word “improperly”, what acts allegedly occurred, and the standard violated.

INVESTIGATIVE PROCESS

Gain Authority
Make Notifications
Plan
Gather Evidence
Evaluate the Evidence and Write the ROI
Obtain Approval
Make Notifications

(2) It is important for the IG to closely consider each of the four elements of an allegation.

(a) Identify the "WHO". The “who” becomes the subject or suspect in the inquiry or investigation. He should be a military member or DA civilian of your command. If he is not in your command, coordinate a hand-off of the case through IG tech channels. If he is a civilian-civilian, consult with your SJA. For example: you receive a complaint that the garrison commander's wife is using an official vehicle to visit the commissary. If she is not a DOD employee, you have no jurisdiction over her. You should make her husband the suspect or subject in this case since he may have permitted her to use the vehicle.

(b) Insert the word "IMPROPERLY" in each allegation to ensure that the focus is on impropriety. Although the word improperly may appear redundant, it is an essential element of a properly worded allegation. For example, presenting a false travel voucher is always improper by its nature, yet the allegation qualifies the conduct by stating “...improperly submitted a false travel voucher in violation of ...”

(c) Describe the ALLEGED ACTS that constitute the impropriety. This information is extracted from the interview

with the complainant or from the complainant's written request for assistance. The language in an allegation should be kept simple and must be worded in such a way that substantiation represents impropriety. You must also ensure that the focus is correct. In this regard you need to balance specificity and confidentiality. For example: you receive a complaint that a supervisor sexually harassed his secretary during May. You might write the allegation that the supervisor "...sexually harassed a female subordinate assigned to Fort Von Steuben." It is not essential to state in what month the event occurred. Do not name the victim of the improper action in the allegation.

(d) Research the STANDARD. This is often the most difficult and important step in properly writing allegations. You, not the complainant, determine which standard was violated. Often complainants will observe something they believe to be wrong that actually does not violate any standard. The question you must continually ask yourself is, "Do the alleged acts violate law, a regulation, or policy."

(e) If you cannot identify a violation of a standard, you may not have an impropriety, hence no need to investigate or inquire. Be cautious, however. Actions may violate one of the seven Army values: Loyalty, Duty, Respect, Selfless-Service, Honor, Integrity, and Personal Courage, or the 14 general ethical principles contained in the JER. Other acts might violate common sense or indicate negligence to a degree that allows you to use the provisions of dereliction of duty as a standard. Sometimes there may not be a applicable standard. You can not substantiate an impropriety for an action which does not violate an established standard. In such cases, it might be appropriate for you to close the case. Consult with your SJA.

(f) Some acts violate more than one standard. Sexual harassment, for example, violates AR 600-20, the JER, and the UCMJ. In selecting the appropriate standard, consult your SJA. Ensure you apply the standard in effect at the time the alleged impropriety occurred.

(g) You may encounter a situation where you are unable to determine a standard, but systemic problems are evident. In such cases, you may elect to inspect or take corrective action rather than to inquire or investigate.

(h) There are situations when you identify systemic problems during your inquiry or investigation that violate a standard but do not indicate misconduct (an allegation) on the part of any individual. You may address the systemic issue in the other matters paragraph of the ROI/ROII.

(i) It may be necessary for you to interview experts to determine the applicable standards. For example, should you

receive allegations of wasteful official travel, you might interview personnel from your servicing finance office to gather information on the provisions of the Joint Federal Travel Regulation (JFTR). When discussing standards with experts, always be cognizant of the need to maintain confidentiality. Protect the identity of your complainant as well as the identity of the subject or suspect. Describe to the expert the general nature of the allegation and allow the expert to describe how regulations apply. Record the results of the interview as summarized testimony and continue with your own research of the cited regulations.

(3) In writing the allegation, be concise, focusing on a specific type of impropriety. Combining two or more improprieties compounds the elements of proof necessary to substantiate or refute the allegation and inhibits your ability to provide a clearly stated conclusion. For example, combining the improprieties of conducting civilian commercial business using a government computer during duty hours and the impropriety of improper solicitation of gifts from subordinates will entail use of different standards and consequent elements of proof. Should sufficient credible evidence exist to substantiate one impropriety but not the other, what would be your conclusion? “Partially Substantiated” is not an acceptable IG conclusion. Write a separate, properly formatted allegation for each act of impropriety.

(4) Review the allegation with your SJA. With all but the simplest allegations, it is best to consult your the SJA. If you intend to recommend your commander direct an investigation, <u>ensure you coordinate</u> with the SJA. It is often helpful to ask the SJA what facts you need to substantiate a violation of a standard. This is particularly true of criminal standards. It is critical that you establish whether any of the allegations violated a criminal standard. If they did, the individual must be treated as a suspect rather than subject.

(5) When you first begin to formulate the allegations, do not be afraid to tackle complex, technical cases simply because you have no previous experience in that area. Remember, you can call experts as witnesses or make experts temporary assistant IGs for your case. Gather the facts and compare them against the information gleaned from the experts and regulations. IGs without previous technical experience in a specific functional area often conduct excellent inquiries and investigations. You will find that by carefully studying and becoming "smart" in the area you are investigating, you will become extremely knowledgeable. In some cases, you may become more knowledgeable about the entire technical process than the "experts," whose focus is often very narrow. Make sure you check their information against other sources. Often a smart, well qualified witness can provide guidance on the appropriate regulations and guidelines.

(6) Writing accurate allegations takes practice. Do not hesitate to ask for help from other IGs in your office or through tech channels.

b. Special Category Allegations.

NOTE: AR 20-1 requires all allegations against General Officers (GO) and members of the Senior Executive Service (SES) be reported directly to DAIG. This includes allegations made to the chain of command, MPI, CIDC, EEO, EO, etc., as well as the IG. DAIG will determine the method of investigation.

(1) Allegations Against GO and SES Personnel. You know from the IGAP that you must refer all GO and SES allegations, including allegations against retired GOs, to DAIG Investigations Division, by a rapid and confidential means, within 2 working days in accordance with para 8-3i(2), AR 20-1. As you continue to gather facts and evidence in an investigative inquiry, you must continually evaluate whether the new allegations or issues are appropriate for your continued involvement. As an example, if you developed general officer (or SES) allegations during an investigative inquiry or investigation, you are required you to notify DAIG Investigations Division. When in doubt, call DAIG Investigations Division for guidance. If the GO is your boss, you may be concerned about confidentially and the possible damage that could occur to your relationship with your commander. Make DAIG aware of your concerns. DAIG will take every reasonable step to protect the relationship between you and your boss. DAIG is not "out to get GOs and SESs" and will not try to force a case where there is none. You are not authorized to do any preliminary analysis.

(a) You may inform your commander of the general nature of the allegations against other GOs in the command. Paragraph 8-3, AR 20-1, provides specific guidance concerning allegations against GOs. Should you receive an allegation against your GO commander, contact Investigations Division, DAIG, for guidance prior to informing your commander. Past experience has shown that IGs who have attempted to “protect” their bosses by informing them of the allegations and/or conducting their own “preliminary analysis” or “preliminary inquiry” have actually exposed the GO and themselves to allegations of reprisal and regulatory violations. The best method of protecting your boss is to immediately report the allegation IAW AR 20-1. Investigations Division, DAIG, will provide you information on what, if anything, to tell your boss.

(b) If DAIG is conducting an investigation within your command, your commander will normally be informed. You, however, may not be informed of the investigation. Even if you are aware of an investigation, you will not be informed of the specific allegations.

(2) Any IGAR containing an allegation against an Army officer in the grade of major through colonel that has resulted in the initiation of an IG investigation, investigative inquiry, or a command directed action (e.g. AR 15-6 investigation, commander's inquiry, UCMJ action, etc.), will be reported to TIG (ATTN: Assistance Division (SAIG-AC), DAIG), by a rapid and confidential means, within 2 working days after receipt. (See paragraphs 1-4b(5) (b); 4-6c; 8-3g; AR 20-1.)

(3) Post-Employment Violations. Should you receive allegations of post employment violations (18 USC 207(a), (b) or (c)), coordinate with your command Ethics Counselor (SJA). These type allegations will be reported to the DAIG Legal Advisor for action. If an investigation is required, usually the major command of the activity involved will be asked to conduct the investigation and will be furnished specific guidance by DAIG.

c. Select the Fact-Finding Process.

(1) After you formulate the allegations, you must determine whether you will conduct an investigative inquiry or recommend that your commander direct an investigation. There are no hard and fast rules to guide you in making this determination. Every case is different. You must evaluate the circumstances at hand and make a decision with which both you and your commander can be comfortable. Deciding which cases to bring to him may appear to be a high risk venture, but as your relationship with your commander develops, you will gain an appreciation for the types of issues of personal interest to him. During your initial in-brief with your commander, you should ask for his guidance on this subject. Factors which favor a recommendation to conduct an investigation are:

(a) Serious Allegations. The allegations are serious and, if substantiated, could result in adverse personnel action or criminal charges.

(b) Appropriate Level for Command Decision. Determine whose "noise level" the allegations involve for adjudication. Determine the commander you should make your recommendations. If your recommendation to investigate is appropriate for the CG, than an IG investigation may be appropriate.

(c) Image of Army. The issues are so sensitive that the image of the Army or the command could be needlessly damaged if confidentially is not maintained. Confidentially is built into the investigation.

(d) Impact on Command. If known, the allegations will impact on the command's ability to function or on the ability of key members of the command to function effectively.

(e) Need to Document. The allegations have been surfaced at a higher level or may be surfaced at a higher level (to include

Members of Congress, for example), and there is a requirement for a formal report.

(f) Media Interest. The issues have potential media interest (or already have media interest).

(g) Harm to Soldier. The issues have potential to cause real or perceived harm to a soldier's career or personal life.

(h) Civilian Involvement. The allegations involve civilian-civilians or members of another command not under your directing authority's control.

(i) Need to Protect Confidentiality and Rights. The issues and their potential impact are such that there is an increased concern for protection of an individual's confidentiality and administrative due process.

(j) "Glass House" Allegations. The level of responsibility and visibility of individuals against whom allegations are made put them in the "glass house." These are individuals who may have allegations made against them because of their position rather than because of wrongdoing.

(2) Depending on the situation, any combination of these issues might cause you or your commander to resolve the issues with an IG investigation. Conversely, you might have all or most of these factors and still properly decide to conduct an inquiry or turn the allegations over to a follow-on investigation. Remember, the primary factor in your decision should be: Do you feel comfortable that your decision to conduct either an inquiry or investigation will satisfy your commander's needs, be thorough, and protect the rights of everyone involved?

6-2. Steps in the Investigative Inquiry and Investigation Processes.

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Appendix X contrasts the steps in the investigative inquiry process with the steps in the investigation process. Refer to it as you read the following description.

a. Gain Authority.

(1) Investigative Inquiries. If you determine that an investigative inquiry is the appropriate fact-finding process, a directive is not required. This does not, however, relieve you of your responsibility to keep your boss informed. Local IG office procedures will provide guidance on the conduct of your investigative inquiries. The principle detailed IG will direct an investigative inquiry. Assistant IGs should no launch an

investigative inquiry without directive from the command or State IG.

(2) Investigations. Should you recommend that an investigation is appropriate, there are formal steps required to obtain the authority to begin. Your commander is the only individual who is authorized to "direct" you to conduct an investigation.

(a) Action Memorandum. After you determine an IG investigation should be conducted, prepare an Action Memorandum (Appendix E or other locally acceptable format) for your commander. The Action Memorandum is an internal administrative document. It should be included in the final ROI (ROII if appropriate). It defines the scope and limits of what you and your commander decided to investigate. As a document prepared in conjunction with an IG investigation, it must be protected, as a minimum, by FOUO markings. It is protected from release under FOIA. The Action Memorandum:

- Forwards a Directive for the commander’s signature.
- Gives a brief background of how the allegations were received, who made the allegations, and against whom they are made. Since this is prepared for the commander, it contains names and specific details.
- Outlines the allegations that need to be investigated.
- May contain a summary of your inquiry/PA, if appropriate.
- May summarize the SJA's legal opinion for the commander.
- Recommends that the Directive for investigation be signed.

(b) The Directive for Investigation is your authority to investigate the specific allegations outlined in the action memorandum. While the Action Memorandum is very specific, the directive is very general. Do not disclose the names of individuals involved or the precise nature of the allegations in the Directive. This is done to maintain confidentiality. The Directive is prepared by you, signed by your directing authority, and addressed to the directing authority's IG (you). If the initial Directive is issued orally, write a MFR which outlines your instructions and secure a signed Directive as soon as practicable. Ensure that the SJA concurs with your approach and recommendation for an IG investigation.

Appendix F is an example of a Directive which:

- Protects you from civil liability by providing a historical record of authority to investigate (it becomes part of the ROI).
- Is used as basis for notifications.
- Is shown to witnesses to establish your investigative authority.
- Is quoted in the formal read-in of witnesses.

- Gives you the authority to require the presence of military and DA civilians at interviews and the authority to secure documents and other pertinent evidence.

(3) The Directive and the Action Memorandum together define the scope and limits of investigation. The IG may not initiate, expand, or terminate an investigation on his own volition. The Directive and Action Memorandum ensure that there is a clear, mutual understanding between IG and directing authority concerning what should be investigated.

(4) An IG investigation may be directed by any commander who is authorized a detailed IG. An investigation pertaining to general officers, including ARNG, USAR and retired general officers, or SESs may be directed only by the Secretary of the Army, Under Secretary of the Army, Chief of Staff, Army, Vice Chief of Staff, Army, or TIG. The State Adjutant General may direct his active duty IG to investigate items of federal interest not pertaining to general officers. You must report allegations of misconduct on the part of Brigadier General selectees, General Officers and SESs to Investigations Division, DAIG, within two working days, by a rapid and confidential means, upon receipt of the complaint.

(5) Do not send an Action Memorandum and Directive for investigation through normal distribution. Do not assume that the Secretary, General Staff (SGS) and Chief of Staff or other members of the staff should be made aware of the investigation unless your commander so desires. You should hand-carry the Action Memorandum and Directive to the commander. Schedule time to provide the commander a desk side briefing on the issues. Ask the SJA to be present if you anticipate briefing the commander.

e. Make Notifications.

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(1) Investigative Inquiry. Formal notifications are not required when you conduct an investigative inquiry. However, some notifications are frequently appropriate. In determining whom to notify and how much information to disclose, you must balance the need for confidentiality against the needs of the chain of command to know what is going on. You must consider the fairness the subject or suspect deserves. There are no hard and fast rules -- notifications are your choice. Notifications, when made, are done by telephone. The notification formats at Appendix G can be used. Some factors for your consideration are:

(a) Consider the benefits or the adverse affects of notifying the chain of command versus not notifying the chain of

command. As a general rule, if your investigative inquiry takes you into a subordinate command and becomes significant enough in scope or depth to cause that commander concern about what the IG is doing, then consider notification a necessary step. For example, should you anticipate a need to question several soldiers within an organization and you believe the fact that you are conducting an investigative inquiry may become known, you should consider notifying the chain of command. Remember, in an investigative inquiry you are not operating with a Directive from your commander. During some investigative inquiries, you might not notify commanders or subjects or suspects until you have developed some evidence that leads you to believe that the allegations have a basis in fact. Normally, you should notify the commander to whom you anticipate making your recommendations.

(b) Notification of subjects and suspects is usually a "fair play" issue. As with the chain of command, you should consider the trade-off of notifying versus not notifying. In some cases, you might not notify the subjects or suspects until you make the decision to interview them. If you believe they will learn that you are conducting an investigative inquiry, it is probably better to be informed by you rather than hearing from others or from rumors.

(c) Remember, you must closely examine the nature of the allegations and issues and determine whether you should notify your commander that you are conducting an investigative inquiry. Generally, the more serious the allegation and the more senior the subject or suspect, the greater the need to advise your commander.

(2) Investigations. After obtaining a directive, you must notify the subject/suspect and his chain of command of the investigation before you contact any witnesses or gather evidence. Notification of the commanders of the organizations involved ensures their cooperation and understanding. Notification of the subjects or suspects provides for their due process right to know there are allegations against them and allows them to seek legal counsel. Notification is also appropriate as IGs do not operate covertly. Do not confuse this notification requirement with your acknowledgment of the case to the complainant. Complainants, if personally wronged by the impropriety, are not entitled to know any information concerning the case other than their allegation was substantiated or not substantiated. Third party complainants, those not directly wronged by the impropriety, are not entitled to any information other than the acknowledgment of receipt of the case. Your communication with the complainant is a separate action and not a part of the notification step of the investigative process.

(a) Command Notifications:

(1) Chain of Command. Normally, at least the first commander or supervisor in the chain of command of the individual

being investigated should be notified. Use the notification formats at Appendix G to make these notifications. You, the directing authority, or someone designated by the directing authority, may make these notifications. How much information you provide, how deep in the chain of command you make notifications, and whether you give the notified commander the option to inform other members of the chain of command will vary. You need to consider the nature of the allegations, your commander's guidance and the personalities of the commanders or supervisors involved. In sensitive cases, you might not provide any detail except that there is an investigation. At other times, you may choose to provide the names of subjects or suspects and specific allegations or some combination. Also, consider the possibility of commander involvement in the allegations or that the commander has condoned the actions. For example: You have sensitive allegations against a battalion commander in 2nd Brigade which your commander directs you to investigate. Your commander believes the brigade commander should be informed of the investigation, but is concerned that doing this may needlessly damage the battalion commander's reputation in the eyes of the brigade commander. Therefore, you may choose only to provide the brigade commander with the general information contained in the directive. Should the facts indicate the allegations will be substantiated and that the brigade commander was knowledgeable and condoned the misconduct, you may need to investigate the brigade commander.

(2) Visited Commands. You may have to visit organizations or staff sections to obtain information and interview witnesses when there are no individuals in that organization who have allegations against them. It is your decision whether or not to notify the commanders of those organizations that you are conducting an investigation. Normally you need only provide the general information contained in the directive.

(3) Higher Commands. Your higher commands are not automatically notified of your investigations. Notify higher commands of an investigation based on the nature of the investigation, the rank or grade of the person being investigated, or as requested by higher headquarters or directed by your commander. Use your judgment and your commander's guidance to determine when to notify higher commanders. Remember you must report any IGAR containing an allegation against an Army officer in the grade of major through colonel that has resulted in the initiation of an IG investigation, investigative inquiry, or a command directed action (e.g. AR 15-6 investigation, commander’s inquiry, UCMJ action, etc.), to TIG (ATTN: SAIG-AC) within two working days after receipt by rapid and confidential means. (See para 1-4b(5)(b),4-6*c*,and 8-3g, AR 20-1.)

(b) Notification (Step 3 of the 7 Step IGAP) of Individuals Under Investigation.

(1) Always notify the individuals against whom the allegations are made. Failure to do so may jeopardize their due process rights. The person should be notified as either the subject or suspect. Determining their status in the case is your responsibility. Seek the assistance of your SJA and, if necessary, DAIG Legal Advisor. It is important that you make the proper distinction since the rights afforded vary with the individual's status. Suspects are afforded more rights than subjects. If the standard allegedly violated is criminal, then the person should be made a suspect. To interview someone pertaining to criminal allegations without first informing them of their rights is a violation of their rights. This is true even if you decide to question them concerning only non-criminal matters. See explanation of rights earlier in this Guide and in Chapter 8, AR 20-1.

NOTE: The opinion of DAIG Legal advisors is that military personnel who have criminal allegations (UCMJ) against them should be treated as suspects.

(2) What do you tell the subject or suspect? An IG investigation is not an adversarial proceeding. Therefore, you do not have to notify the subject or suspect of the specific allegations at the time of notification, but you must tell them what is mentioned in the directive. However, under most circumstances, you will inform the subject or suspect of the specific allegations at the time of notification. This is especially true of suspects, since they are more likely to seek the advice of a lawyer. Before making this decision, consider whether or not informing the subject or suspect of the specific allegations would reveal who made them. You must avoid this in order to preserve confidentiality. You must be concerned with the possibility of retribution and cover-up. The subject or suspect might talk to or influence the complainant or potential witnesses and thereby hamper your investigation.

(3) You should understand that if you do not give a suspect the specific allegations during notification, then once you give them the specific allegations during the interview, they may ask to see an attorney. This may slow your investigation, but it is their right to seek the advice of a lawyer. Sample Notification Formats for subjects and suspects are at Appendix G.

(c) Who Makes the Notifications? Who makes the notifications will be based on your SOP and will probably vary with the rank of the person against whom the allegations are made. There are several advantages for you, as the investigating officer, to make the subject or suspect notification. It gives you the opportunity to begin to develop a rapport with the individual. You may be able to anticipate from this conversation whether they will be cooperative or not and you can prepare yourself accordingly.

(d) How do You Make Notifications? Experience has shown that telephone notifications are best. Chain of command notifications made over the telephone are discreet and minimize disruptions to the units. Face-to-face notifications with a subject or suspect can be very difficult to control. Other than restating the allegations, when notifying a suspect, you should avoid discussing the facts surroundings the allegations. The rights warning contained in the suspect notification format is not considered legally sufficient for questioning an individual suspected of a criminal offense. You may provide the allegations to their attorney. Remember that experience has shown that the best course of action is to interview the subjects or suspects only after you have conducted a thorough investigation and know all the facts. The notification memorandums are for your files only. Do not send them or give them to the individuals you notify.

(e) New Allegations/New Subjects/New Suspects. During the investigation, you may develop new allegations unrelated to the original allegations or unrelated to the subjects or suspects. You must brief or send a memorandum to your directing authority to expand the investigation by explaining the additional allegations and/or new subjects or suspects. Prior to completion of the investigation, the subject or suspect must be informed and given the opportunity to present his side of the story. If the allegations are against someone not originally defined a subject or suspect, then he should be notified and interviewed.

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f. Plan the Investigative Inquiry or Investigation.

As in any military operation, planning is a critical element leading to successfully attaining the objective. You formulate a plan of how you will obtain facts and information pertinent to the allegations you have received. The planning process for investigative inquiries and investigations is the same.

(1) The planning process begins with your assessment of the facts you must gather to substantiate or refute that a violation of a standard occurred as alleged. This is done by a careful examination of the standard violated and the essential elements of that standard (e. g. the elements of proof). Next you must determine where you go to gather those facts. Generally this involves deciding whom (witnesses) you must interview to gather and corroborate those facts, and the questions you must ask to elicit the required information. You then develop a logical sequence for conducting the interviews. At this point, you also assess what documentary or physical evidence might be available that would contribute to your investigation.

(2) It is also necessary for you to conduct a certain amount of logistical planning -- court reporter availability, travel orders and hotel arrangements, etc.

(3) A suggested format for a plan is at Appendix H. As a minimum, the plan should include a list of the witnesses (also complainant, subjects and suspects) in the order you want to interview them, where you will interview them, and for how long. Separately list the witnesses and documents needed for each allegation. This will prevent you from unexpectedly coming up short on evidence for a particular allegation. Often this information is portrayed in the form of an Evidence Matrix. An example is at Appendix R. Items usually found in a good plan are:

(a) Background. Keep a record of how the allegations were received, who has been informed of them or otherwise has knowledge of the them, and who should be informed. This may be a list of individuals, commands, or commanders and supervisors. This will help when writing a final report. Experienced IGs have found it helpful to develop and maintain a chronology of events.

(b) Specific Allegations/Issues. List the specific allegations that you have developed to this point (from your action memorandum.)

(c) Evidence Required. In order to plan an investigative inquiry or investigation properly, you must have an understanding of the evidence required to establish the facts which will either substantiate or refute the allegation. For example: If you are investigating allegations of adultery you must establish that the suspect had sexual intercourse, that either the subject or the other party was married to someone else, and the conduct was either prejudicial to good order or discipline or discreditable. Under the Manual for Courts-Marshal, these items address the elements of proof for the standard.

(d) You should also have a feel for the types and categories of evidence that you will realistically be able to gather in your case (as you see it at that point in time). For example, in the adultery case, documentary evidence might establish that one of the parties was married, but verbal statements would probably provide the bulk of the evidence regarding intercourse (and most might be circumstantial). It is not premature during planning to develop a sense of what your standard of proof in the case will be (how much evidence will you need to establish a preponderance of evidence).

(e) Witness List (includes complainants, subjects and suspects). There are three areas on which you should focus. Whom are you going to interview? In what sequence are you going to conduct the interviews? What type of interview are you going to use?

(1) Whom are You Going to Interview? Selecting whom you should interview can seem very difficult until you have had some practice. Plan to interview the minimum number of witnesses necessary to ascertain the facts in the case -- IGs are always concerned with confidentiality. There is no set rule for establishing the minimum number required -- use your judgment to determine when you have reached a preponderance of evidence. Keep in mind that you want to verify all important facts and that you do not accept something as factual or true just because someone of a higher rank says it is so. As a minimum, you should have at least one person or document that verifies or corroborates a fact.

(2) Always appreciate the effect of talking to someone about allegations against someone else, especially someone in the same unit i.e., the effect on confidentially, unit cohesion, morale. People often assume the worst when an IG is asking questions. Where possible, you may want to gather information from agencies outside the subject's or suspect's workplace. As an example, the local finance office may be able to give you information concerning whether an individual was on leave or TDY for a certain period. This may have less negative impact than going directly to the unit to find out. Where possible, use IG tech channels to get information. Often the complainant (if known) may be able to provide you names of witnesses, but do not limit yourself to what complainants provide. You will also need to develop your own witness list since the complainant is not likely to give you names of people who could provide another side of the story.

(3) Interview Sequence. You will normally interview the complainant first, followed by any expert witnesses, the witnesses, with the subject or suspect last. Under some rare circumstances, such as a vague or anonymous allegation, you might elect to interview the subject or suspect first.

(4) Choose the type of interview. Most interviews conducted in an investigative inquiry will be statements, while those conducted during an investigation will be testimonies. However, you may choose the type of interview you plan to conduct based upon the nature of the case. If you believe the sensitivity of the interviews require the taking of testimony during an investigative inquiry then do so. You can always summarize the testimony from the tape recordings to statements.

(e) Additional Items. Additional items that you must include in your plan are the elements of proof from the standard. Consult your SJA to ensure you have the correct focus and interpretation of the standard. Also list those areas requiring discussion with proponents or subject matter experts. List the regulations and other publications necessary for the conduct of the investigation, and make extracts for your report. Detail any other requirements such as travel arrangements and coordination required with external agencies. If you use an evidence matrix

as an information management tool, you can also use it as a planning tool to assist describing the information each witness or document may contribute to your investigation of the allegations. The Evidence Matrix is discussed in more detail later in this chapter.

(f) Schedule Witnesses. Schedule and interview the minimum number of witnesses consistent with thoroughness (i.e. to reach a preponderance of evidence). This will protect the integrity of your investigation. Additionally, ensure you interview all the witnesses provided by the complainant and the suspect/subject that have material evidence concerning the allegations. Consider these points when scheduling witnesses:

(1) Provide the witness only the information contained in the Directive for investigation. Avoid revealing the details of the allegations. Occasionally, you may need to provide a witness additional information so that they can prepare for the interview. For example, if you need a witness to bring documents related to a case with them for the interview, you will need to provide them enough information to identify the documents. Use caution. At times, you may be able to ask for several documents of the same type to protect the identity of the individuals involved in the investigation.

(2) Protect the confidentiality of the witness and the confidentiality of others. Do not reveal the names of other witnesses, complainant or subjects and suspects.

(3) Follow the scheduling format (Appendix H) except for answering administrative questions (like location and direction to interview location). During the scheduling call, the witness may begin to provide information concerning the case. Avoid this discussion until you are prepared to conduct the interview. However, on occasion you may decide to question a witness during the scheduling process to determine if they are the correct witness. Again, you should be concerned about confidentiality. Be careful if a witness whom you believe to have information important to your case attempts to convince you otherwise. It is often difficult to judge over the telephone whether a witness is misleading you to avoid being involved.

(4) Ask the witness not to discuss the investigation with anyone. Explain the IG concept of confidentiality.

(5) As the investigating officer, you will benefit from personally making the scheduling calls rather than having someone else make them for you. You are the most knowledgeable concerning the case and why the witness is important to the fact-finding process. Should a witness prove to be reluctant to participate, you are the most likely to persuade them to cooperate. Do not attempt to compel (order) a witness (soldier or Government Employee) to participate. If a witness is refusing to cooperate, contact the witness’ supervisor or commander. The

witness' supervisor or commander should compel them to cooperate not the IG. This will maintain IG impartiality. Remember, regardless of whether a person is required to cooperate or not, willing cooperation will yield the greatest benefit. On occasion, other IGs in "tech" channels or members of the witness' chain of command can schedule him for you. Ensure you give them specific instructions concerning confidentially, location, and time of interview.

NOTE: If a witness is from another command, consider contacting that command's IG before you contact the witness or the witness' commander.

g. Gather Evidence.

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Except taking testimony (sworn recorded interview), this step is the same in both investigative inquiries and investigations. Gathering evidence consists of executing the plan you prepared. Remember your plan is a document that constantly changes as each piece of new evidence dictates. When collecting evidence and data, ensure you properly safeguard any Privacy Act records. The following information may be helpful in determining how to proceed.

(1) Duty/Assignment Status. Determine the status of individuals involved in your case. This should be done quickly and confidentially, usually without interviewing witnesses. For example, you may wish to verify whether an individual was on leave or TDY or at their duty station at the time of the alleged incident. In cases where the allegation is against someone because of their position, you may be able to determine whether they occupied the position at the time the improprieties were alleged to have occurred. Be careful about going directly to one's office or boss. You could needlessly damage a reputation. Develop reliable sources in internal agencies who will maintain confidentiality. When gathering information from an agency with which you have no "trusted agent" (an individual with whom, over time, you have found can keep matters confidential), or which has a new boss, you should start at the top. Use IG "tech" channels when necessary to gather information from other installations and commands.

(2) Documents. In some cases, documents such as travel vouchers might confirm the issues or allegations in such a way that a minimum number of witnesses are necessary. If so, collect them before you begin interviewing. Documents can provide excellent circumstantial evidence to confirm other evidence. However, documents alone are rarely sufficient to substantiate misconduct. Even when requesting documents, you must be concerned with confidentiality; obtaining files can cause an

unnecessary rumor concerning your investigative inquiry. In some cases, you may have to explain to people the nature of your investigative inquiry and ask that they not divulge the information because of the damage it may do. In other cases, you can ask for information in such a way to be protective. For example, if you want to see one soldier's record, you might ask for 10 records instead of one. When asking someone to get a record for you, do not assume that they understand how to protect the confidentially of the records. Explain the importance of confidentially and your concerns. Often they can obtain the records in the normal course of business without causing any rumors.

(3) Background and Previous Problems. It may help to know the background of the subjects or suspects or other people involved in the case and whether they have had previous problems related to the allegations. IGs can access personnel records, drug and alcohol records, and medical records for background information concerning individuals involved in inquiries or investigations. All information and evidence within the Army is obtainable to you unless it is above your security clearance (see paragraph 1-9d and e, AR 20-1). Normally, information can be easily and confidentially obtained by talking with the people in a position of authority, explaining the IG authority per AR 20-1, showing the need for the information, and explaining how we protect confidentiality.

(a) Generally, only three areas fall into privileged information not releasable to an IG: lawyer-client; husband-wife; certain communications with clergy.

(b) Witnesses (military and DA civilian) must answer questions or provide information. They can only refuse if the information falls into one of the above categories, is beyond your security clearance, or would be self-incriminating (see the discussion of rights, Chapter II, Section II, of this Guide).

(c) IGs who receive sensitive information such as Drug and Alcohol records and medical records must ensure that those records are safeguarded properly from release outside the IG System in accordance with the appropriate regulations and IG procedures.

(d) There are some pitfalls which you should avoid. Tact and discretion are usually more effective than a brash display of authority. For example, should you walk unannounced into a Drug and Alcohol counseling center, state that you are with the post IG office and need the clerk to provide you information concerning the enrollment in the program of a senior person, you will be rightfully challenged. You may win the argument and prove your authority to obtain the information, but in doing so you may adversely effect the credibility of the IG System. Instead, coordinate ahead through a supervisor.

(e) Additionally, human nature dictates that when the IG calls or asks about one's records or files, the assumption of the person who receives the request is usually that the someone is in trouble with the IG. For example, you need to know information contained in a soldier’s record. Since there are allegations against the soldier, you want to keep it confidential. Rather than call the AG records branch directly, you should probably contact the AG and explain what is needed, the nature of IG business and the need for protection of the soldier's identity. This allows the AG to use his resources to discreetly gain the information. After this initial contact, the AG may refer you to a records clerk or supervisor as a "trusted agent" to whom you can go directly for information. You will be more effective if you develop reliable, confidential contacts and avoid using "steamroller" tactics.

(4) Issues Looked at Before. You may determine during the course of the investigative inquiry or investigation that the issue has already been looked into by you or another IG, another investigative agency or by an AR 15-6 officer. If so, you probably would want to review the report. As a general rule, IGs do not open an investigative inquiry into something someone else (IG or non-IG action) has looked at unless there is new evidence or there is credible evidence that the original investigation or inquiry was not properly conducted (lack of due process, for example) and that appropriate redress has been exhausted. If you decide to open an investigative inquiry into issues already looked at by another investigator, you should understand that an ancillary issue may be an allegation against whoever conducted the original inquiry or against the "system." For example, a complainant provides you with an allegation in the EO area. You refer them to the EO office, which conducts an inquiry. The complainant returns to you requesting you look at the same issues, because the EO inquiry did not find in their favor. If you initiate an investigative inquiry into the allegations, then you may be required to treat this as an allegation against someone in the EO office or against the EO system.

(5) Interview the Complainant. An interview with the complainant sometime during the conduct of the inquiry is mandatory. Cases referred from DAIG direct you to interview the complainant. You may have already conducted an initial interview that may be sufficient. However, another interview conducted after you have made a thorough analysis of the allegations, become smart on the issues and standards, and have done some planning is frequently helpful. If you only have a letter or brief statement from the complainant, an interview will help clarify issues, or may provide additional evidence and witnesses. Just as important, an interview often gives the complainant the necessary "feedback" that we are taking appropriate action. In complex cases (multiple allegations vs. simple, single allegation cases), or if the allegations appear serious, but are presented in an unclear or vague manner (lacking facts), you will find it beneficial to interview the complainant prior to deciding

on what course of action to recommend to the commander (e.g. IG investigative inquiry or investigation or referral to AR 15-6, MPI/CIDC, commander's inquiry).

(6) Corroborating Evidence. The objective of your investigative inquiry is to seek witnesses and documentation which may be able to corroborate or refute some or all of the allegations or facts relating to allegations. These may be persons or documents mentioned by the complainant or developed by you. If you have only one witness who verifies a fact or facts, then you probably need documentation to support that witness' testimony. If there is no other evidence available, then you may consider the witness' credibility and perhaps accept it as true and accurate. Caution: If the witnesses were provided by the complainant, you should attempt to talk to witnesses selected by you or the subject or suspect. This helps ensure fairness and that you have more than one side of the story. When developing a list of witnesses, you must consider the scope of the investigative inquiry. How far do you need to go and how much time can you allocate to the case? There is no substitute for accuracy in the IG business. Your credibility as an IG is at stake.

(7) Testimony Interviews. Early in an investigative inquiry or investigation, when you have little knowledge of the case and probably do not know the full extent of each witness' involvement, you should proceed carefully. Consider taking testimony (sworn and recorded interviews) to gather a witness’ understanding or direct knowledge of the situation. The Read-out ensures you ask witnesses not to discuss the IG proceedings, and whether they consent to release of their testimony. Additionally, should a witness say something incriminating, the Read-in provides the proper protections and allows you to shift gears (Example: changing a witness’ status to that of a suspect).

(8) As you gather evidence, you must continually ask yourself, "Am I still proceeding on the appropriate course of action?" If conducting an investigative inquiry, you may uncover evidence that the allegations are more serious than you believed. If that occurs, you might go to your commander with a recommendation to direct an investigation. In either an investigative inquiry or an investigation, you may uncover evidence that criminal misconduct has occurred or that adverse action is a likely outcome of the case. Under those circumstances, you may wish to inform your commander and recommend appointing a follow-on investigator or turn the case over to CIDC. Some factors, should you consider handing off the case, are:

(a) When the facts obtained in a case lead you to conclude the allegations will be substantiated, and if so, could result in adverse action, a follow-on non-IG investigation is usually considered more appropriate than an IG investigative inquiry or

investigation. You must complete the investigative inquiry or investigation process, write the report, make notifications, close the case, and complete the IGAR in the IGARs data base. When your directing authority approves the ROI/ROII, you will find it necessary to turn your case over as quickly as possible to a follow-on non-IG investigator. During the turn-over, you must ensure you do not bias the follow-on investigator or violate IG confidentially.

(b) IG investigative inquiries and investigations are designed to put a premium on the protection of confidentially of all involved personnel. A large measure of that protection exists because the IG materials are not designed to be used as the basis for adverse action. Once IG materials are used for adverse action, all or part of the IG record may be made available to the subject or suspect under administrative due process (see paragraph 3-3b, AR 20-1). The confidentiality of the sources (witnesses and/or IG opinions, conclusions, and recommendations) in the case may be released in this situation.

(c) When the allegation is already in the IG System, you can usually obtain facts more quickly (initially) than can an AR 15-6 investigating officer. Thus if your commander needs a case resolved quickly, it may be best for you to continue and not have it off for a follow-on investigation.

(d) Some criminal issues will not be looked at by the CIDC unless there are other issues involved. For example, the CIDC will not normally look into allegations of adultery unless other issues are involved. That being the case, your commander will frequently rely upon you to conduct an investigative inquiry or investigation which, after being approved by the directing authority, may result in a follow-on investigation..

(e) The recommendation about whether to continue an IG investigative inquiry or IG investigation or recommend a follow-on investigator must be made on a case-by-case basis after serious consideration of the many factors already discussed here. Each case is unique. The nature of the allegations, whom they are against, or the way the commander wishes to handle the situation will vary with each case. It is not unusual that a commander may decide that the IG is the best trained resource to do an investigative inquiry or investigation which normally would be referred to another investigative process. Many commanders have more confidence in the abilities of their IG to impartially identify the issues and thoroughly present relevant facts in a timely manner. This is especially true in situations where the allegations are of such a sensitive nature that needless disclosure will harm the command. Do not forget that you can use the "tech" channels to seek advice.

h. Evaluate Evidence.

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As you gather evidence in your case, you must evaluate it and determine if you have obtained a preponderance of credible evidence that is sufficient to allow you to make a conclusion. This is a complex intellectual process. How effective you are depends upon your skill and experience, your knowledge of the categories and types of evidence, the quantity of evidence you gathered, and your judgment as to each item of evidence's credibility. After you evaluate the evidence, you must decide whether the allegations are substantiated, or not substantiated. Remember that your conclusions are based on the preponderance of the evidence available and not on "proof beyond reasonable doubt." Consult with other IGs or with SJA if you have questions when you evaluate evidence.

(1) Investigative Inquiry. When you are conducting an investigative inquiry, your evaluation of evidence may be a mental process, particularly if the case is simple. On more complex inquiries, a useful tool for evaluating evidence is the evidence matrix which was discussed during the planning step. The matrix lays out the evidence spatially and helps you see whether you have enough evidence to support a conclusion. Also, you should coordinate your evaluation with the SJA. Once you have enough evidence for a conclusion of substantiated or not substantiated, you should interview the subject/suspect. The subject/suspect may introduce new evidence that your need to collect. Once you collected all the evidence stop gathering evidence write your report and close out your case. If, however, you cannot get a preponderance of credible evidence, you may have to conclude not substantiated.

(2) Investigation. When conducting an investigation, you perform a mental evaluation of the evidence as you proceed. Once you have mentally determined that you have a preponderance, you formally evaluate your evidence by drafting the evidence and discussion subparagraphs of the ROI for that particular allegation. Often you will detect inconsistencies and voids as you write your discussion. This prompts you to gather additional evidence to include when you write your final report.

i. Write the Report of Investigation.

Once you have completed your investigative inquiry or investigation, you must document the findings. The ROI/ROII format (Appendix S) provides a logical, disciplined approach for presenting the case to an uninformed reader.

(1) Investigative Inquiry. Use the ROI format to document your investigative inquiry.

(2) Investigation. As part of the formal investigation process, you must document your case by preparing a ROI. The

format and detailed instructions for preparing an ROI are contained at Appendix S. Before you prepare an ROI, you should review previously prepared reports so that you can get a feel for the style and level of detail that are required in your command. Specific comments on preparation of the ROI:

(a) The ROI is a very important document. It gives the directing authority the facts, your conclusions, and recommendations. The ROI provides the basis for the directing authority's decision in the case. It may affect the future of the person under investigation or result in policy changes in your command. It might also be used by a DA centralized selection board to decide the fate of a soldier’s career.

(b) The ROI is the official record of the case. It documents your authority to conduct the investigation, contains all pertinent testimony and evidence, and makes provisions for the directing authority to approve the report. Keep the approved ROI with its exhibits on file in accordance with records disposition instruction. The ROI summary transcribed into the IGARS data base must be concise, complete and able to stand alone long after the paper file is destroyed (See MARKS requirements).

(c) THE EXECUTIVE SUMMARY. The Executive Summary (EXSUM) is a separate, stand-alone document which provides a succinct overview of the case, providing the background, that is, where the case originated, as well as the complaint. The allegations are presented by grouping those which are substantiated and those which are not substantiated. Give a brief synopsis of the key evidence which led to the conclusion. Don’t get into the details of the case in the EXSUM. This is a summary of the case, not the detailed discussion contained in the ROI itself.

(d) THE EVIDENCE.

(1) The main body of the ROI must be a clear, concise presentation and analysis of the pertinent evidence. Do not simply restate all the facts you gathered. Use the ROI format in all cases in which you complete the investigation. In those cases where you terminate before completion or turn the case over to a follow-on investigator, you may abbreviate this ROI format. However, this does not relieve you of the requirement to complete the investigative inquiry or investigation process, write the report, make notifications, close the case, and complete the IGAR in the IGARs data base.

(2) In most investigations, you will probably collect more evidence than is needed to substantiate or refute an allegation. You may have collected evidence that has no bearing on the case, is redundant, or will serve no useful purpose if included in the

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report. You may mention in the ROI the fact that you looked at a piece of evidence and found it to be of no value. However, you may omit evidence with no bearing on the case without comment in your ROI.

(3) Testimony is difficult evidence to analyze. Usually, only a few witnesses provide vital testimony. More often, witnesses provide fragments of information which you must piece together to present a picture of what took place. In these cases, you may summarize the testimony of the witnesses who provided pieces of information, but be careful not to omit important points. Use care in summarizing testimony of a witness who lacks knowledge of certain events. The lack of knowledge may be genuine, but it may also indicate that the witness was not candid. In complex cases or those with many witnesses, it is helpful to develop a system for identifying what each witness said about each allegation. A matrix, an outline, or file cards may be helpful. Whatever system you use, reference the testimony. This technique will also help eliminate unneeded testimony. A sample of an evidence matrix is at Appendix R.

(4) Your analysis of the evidence must bring together all evidence, documentary, physical, and testimony, relating to the allegations and result in a determination whether the allegations were substantiated, or not substantiated. Your conclusions must be clearly supported by the weight of evidence. Some conclusions may not be clearly supported because of vague standards or inconsistencies in testimony. In such cases, use your judgment and objective reasoning to formulate your conclusions. Have another IG who has had no contact with the case look at your draft report and comment on your judgments. You, the IG working the case, are often too close to critique yourself.

(5) You should analyze and address any conflicts in evidence. If you have witnesses who are not credible or whom you believe to be untruthful, say so. You are explaining to the reader how you determined the preponderance of evidence. Your discussion might state that five witnesses said the suspect did not do what was alleged and three witnesses said the suspect did. The preponderance of evidence points toward not substantiated. However, it would be helpful to explain the credibility of the three witnesses. Without that explanation, a reader might wonder what the conclusion might have been had you interviewed more witnesses.

(e) THE DISCUSSION.

(1) In the discussion subparagraphs it is not sufficient to merely restate evidence already presented. Your discussion should lead an uninformed reader logically through the evidence to obvious conclusions. If the facts and evidence already presented lead to obvious conclusions, this section need be only a brief statement leading to the conclusions. You may offer your opinion; however, experience has shown that unsupported opinions

often weaken a report. For example: If in your opinion a unit had poor morale and discipline, you should back that statement with evidence (appearance of soldiers, comments your overheard, etc.). However, you are now a witness in the case which may detract from your impartial fact finder role. It is best to present evidence from witnesses who testify or state that in their opinion the unit had poor morale and discipline. The witnesses should give examples. This procedure strengthens the analysis of the case by the objective or impartial investigator.

(2) Your directing authority will use your discussion subparagraphs to get a clear understanding of the evidence. Weigh and discuss the evidence which you presented in the evidence section. If you believe that your opinions or judgments should be introduced, then do so here, but clearly identify them as your opinions and introduce them sparingly. Do not present new evidence in the discussion paragraph. The biggest problem in writing the discussion portion of the ROI is that investigators tend to introduce things which they know, but have failed to put in the evidence section. If you know it, you probably got the information from a source. Find the source and place it in evidence.

(f) THE CONCLUSION.

(1) The goal of your investigation should be to develop and report sufficient evidence to conclude that the allegations are either substantiated or not substantiated. You must gather evidence to either support or refute the allegations with equal vigor. If you do not find enough credible evidence to draw a conclusion of substantiated or not substantiated, and no other evidence is reasonably available, your finding must be not substantiated.

(2) Your conclusions must be consistent with the allegations, evidence, and discussion. If you have properly presented your discussion, the conclusions need no further explanation. It should follow logically from your discussion that an allegation is substantiated, or not substantiated. Remember, a substantiated allegation must always indicate an impropriety.

(3) The only conclusions for an IG Investigative Inquiry or Investigation are: substantiated and not substantiated. Do not use “partially substantiated” or “substantiated without impropriety.” If you are at the point where you believe only part of the allegation is substantiated, then you should divide the allegation into several and discuss each allegation separately.

(4) Make sure your conclusions are complete. You may determine that an individual’s behavior did violate a regulation but extenuating or mitigating circumstances exist which leads you

to conclude that an impropriety did not occur. These circumstances are normally worded along the lines of, “. . . However, the facts indicated that the suspect's actions were motivated by concern for the subordinates and not by self interest." You could also conclude an allegation was not substantiated but include the comment, ". . . However, the suspect's actions led many in the unit to believe that the suspect was involved in an impropriety . . . ."

(g) OTHER MATTERS.

(1) During an investigation you may develop matters which are outside the scope of the specific allegations, but require a detailed examination. For example, if you are investigating allegations of improper command influence, and witnesses also tell you about or you observe poor vehicle maintenance, it would be proper to discuss that fact in a paragraph in the "Other Matters" section of your ROI/ROII. Since vehicle maintenance is outside the scope of your original directive, you might present this allegation and recommend an IG inspection or an examination by another staff agency.

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(2) However, if your investigation into improper command influence developed information that the morale in the unit was low based on this improper influence, then that would properly be a related matter for investigation within the scope of your directive. You would then present your evidence of the low morale and your conclusion in the body of the ROI/ROII. Use this paragraph with care; it is not a license to go beyond the scope of your directive. If unsure, seek guidance from your senior IG or directing authority.

(h) THE RECOMMENDATIONS.

(1) You must always close your ROI with your recommendations for action by the directing authority, i.e., that the report be approved, that the case be closed, and possibly that the ROI or portions of it be forwarded to the appropriate commander or staff section for action. Do not make recommendations of any punitive, adverse administrative or disciplinary action concerning the subject or suspect. To do so compromises your status as an impartial fact finder. You may recommend the case be turned over for investigation by another investigating officer, MPI/CIDC, or another criminal investigative agency. Do not recommend a commander's inquiry, an AR 15-6 investigation, or Article 32, and never make any recommendation concerning adverse action to be taken against individuals or organizations.

(2) Your commander, by approving your recommendation to close a case, implicitly tells you to monitor any required actions taken such as implementing letters, forwarding the ROI/ROII to a higher headquarters, and closing the file without

further referral to the directing authority. However, if the follow-up action appears inappropriate, you should advise the directing authority.

(3) If you identify systemic problems, your recommendations should address the general corrective action that is anticipated. For example, "An extract of the report, identifying the problem be provided the commander/director of _____." Or recommend the commander sign and forward a letter (prepared by you) describing a generic problem into which the subordinate command needs to look. Do not recommend what corrective action should be applied or how to fix a problem.

j. Obtain Approval.

(1) Investigative Inquiry. There is no formal process prescribed for approval of investigative inquiries. It is prudent to ensure that your IG is informed and approves of the cases you believe should be worked. Consequently, it is normal for IGs to brief the senior IG when they complete these cases. The command or State IG will approve the ROII, if not directed by the CG, IAW Paragraph 8-4, AR 20-1. If your investigative inquiry has substantiated allegations you must obtain a written legal review from the servicing SJA's office. On a case by case basis you or your IG may need a written legal review for ROIIs with not substantiated allegations. However, this is not required. Use your own best judgement.

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(2) Investigation. The directing authority must approve the results of the investigation by signing the ROI. Normally the ROI is hand-carried to the commander for approval. Before taking the ROI to the commander obtain a written legal review from the servicing SJA. Once the SJA has opined the ROI is legally sufficient present the ROI to the commander. It may be appropriate to give the commander an oral briefing. Often this takes the form of a decision brief.

(a) Actions by the Directing Authority. The directing authority approves, modifies, or disapproves the recommendations, and directs any actions to be taken. The directing authority may not agree with either the conclusions or the recommendations. No directing authority or other individual should compromise your independence by suggesting that any particular conclusions or recommendations should appear in the report or that any conclusion should be changed. This degrades the objectivity of your investigation. However, it would not be incorrect for the commander to request that you gather more evidence to support a finding. The commander is not bound by your findings, conclusion, opinions or recommendations. Commanders may act as they see fit. Experience has shown that having the concurrence and recommendations of the SJA will greatly enhance your case.

(b) Actions by Higher Authorities. Do not transmit ROIs from subordinate commands to higher authority unless the investigation is requested by, or is of interest to a higher headquarters, or the investigation involves other commands. If the investigation is requested by higher authority, that authority reviews the conclusions and recommendations, monitors action taken by the subordinate command, and then determines if further action is required. Final approval rests with the directing authority of the IG office of record. If the case is referred to higher authority because other commands are involved, that headquarters takes any necessary action only when the other commands are within its jurisdiction. If not, the case is referred to the next higher headquarters. Unless requested, exhibits are not normally transmitted with the ROI to the higher headquarters. In Whistleblower investigation cases, the directing authority must concur or non-concur with the ROI. ROI including all exhibits must be sent through IG channels through higher level commanders in the chain of command for endorsement through DAIG to IG, DOD for final approval. (see para 8-9c, AR 20-1)

k. Notify Appropriate Persons of Results (Step 5, Make Notifications of Results, of 7 Step IGAP process).

The requirements for notification differ between investigations and investigative inquiries. If you notified the subject or suspect and a commander at the beginning of an investigative inquiry, you should notify those same individuals at the conclusion. This may be either a written or verbal notification. In investigations you must formally notify the chain of command and the subject or suspect when you complete your case and the report is approved. This is accomplished through a letter. Example close-out letters are at Appendix W. These may be used for both investigative inquiries and investigations. Specific information:

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(1) Subordinate Commanders.

(a) Investigative Inquiry. It may be appropriate to notify subordinate commanders of the outcome of your investigative inquiry. This information can be shared as official information. If the report or portions of the report are forwarded to a subordinate commander, appropriate protection measures must be taken (reference Chapter 3, AR 20-1). If, however, the purpose of sharing the information is to allow the commander to conduct a follow-on inquiry/investigation, then only that information appropriate for follow-on investigators should be given (discussed in the next section of this chapter).

(b) Investigation. At the conclusion of an investigation, formally notify any commanders you initially notified when the commander signed your directive. Use the format at Appendix W. Notify the incumbent in the command position -- an individual who departs from command when your case is in progress has no need to know the outcome.

(2) Subjects/Suspects.

(a) Investigative Inquiry. If you have substantiated allegations against someone during your investigative inquiry, then you must notify them of that fact, either verbally or in writing. If the allegations are not substantiated, and during the case, you did not notify or interview the subject or suspect (required in an IG investigation and in cases referred to you from DAIG), then you may choose not to inform them of the results. On the other hand, if you have notified or interviewed them, you should let them know the results of the investigative inquiry. Remember to protect the identity of the complainant.

(b) Investigation. In an investigation, formally notify the subject or suspect in writing after the case is completed and approved. Use the example at Appendix W. Type and underline the words "Exclusive For" on the envelope IAW AR 25-50. If the subject or suspect desires more information, he must request it under the provisions of the Freedom of Information Act.

Note: In both inquiries and investigations, it is not appropriate for you to comment on actions that may be contemplated by the command, other than the appointment of a follow-on investigator.

l. Final Response to the Complainant (Step 6, Conduct Follow-up, of 7 Step IGAP process).

In both inquiries and investigations, provide the complainant a response to any allegation which applies directly to him. You should not provide complainants any information concerning allegations or findings which do not directly affect them. In investigative inquiries, notifications are usually informal and made verbally. In investigations, provide notification in writing. This consists of a simple memorandum with a statement to the effect: "We have completed our investigation into your allegation that . . . . The allegation was substantiated (or not substantiated, as the case may be)." Should complainants desire additional information, they must request it under the Freedom of Information Act. For example: A complainant alleges that his supervisor, MAJ Smith, had an improper relationship with another member of his (MAJ Smith's) organization in violation of AR 600-20, and that the improper relationship resulted in the complainant being denied promotion in favor of the other person. Your investigative inquiry substantiates the allegations. The fact that MAJ Smith had an improper relationship would not be

reported to this complainant. The complainant would be informed that his complaint of an improperly denied promotion was substantiated. Additionally, complainants and others do not have the right to know of any action by the command concerning the allegations.

6-3. Post Fact-Finding Actions

Your actions do not end once you have made your notifications at the completion of your case. Your post fact finding actions are driven by the nature of the case and are independent of the fact finding process you used.

a. Follow-up. Recall the Seven Step IGAP Process. You should return to Steps 6 and 7 of the process once fact finding is complete. Follow-up actions are frequently extensive. Even if you hand-off corrective actions to a proponent staff agency, you will probably have to follow-up to ensure that problems are fixed.

b. Disposition of Documents/Physical Evidence.

(1) Maintain and file the ROII/ROI as required by the appropriate regulations governing maintenance of records and files. Consider carefully which case materials you keep beyond the ROII/ROI. Maintain only case related materials needed for factual documentation. Eliminate any extraneous working papers such as draft reports, administrative notes or other items not needed for your ROII/ROI and case file. Return all other materials to their sources. Dispose of all files in accordance with AR 25-400-2, The Modern Army Record Keeping System (MARKS). You are not authorized to keep any files beyond their destruction date.

(2) Erase magnetic recording tapes used to record testimony once you have a transcript or summarized testimony.

6-4. Closing the ROI/ROII (Step 7, Close the IGAR, of 7 Step IGAP process).

Ensure the IGAR is coded IAW Paragraph 1-11, Section I, of this guide. Give special attention when deciding which codes are recorded. The function codes selected characterizes the areas that the IG has inquired or investigated the allegation(s) and has come to a conclusion(s). The synopsis must be clear concise summary of the complaint, allegations investigated, analysis of the evidence, the conclusion reached by the investigating officer, and the actions taken by the command. The synopsis must be a stand alone document that can be brought up from the IGARS Data Base anytime in the future and understood by the IG reading it. It should answer the questions Who, What, When, Where, Why,

and How. Each allegation should be clearly written in the correct format (Who, Improperly, Did what, In violation of a standard) with the conclusion of substantiated or not substantiated clearly displayed for each allegation. The determination codes or SNA codes should be indicated with an individual function code for each.

6-5. Problems Encountered

Occasionally, you will encounter problems when you conduct investigative inquiries or investigations. To assist you, commonly encountered problems, and possible courses of action, are discussed below.

a. Refusal of a Commander To Cooperate. From time to time commanders may not be fully cooperative. In most cases, the best course of action is for you to convince the commander that it is in his interest to fully cooperate. If a commanding officer (subordinate to your directing authority) will not let his subordinates testify, or not make them available for you to interview, two courses of action are open to you:

(1) Advise the commander that the matter will be referred to the next higher commander or the directing authority. Then contact your office and request that action be taken to inform the appropriate commanders or call the commander yourself. Frequently, the mere statement that the higher commander will be notified is sufficient to persuade a commander to cooperate.

(2) Submit a written report to the senior IG or directing authority. Ensure the written report contains protective markings IAW AR 20-1, Chapter 3-2.

b. Request to Have Others Present During an Interview.

(1) Allowing third party individuals in the interview is not a preferred practice. These individuals are anyone other than the witness, the investigators, a stenographic secretary, court reporter or interpreter, union or collective bargaining representative and counsel when authorized. Third party personnel include friends, spouses, assistants, physicians, nurses, and union representatives, unless authorized. Privacy promotes confidence; third parties do not. While the presence of third parties is discouraged, the final decision is up to the investigating officer.

(2) In cases where the person being interviewed has requested the presence of an unauthorized observer or lawyer, you should weigh whether the presence of such a person will facilitate or inhibit communications. If it will make the interviewee more comfortable, you may want to consider allowing an exception. Indicate in the record the presence of all parties to an interview. If a witness requests the presence of another

person, offer to have the other person located in a nearby room and called in to the interview only if needed.

c. Refusal of a Witness to Testify.

(1) Military members and DA civilians are required to answer all questions related to an investigation except questions that may be self-incriminating or, in the case of military personnel, those that are privileged communications as defined in Section V, Military Rules of Evidence of the Manual for Courts-Martial. Lawyer-client, husband-wife, and certain communication with a clergyman are privileged. The military doctor-patient relationship is not considered privileged communication in the Army. However, the rules for each differ and you should check with a legal advisor if a military witness claims one of the exemptions.

(2) DA civilian or military witnesses who improperly refuse to answer questions may be ordered to answer by their commander or supervisor. Allow the witnesses to explain why they should not be required to testify before you take action to require them to do so. This provides you a basis for determining whether you want to force the issue. IGs confronted with a military member or DA civilian witness who improperly refuses to answer questions should consult with their SJA or legal advisor. IGs should not order a witness to testify because by doing so they depart from their impartial investigative role. Failure to cooperate is an offense punishable under applicable regulations. Possible punishments include dismissal from Federal service.

(3) If a civilian contractor employee witness is the employee of a business with a government contract may be ordered to answer by their supervisor. The investigator should contact the Contracting Officer or the Contracting Officer’s Representative to gain the cooperation of the witness. Again, allow the witnesses to explain why they should not be required to testify before you take action to require them to do so. This provides you a basis for determining whether you want to force the issue.

(4) A witness may also improperly refuse to answer because the answer may reveal classified information. If the IG involved does not have the proper clearance, he should obtain it or request assistance from an IG who does have the proper clearance.

(5) The witness may not refuse to testify on the basis that the question is not material. You alone determine if a question is material to the investigation, and you should so advise the witness.

(6) If you have a reluctant witness whom you believe has information concerning a felony, you may read them Title 18, United States Code, Section 4, (Appendix Q) in the hopes they will then discuss the issues with you. This law provides that

any person having knowledge of a felony and who does not make this known to civil or military authority is subject to a fine or imprisonment.

(7) Civilian witnesses who are not DA employees may rightfully refuse to testify on the basis that you have no authority to make them do so. Your personal appeals may help obtain their testimony. The US Code provision mentioned in paragraph (c), above, is applicable. You must, however, realize that the possibility of a civilian being taken to court for refusing to cooperate with an IG is slight. Therefore, you should be cautious about using this warning.

d. False Testimony by a Witness. False testimony knowingly given to you under oath by an individual subject to the Uniform Code of Military Justice constitutes false swearing. False testimony knowingly given to you under oath by a civilian witness constitutes an offense under Title 18, USC, Section 1001. Appropriate advisements which may be read to individuals who provide false testimony are contained in applicable read-in scripts. Remember, a false official statement made by someone subject to the UCMJ is a criminal offense.

e. Requests for Advice from Investigating Officer. A witness may ask for or seek your advice, but you must tell the witness that you cannot give any advice except as to rights, duties and procedures regarding the interview. Do not advise a witness whether or not they should consult with counsel. Do not advise a witness whether or not they should consent to release of their testimony if a FOIA request is made.

f. Intimidation of Witnesses.

(1) If you believe there has been tampering or interference with a witness, you should immediately report this to the witness' commander and request that this practice cease immediately. If the commander does not cooperate, or if the commander is suspected of being a party to this irregularity, advise the directing authority and request that appropriate action be taken. Make sure you make a full record of such action and that the pertinent details appear in the ROI/ROII.

(2) A witness may be intimidated by the fear of retribution for testifying about their superiors or supervisors. There have been instances where individuals were called as witnesses and gave testimony adverse to their commanding officer. Despite the assurance given to these witnesses by the investigator, reports on occasion have been forwarded to the same commander for necessary action. These referrals present the possibility of adverse action or discriminatory practices against the witnesses. The effect of such action is to destroy the confidence of witnesses in the integrity of the IG system. Therefore, this practice must be precluded whenever possible.

g. Request by Witness to Record an Interview. Normally, persons providing testimony are not allowed to tape interviews in order to preclude compromising testimony and other evidence (See paragraph 8-4h, AR 20-1.). Follow the procedures outlined below when you receive a request to record an interview.

(1) Military or DA Employee Witness. Inform the witness that IG investigation procedures prohibit the witness from recording the interview. Should this not resolve the issue, you may offer them the opportunity to read the testimony in your office upon proper request. Also upon proper request, para 3-7a(2), AR 20-1, you may provide the witness a copy of his testimony after the ROI is approved. Both these requests must be in writing. If the witness is uncooperative and refuses to testify because they have been denied permission to record the interview, you may have them ordered to testify.

(2) Non-DA Civilian Witness. If a civilian witness, not affiliated with DA, puts a condition on their cooperation such as refusing to testify unless they are allowed to record the session, you can persuade them otherwise, honor the request, or forgo receiving their testimony. A civilian witness cannot be required to testify. If a civilian witness is permitted to record an interview, attempt to retain the tape until the investigation is complete. This precludes compromising the investigation. Failing this, consider interviewing all other witnesses before letting a civilian witness record an interview.

h. Request for a Copy of the ROI/ROII. Individuals involved in an IG investigation or investigative inquiry will not be provided access to the ROI/ROII. ROI/ROIIs and accompanying testimony are released only as authorized by Chapter 3, AR 20-1.

i. Request for Results of an Investigation.

(1) Follow guidelines in Chapter 3, AR 20-1. The directing authority may direct that you provide ROI/ROIIs or summaries within the Department of the Army for official purposes; however, you need to take several precautions:

(a) Comply with all provisions of Chapter 3, AR 20-1.

(b) Make sure the protective markings are applied to each page of the report and attached testimony.

(c) Prohibit reproduction.

(d) Prohibit subsequent transfer to another agency.

(e) Attempt to satisfy the request for an ROI by permitting the report to be used in your office.

(f) Provide for return of the report to the IG office as soon as the action desired is completed.

(2) The purpose of these restrictions is not to hinder operations but to limit access to IG records. An example of an ROI transmittal letter is at Appendix U.

j. New Allegations Received During an Interview. It is not uncommon to receive new allegations from an interviewee during an interview. If they are related to your investigation, include them in your case -- you may need to expand your directive. If you are unsure, brief your directing authority. If an unrelated issue surfaces, take it through the seven step IGAP process. It could result in a separate investigative inquiry or investigation.

k. Off-the-Tape Discussions. If the witness appears to be withholding information or is uneasy talking about a subject, considering turning off the recording devices and discussing the apparent problem. Although the tape recorders are off, the discussion is still on the record and official. You should discuss the witness' concerns, attempt to dispel them, and encourage the witness to allow the information to be recorded. While you can make an MFR of off-the-tape discussions, the witness may later contend that you modified or misunderstood what he said. It is best to have the witness put off-tape answers in the recorded testimony. When you resume taping, ask the witness to summarize what he told your off-tape.

l. Refusal to Swear or to Affirm Testimony.

(1) You cannot make individuals who are not subject to UCMJ or who are not DA employees testify under oath or affirmation. If a witness refuses to be sworn in or refuses to affirm his testimony, let the record reflect his refusal and continue to interview.

(2) You can require individuals subject to the UCMJ or DA employees to testify under oath or affirmation. If a witness refuses to swear, you may continue with an unsworn interview, or you may consult with a SJA and then ask the witness' commander or supervisor to direct the witness to swear or affirm to their testimony.

m. Locating Civilian Witnesses. If you have difficulty locating essential civilian witnesses, the first choice is to seek help through IG technical channels. When not practical, sources such as the local provost marshal, local CID element, or the designated liaison official for the local police or other law enforcement agency can be helpful.

n. Gifts and Social Activities. Do not accept gifts or be involved in any social activities which might give the appearance of conflict of interests with anyone involved in your investigative inquiry or investigation or any inquiry or investigation being conducted by an IG in your office. Should

you find yourself in a position where someone might question your impartiality in an investigative inquiry or investigation, consider disqualifying yourself to the senior IG or directing authority. Even if you think you can be impartial, it matters what others think. If you are the senior IG, your office may have to hand it off to a higher IG.

o. Amending Directives. Occasionally, you may find your directive to be inadequate for the investigation either because you misinterpreted the original information or you found new information outside the scope of the original directive. If this happens, have your directive amended, or prepare a new directive and an MFR explaining the circumstances. Do not confuse this situation with the discovery of matters not appropriate for you to investigate. Refer those inappropriate matters to the agency having jurisdiction for action.

p. Requests for Interim Reports.

(1) IG investigations often take several weeks or months to complete. You may use an executive summary as an interim report to keep your senior IG or the directing authority informed of your progress. The executive summary must contain protective markings. Be careful not to speculate on the results of the investigation too early in the investigative process because subsequent evidence and legal reviews may alter early conclusions.

(2) Complainants may ask, write, or call you, the commander or a higher IG for the progress or the results of an investigation before it has been approved. Do not provide any information other than to state that their complaint has been received and appropriate action is being taken. Do not release any other information, such as the tentative conclusions stated in an interim report. Even when the case is complete, the complainant cannot be allowed to have any information except that which applies directly to them.

(3) Never fall into the trap of leading a subject or suspect to believe that the allegations will be not substantiated before the case has been approved by your directing authority. The weight of evidence may change or the commander may not agree with you.

q. Using IG (Technical) Channels. Some of the tasks you typically would ask an IG from another headquarters to perform are:

(1) Notify the IG's commander of the investigation.

NOTE: Never do this if the allegations are against the IG's commander.

(2) Schedule and arrange locations for interviews.

(3) Assist with lodging and transportation requirements and with administrative support.

(4) Assist in gathering documents and other physical evidence.

(5) Assist with or conduct interviews by being part of the interview team. Assist by giving the oath and pre-tape and read-in and read-out to a witness or assist by actually conducting the interviews.
Note of caution: Do not put another IG into the position of investigating or appearing to investigate his or her own boss (either commander or senior IG). To do so creates a conflict of interest and may jeopardize the IGs working relationship with their boss.

r. Courtesy Calls. Do not routinely make courtesy calls with commanders. Because of the confidential nature of IG investigations, you cannot normally discuss details of a case beyond what is provided in the directive. This need for confidentiality applies in investigative inquiries as well. If a commander desires a courtesy call, exercise tact and restraint. Limit your discussion to the minimum information the commander needs to do his job -- usually the information in the directive. The same guidelines apply to exit interviews; limit discussion to the directive and the support rendered by the command.

s. Shifting from Investigative Inquiry to Investigation. Shifting from an investigative inquiry to an investigation is not a significant problem -- frequently IGs will begin an investigative inquiry and later determine an investigation is more appropriate. The information from your investigative inquiry is the basis for the background paragraph in your action memorandum. Once your commander signs your directive and you begin your investigation, you must formally notify the chain of command and the subject or suspect (even if you advised them you were conducting an investigative inquiry). You can use the evidence you gathered during your investigative inquiry as evidence for your investigation. You do not have to conduct testimony interviews with witnesses you previously interviewed informally. However, you might do so if you need to fully document your findings, the case is complex, or you have conflicts in evidence.

CHAPTER VII--Release of IG Records and Information

7-1. Overview.

IGs frequently receive requests for information and records. Provisions for handling such requests are covered in Chapter 3, AR 20-1. The most common situations you will face are discussed here. You must be thoroughly familiar with the procedures for safeguarding IG information as the potential exists for the compromise of confidentiality should records be inappropriately released. Study Chapter 3, AR 20-1, and refer to it when you receive requests for information. If you have any questions, consult with DAIG Records Release Office.

7-2. Nature of IG Records.

All IG records including USAR and ARNG IG records pertaining to Federal matters are the property of the Secretary of the Army (SA). They are maintained for the SA by IGs. The records frequently contain sensitive information and advice. Reports of Investigation are almost always sensitive information. Rarely will anyone but you, your SJA, and your commander review a complete copy of an ROII/ROI and only with proper authorization. IG records belong to SA, local IGs are not authorized to release them, even if ordered to do so, unless the release is in accordance with AR 20-1. This includes release to other IGs. TIG or higher authority must approve the release of IG records for adverse action. Refer to AR 20-1, paragraph 3-3.

7-3. Use of IG Records for Adverse Action.

IG records are not normally used for adverse action. To do so compromises the confidentiality built into IG fact-finding. Under legal due process, the suspect or subject will be provided copies of the evidence used to support the adverse action -- including IG records if they are used as the basis for adverse action. Under certain circumstances (cost, administrative burden, pending separation of the suspect, PCS of witnesses, etc.), your commander may wish to use your records to support an adverse action. In those cases you must request TIG approval. Requests must state why a follow-on investigation would be unduly burdensome, unduly disruptive, or futile. Send your request to DAIG Legal Office. Describe precisely what IG records are required, why they are required, and the adverse action that is contemplated. As a rule, only the minimum records required are released. Normally this consists of selected transcripts and documentary evidence. IG opinions, conclusions, and recommendations are not evidence and will be protected and not released.

7-4. Official Use of IG Records within DA.

Many requests for IG records and information are for official use within DA. IG records and information can be used, without redacting, within DA for official purposes (other than adverse actions). In fact, you advise witnesses of this during the Pre-tape and Read-in for interviews. You are authorized, with restrictions, to release your records for official purposes. In the course of investigations or investigative inquiries, you will frequently uncover systemic problems that need to be fixed. You document these in the ROII/ROI in a paragraph entitled, "Other Matters" and propose a corrective action with your recommendations. In such cases, you will initiate the release of information and records through an extract from your files to the agency or subordinate commander who will actually fix the problem.

a. Restrictions that apply are:

(1) IG records may not be used for adverse action without TIG approval.

(2) IG records are not to be used for comparison of commands or commanders.

(3) IG records are not to be cited in evaluation reports, performance appraisals, award recommendations, or other evaluations maintained in personnel records.

(4) IG records released for official purposes are not to be converted to personal use or further distributed without the authorization of the IG office of record.

(5) The contents of an ROII/ROI are not to be released to subjects, suspects, or witnesses named in the report (except for their own testimony as discussed below).

(6) IG records must be safeguarded and marked IAW AR 20-1.

b. Provide the minimum records and information required. Ensure that the records and extracts are appropriately marked (refer to paragraph 3-2, AR 20-1).

c. Ensure that the agency receiving the records understands that they are not to be reproduced without your permission and that they are to be returned to you when they have served their purpose. Emphasize that the records are IG records "on loan" and must not be incorporated into another system of records that is subject to the Privacy Act. TIG OR HIGHER AUTHORITY MUST APPROVE RELEASE OF RECORDS OUTSIDE DA FOR ANY PURPOSE.

7-5. Release of IG Records for Official Purposes Outside DA.

TIG is the release authority for records outside DA. Forward requests from other Federal government agencies for IG records for official purposes along with two copies of the requested information to DAIG Records Release Office. Coordinate telephonically with them prior to sending the records. Investigators from IG DOD, Defense Investigative Service, GAO, Office of the Special Counsel, or the Merit Systems Protection Board have a statutory right to read, but not copy IG records in your office if they are relevant to one of their ongoing investigations or audits. Request from these agencies for copies of your records must be submitted in writing and include the reason copies are required. Forward these requests to DAIG Records Release Office. Release of copies to these agencies must be approved by TIG.

Note: Requests for IG records from state, county, and or municipal governments are processed under FOIA.

7-6. Release of Records for Unofficial (Personal) Use.

Requests for release of records for unofficial or personal purposes are made under provisions of the Freedom of Information Act. The FOIA allows individuals (anyone) to request government records for private purposes. IGs commonly receive FOIA requests from subjects or suspects against whom they substantiate allegations. It is important that you understand how to process requests for information that are made under the FOIA.

a. Requesters must make their request in writing and must reasonably identify the actual records being sought. You can assist them in preparing their request to limit the volume of files you must review and process.

b. Respond to the requester that you have received the request and that it has been referred to the Records Release Office for direct reply. Your response must be in writing. Simply acknowledge receipt of their request. Do not advise the requester whether or not you have the records requested.

c. Forward the original request, two collated copies of the requested records, and a copy of your acknowledgment to DAIG Records Release Office within 10 working days. Advise DAIG of any concerns you or your commander have concerning the release of the records. Identify witnesses by name; who, specifically, did not consent to release of their testimony, and indicate the source of any non-IG records being forwarded. Avoid retaining extraneous documents, notes or comments in your case files. When you have completed a case, you should purge your files of unnecessary notes, logs, internal memoranda, personal observations concerning credibility of witnesses, etc. Once a FOIA request is received, the file is frozen and you cannot purge your files. It is a violation of Federal law to purge your files after a FOIA request is received. When you receive a FOIA

request, all requested documents must be forwarded to DA for their review (even if the files are potentially embarrassing to you or your command). The one exception to purging your files is cases that are initiated by a IG, DOD Hotline complaint. Then you must maintain your working files for two years after DOD closes the case.

d. DAIG Records Release Office processes the requested records for TIG approval. They review the records, apply FOIA exemptions, redact exempted information, coordinate with the requester regarding processing fees, obtain TIG approval for release, and mail the released records to the requester.

7-7. Release of Information to Follow-on Investigating Officers.

If you develop facts which indicate that the allegations in the case on which you are working are going to be substantiated, then consider whether referral to another agency for investigation is appropriate. Should your commander close your case and appoint a follow-on investigator (AR 15-6, Rule 303, CIDC/MPI, Report of Survey), review paragraph 3-4h, AR 20-1. In general, you may provide an investigator with the following:

a. An oral briefing on the nature of allegations or matters the IG office examined. Be careful to avoid revealing your findings, conclusions, or recommendations. You want the follow-on investigator to conduct an unbiased investigation -- don't prejudice him with your opinions.

b. Commonly available documents. Release evidence readily available that was not received by you in confidence. Under this category, you may release documents such as vehicle dispatches, personnel and pay records, travel documents, hotel receipts, etc.

c. Identify witnesses and explain their relevance to the case by providing a verbal summary of their testimony. Avoid revealing the identity of the complainant where possible. Do not allow the follow-on investigator to read your transcripts. Limit the information you release to the minimum the investigator needs to complete his task -- readily available documents and an oral summary. Ensure you guard the impartiality of the follow-on investigator. Be careful not to be judgmental about the witnesses. Communicate the facts.

7-8. Release of Transcripts.

Witnesses, as well as subjects or suspects, commonly request copies of their testimony. You may allow witnesses, subjects, or suspects to read their transcript in your office while the case is in progress. Individuals who provided statements or completed an IGAR must submit a Freedom of Information Act (FOIA) request to the IG office of record to obtain a copy of their own testimony or IGAR (DA Form 1559).

Upon receipt of the written FOIA request, the IG office of record must forward two collated copies of the responsive records to HQDA (SAIG-ZXR) 2511 Jefferson Davis Highway, Arlington, Virginia 22202-3912 for action. IG records will only be released after case closure. It is in your best interest to freely allow persons to review their own testimony. You can be open and up-front with the individual. The threat to the confidentiality of your case is low since these individuals already know the questions you asked and the answers provided. Additionally, they may remember new details when they are reviewing their testimony. If someone indicates a desire to change or add to their testimony, you can conduct a recall; interview on the spot. **A caution**: if you prepared an MFR summarizing an interview, ensure it contains only the evidence the witness provided. Ensure that any opinions or observations you have about the witness are contained in a separate MFR (which being internal IG information would not be shown to the witness).

7-9. Media Requests.

Do not discuss specific investigations or investigative inquiries with media representatives. Refer them to your local Public Affairs Office (PAO). Neither confirm nor deny that a specific individual or topic is under investigation or inquiry. Should media representatives request IG records, advise them of the FOIA.

7-10. Response to Subpoena or Court Order.

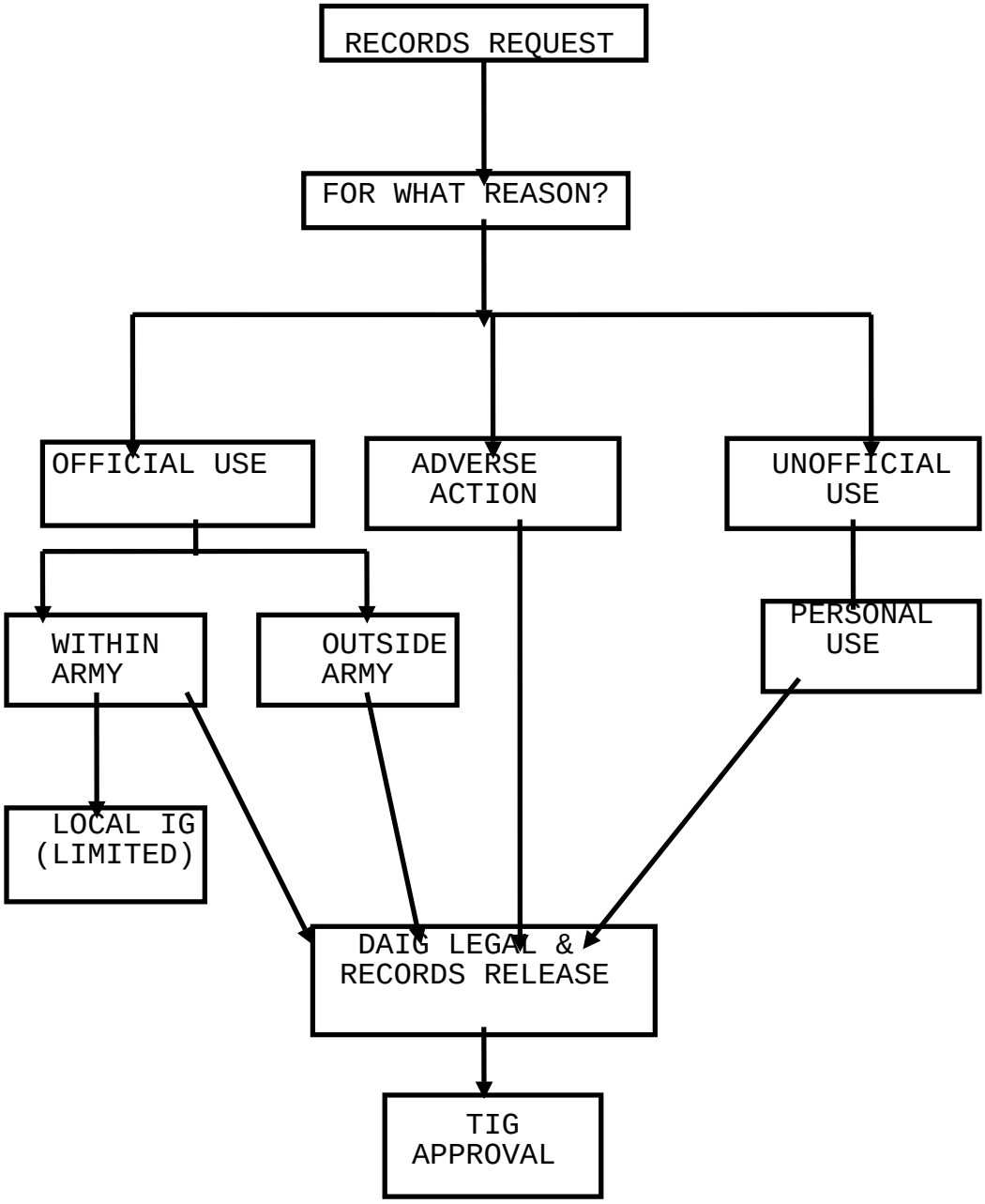
a. Infrequently, IGs and IG records are subpoenaed. Procedures regarding subpoena of IG records are discussed in paragraph 3-7d, AR 20-1. TJAG is the proponent for all aspects of litigation involving DA personnel. Should you receive a subpoena, a court order, or have reason to believe either is imminent, immediately consult with your local SJA and the DAIG Legal Advisor. DOD policy is that official information should be made reasonably available for Federal and state courts. However, TIG or higher authority is the release authority for IG records outside DA, including those requested by courts.

b. Do not ignore a subpoena or court order. Advise individuals requesting records that they must specifically, in writing state what information they desire and why they want it. Further advise them that TIG or higher authority within DA or DOD must authorize release of the information. If necessary, seek a stay to provide time for TIG to expeditiously review the request. In the unlikely event that a response to the court is required before TIG reviews the request, respectfully explain to the judge why you are unable to comply and decline to comply with the subpoena or court order. (See U.S. ex. rel. Touhy v. Ragen, 340 U.S. 462, (1951)). IGs may ordinarily expect judges to respect the military officer's dilemma of whether to comply with orders of superior military authority of the Executive Branch not to

release until authorized, or with subpoenas and other orders of courts of the Judicial Branch.

7-11. Requests under the Privacy Act to Amend IG Records.

The local IG can amend facts in a record, such as a misspelled name or an incorrect social security number or address. Only TIG can amend records pertaining to areas of judgment, such as IG opinions, conclusions, and recommendations.



RECORDS RELEASE PROCESS

8-1. Whistleblower Reprisal Investigations.

a. Section 1034 of Title 10, United States Code (10 U.S.C. 1034), revised by The Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, effective 16 October 1998, extends authority to Inspectors General within the Military Departments to grant Whistleblower protection for reprisal allegations presented directly to them by service members (Note: TIG has limited this authority to MACOM and higher level IGs). 10 U.S.C. 1034, implemented by DOD Directive 7050.6, 23 June 2000, requires Service IGs to investigate allegations of individuals taking or threatening to take unfavorable personnel actions or withholding or threatening to withhold favorable personnel action as reprisal against a member of the Armed Forces for making or preparing a protected communication. A protected communication is:

(1) Any lawful communication to Member of Congress or an IG.

(2) A communication in which a member of the Armed Forces communicates information that the member reasonably believes evidences a violation of law or regulation, including sexual harassment or unlawful discrimination, gross mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such a communication is made to any of the following:

(a) A Member of Congress, an IG, or a member of a DOD audit, inspection, investigation, or law enforcement organization.

(b) Any other person or organization (including any person or organization in the chain of command) designated under Component regulations or other established administrative procedures (i.e. Equal Opportunity Advisor , Safety Officer) to receive such communications. (See AR 600-20 for definition of chain of command)

b. If, upon presentation, a soldier makes a reprisal allegation that appears to meet the criteria outlined in 10 USC, section 1034, the IG who receives the allegation will contact the Whistleblower Investigation and Oversight Branch (WIOB) of the DAIG Assistance Division (SAIG-AC) promptly by telephone (within two days) for specific instructions regarding how to proceed. The field IG should be prepared to discuss the timeliness of the allegation (an allegation of Whistleblower reprisal may be determined to be untimely if the allegation is made more than 60 days after the service member became aware of an adverse personnel action which he or she believes was taken in reprisal), the protected communications made by the soldier, and the personnel actions alleged by the soldier to be acts of reprisal. The name, grade, SSN, unit assignment, address and phone number

of the soldier also will be required. The IG should be prepared to respond to the following specific questions:

(1) What protected communications does the soldier claim that he made?

(2) To whom were they made?

(3) When were they made?

(4) What matters were addressed in the protected communication (i.e. gross mismanagement, waste, public safety, abuse, etc.)

(5) What are the personnel actions alleged by the soldier?.

(6) Who are the responsible Army officials alleged by the soldier to have taken or threatened the personnel action? Allegations against senior Army officials (i.e., general officers and civilians in the grade of SES) must be reported to the DAIG Investigations Division (SAIG-IN) within two days of receipt.

(7) When were the personnel actions against the soldier taken or threatened?

(8) When did the soldier first become aware of the personnel actions?

c. Based on the results of the coordination between WIOT and the IG receiving the complaint, WIOB will forward a letter to the soldier formally acknowledging receipt of the complaint and also will accomplish the required notification of the IG, DOD, as appropriate.

d. If, as a result of the coordination with WIOB, it is determined that the soldier's allegations appear to meet the criteria for coverage under the law, then the IG receiving the complaint will be directed by WIOB to forward the case to either their MACOM IG or to WIOB to accomplish an IG preliminary analysis (IGPA). If the initial complaint is received at the MACOM, the MACOM will retain the complaint and accomplish IGPA (reporting requirements IAW paragraph C(2), AR 20-1, still applies). The MACOM's IGPA will determine whether the complaint meets the criteria for coverage under the law and whether formal investigation is warranted. If it is determined during IGPA that the soldier's allegations do not appear to meet the criteria, then the MACOM IG will forward the case via IG channels to WIOB for further review and reporting to IG, DOD. If it is determined during IGPA that the soldier's allegations meet the criteria, then the MACOM IG will coordinate with WIOT to determine which Whistleblower investigation strategy to use, and then proceed IAW DODI 7050.6. MACOMs will coordinate all notification and reporting requirements with WIOB. WIOB will maintain oversight on all Whistleblower cases.

e. IAW DOD Directives 7050.6 and 6490.1, IG, DOD is the final approving authority for cases involving allegations of Whistleblower reprisal and the improper referral for Mental Health Evaluation (see paragraph 8-9e(2), AR 20-1). The command or state IG who investigates the reprisal allegations will obtain a directive authorizing the investigation from his directing authority . The investigating IG will obtain the directing authority's concurrence or nonoccurrence with the findings and conclusions of the investigation and will forward the ROI through IG channels to DAIG. Each intermediate IG will review the ROI and obtain his commander's endorsement regarding the findings and conclusion. ROIs will be prepared IAW the instructions in IGDG 7050.6.

8-2. DOD and DA civilian employee allegations of reprisal for Whistleblower.

a. Requirements of section 2302(b)(8), title 5, United States Code (5 USC 2302(b)(8)) provide similar coverage to appropriated fund employees as previously discussed above for members of the Armed Forces. Coverage to contractor employees is provided under section 2409(a), title 10, United States Code (10 USC 2409). When a Government civilian employee presents to an IG an allegation of reprisal for protected disclosure, the IG must perform certain functions:

b. Inform the appropriated fund civilian employee of the right to present the reprisal allegation to the Office of Special Counsel (OSC).

c. Inform nonappropriated fund employees that they should make their complaint about reprisal to the IG, DOD in accordance with DODD 1401.3, Employment Protection for Certain Nonappropriated Fund Instrumentality Employees/Applicants (19 July 1993).

d. Inform contractor employees that their right to complain about reprisal is governed by the provisions of 10 U.S.C. section 2409a.

e. If the employee elects not to present a complaint of reprisal to the OSC or IG, DOD but still wants to present the complaint to an IG, obtain that decision in writing and coordinate with the SJA and the commander to determine which type of IG action is appropriate. IGs are cautioned that the provisions of para 4-4k, AR 20-1, may apply if the complainant elects not to present the complaint to the appropriate agency.

8-3. Improper Referral for Mental Health Evaluation.

a. DOD Directive 6490.1, Mental Health Evaluation of Member of the Armed Forces, and DOD Instruction 6490.4, *Requirements for*

Mental Health Evaluation of Members of the Armed Forces, establish and implement DOD policy, assign responsibility, and prescribe procedures for the referral, evaluation, treatment and administrative management of Service Members who may require mental health evaluation, psychiatric hospitalization and/or assessment for risk of potentially dangerous behavior. The directive prohibits improper referral as a punitive violation of Article 92, UCMJ, and the instruction requires the Military Departments to notify IG, DOD within 10 working days after receipt of allegation(s) involving improper referral for a mental health evaluation (MHE) in violation of the directive.

b. IGs receiving allegations of improper referral for MHE will notify DAIG Assistance Division (telephone) within two working days. This notification will include the name, grade, address or duty location and phone number of the complainant; a synopsis of the specific allegation(s); any supporting data received by the IG; the name, grade, address and phone number of the IG action officer; and any other information required during notification IAW DOD Instruction 6490.4.

c. All allegations of improper referral for MHE must be analyzed for reprisal UP 10 USC, section 1034. If, as a result of initial review by DAIG, possible violation of DODD 7050.6 (Military Whistleblower Protection) cannot be ruled out, then DAIG will refer the allegations to the appropriate MACOM IG for IGPA. (see paragraph 8-9c(4), AR 20-1).

Appendix A – DA Form 1559, Inspector General Action Request

INSPECTOR GENERAL ACTION REQUEST

For use of this form, see AR 20-1; the proponent agency is the Office of The Inspector General

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: **Title 10, USC, Section 3039.**

PRINCIPLE PURPOSE: **To secure sufficient information to make inquiry into the matters presented and to provide response to the requestor(s) and/or take action to correct deficiencies.**

ROUTINE USES: **Information is used for official purposes within the Department of Defense; to answer complaints or respond to requests for assistance, advice or information; by Members of Congress and other Government agencies when determined by The Inspector General to be in the best interest of the Army; and in certain cases in trial by court martial and other military matters as authorized by the Uniform Code of Military Justice.**

DISCLOSURE OF THE SOCIAL SECURITY NUMBER AND OTHER PERSONAL INFORMATION IS VOLUNTARY. HOWEVER, FAILURE TO PROVIDE COMPLETE INFORMATION MAY HINDER PROPER IDENTIFICATION OF THE REQUESTOR, ACCOMPLISHMENT OF THE REQUESTED ACTION(S)AND RESPONSE TO THE REQUESTOR.

LAST NAME - FIRST NAME - MIDDLE INITIAL	GRADE	SSN	DUTY TELEPHONE

COMPLETE PRESENT MILITARY ADDRESS (If no military address, state current civilian address, including Zip Code.)

SPECIFIC ACTION REQUESTED

INFORMATION PERTAINING TO THIS REQUEST (Use additional sheets if necessary; list inclosures if applicable.)

This information is submitted for the basic purpose of requesting assistance, correcting injustices affecting individual, or eliminating conditions considered detrimental to the efficiency or reputation of the Army. I fully understand that I may be held accountable for any statements which are proved to be knowingly untruthful.

DATE SIGNATURE

DA Form 1559

DA Form 1559, Inspector General Action Request(Backside)

THIS SIDE FOR USE BY INSPECTOR GENERAL

(When completed, this form becomes an official communication in accordance with AR 20-1.)

CASE NUMBER
CLOSEDDATE Y Y M M D D
OPENEDDATE * Y Y M M D D
SUSPENSE Y Y M M D D
EXTERNAL SUSPENSE Y Y M M D D
RECIPIENT *
RECPTMODE *
CASESTATUS *

INITIATOR:
LASTNAME * FIRST M.I. SSN
COMPONENT * GRADE * GENDER * RACE * HOMEUIC
ACKNOWLEDGEMENT DATE Y Y M M D D SOURCE *

COMPLAINANT:
LASTNAME * FIRST M.I. SSN
COMPONENT * GRADE * GENDER * RACE * HOMEUIC

ADDITIONAL INFO:
CASE LABEL * HOME IG
PROBLEM AREA * NOTIFICATION Y Y M M D D
INSPECTOR GENERAL

FUNCTION INFO:

*FUNCTION CODE	*AGCMD AGNCY	*DETER	AGAINST UIC	USER CODE

SUBJECT INFO:
*LASTNAME FIRST M.I. SSN
GRADE *GENDER *RACE AGCMD AGNCY AGUIC

SYNOPSIS: (Enter case summary, facts determined, action taken):

* INDICATES A REQUIRED DATA ELEMENT ** INDICATES ADDITIONAL DATA

DA PROTOTYPE 1559-E, MAR 94

Appendix B -- Boilerplate Documents

1. Boilerplate Documents

a. In this Appendix, Boilerplate Documents are provided for the use by field IGs to communicate with other IGs and the public. IGs do the majority of their work through written correspondence. The goal is to prepare easily understood tasking documents, timely acknowledgment letters, and adequate closing letters. These documents are DAIG templates and are provided for informational purposes. The letters have the DAIG perspective and should be modified for local use. There are normally three pieces of correspondence associated with each case, and in special situations a fourth piece of correspondence. Each is discussed and an example provided.

b. Acknowledgment Letters

(1) IGs acknowledge receipt of correspondence on behalf of senior Army officials. The acknowledgment letter should be tailored to the specific individual requesting IG assistance. Local office protocol determines who signs the acknowledgment letter.

(2) The acknowledgment letter simply acknowledges receipt of the writer's material. The purpose of the letter may expand as circumstances dictate. The IG must acknowledge receipt of each case. The following rules apply to acknowledgment letters:

(a) If the writer indicates in the correspondence that he/she has written a MC, include a MC intervention paragraph to the writer.

(b) If the writer writes on behalf of a family member include a Privacy Act paragraph.

(c) In writing acknowledgment letters remain flexible. Your "co-workers" can answer any questions you have.

(3) Acknowledge receipt of each case. Your specific office policy may stipulate a minimum number of days in which the IG should expect to provide a response to the complainant. It is not necessary to provide the date you expect to complete the case in your acknowledgment letter. You should try to provide the closing letter within 30 days of case closure. The purpose of the extra time is to allow administrative processing and preparation of the response.

(4) The following is a list of acknowledgment letters, with examples provided:

(a) Acknowledgment to a complainant.

(b) Acknowledgment to a complainant with privacy act
(c) Acknowledgment to a 3d party with privacy act statement.

(d) Acknowledgment to a complainant with MC intervention statement.

(e) Acknowledgment to a complainant with a privacy act and MC intervention statement

(f) Acknowledgment to a complainant, case referred with direct reply authorized.

(g) Acknowledgment to individual, case referred with direct reply and review by tasking IG.

(h) Acknowledgment of a Records Release request.

Acknowledgment to complainant

(DATE)

<Office Symbol>

(FULL NAME)
(ADDRESS)

Dear :

We received your (DATE), letter to (WHOM) concerning (WHAT).

The Inspector General initiated a thorough inquiry into your complaint/request for assistance/allegations. We will advise you of the results at the conclusion of the inquiry.

Sincerely,

(Action Officer)
(RANK), U.S. Army
Inspector General

Acknowledgment to a complainant with Privacy Act Advisory

(DATE)

<Office Symbol>

(FULL NAME)
(ADDRESS)

Dear :

We received your (DATE), letter to the (WHOM) concerning (WHAT).

The Inspector General initiated a thorough inquiry upon receipt of your correspondence. Legislation regarding an individual's right to privacy, however, restricts us from releasing information on an individual's personal affairs to those the Privacy Act classifies as third parties. You are classified as a third party under the act. Therefore, we are precluded from providing a further response to you.

Sincerely,

(Action Officer)
(RANK), U.S. Army
Inspector General

Acknowledgment to 3d party with Privacy Act advisory

(DATE)

<Office Symbol>

(FULL NAME)
(ADDRESS)

Dear :

We received your (DATE), letter to the (WHOM) concerning (WHAT).

Because The Inspector General wants to be fully responsive, we initiated a thorough inquiry. Legislation regarding an individual's right to privacy, however, restricts us from releasing information on an individual's personal affairs to third parties without consent. Therefore, we are precluded from providing a complete reply to you without (Name of individual that IGAR pertains to) consent.

If consent is received prior to the case being closed we will advise you of the results of the inquiry.

Sincerely,

(Action Officer)
(RANK), U.S. Army
Inspector General

Acknowledgment to complainant with MC intervention advisory

(DATE)

<Office Symbol>

(FULL NAME)
(ADDRESS)

Dear :

We received your (DATE), letter to (WHOM) concerning (WHAT).

Because The Inspector General wants to be fully responsive, we initiated a thorough inquiry into the matters you presented. We will advise you of the results at the conclusion of the inquiry.

You should be aware, however, that if a Member of Congress intervenes in your behalf, we will provide the results of our inquiry to the Member of Congress rather than to you. This ensures that you receive a complete reply which may be based in part on information obtained from sources other than this office.

Sincerely,

(Action Officer)
(RANK), U.S. Army
Inspector General

Acknowledgment to a complainant with a Privacy Act Advisory and MC intervention statement

(DATE)

<Office Symbol>

(FULL NAME)
(ADDRESS)

Dear :

We received your (DATE), letter to the (WHOM) concerning (WHAT). Because The Inspector General wants to be fully responsive, we initiated a thorough inquiry. Legislation regarding an individual's right to privacy, however, restricts us from releasing information on an individual's personal affairs to third parties without consent. Therefore, we are precluded from providing a complete reply to you without (Name of individual that IGAR pertains to) consent.

You should be aware, however, that if a Member of Congress intervenes in your behalf, and if consent is received prior to the case being closed, we will provide the results of our inquiry to the Member of Congress rather than to you. This ensures that you receive a complete reply which may be based in part on information obtained from sources other than this office.

Sincerely,

(Action Officer)
(RANK), U.S. Army
Inspector General

Acknowledgment to a complainant, case referred with direct reply authorized

(DATE)

<Office Symbol>

(FULL NAME)
(ADDRESS)

Dear :

We received your (DATE), letter to The Inspector General concerning (WHAT).

The matters you present are under the jurisdiction of (COMMAND). We referred your correspondence to that headquarters for appropriate action and direct reply to you.

Sincerely,

CF:
(COMMAND)

(Action Officer)
Lieutenant Colonel, U.S. Army
Inspector General

Acknowledgment to a complainant, case referred with direct reply and review by DAIG IG

(DATE)

<Office Symbol>

(FULL NAME)
(ADDRESS)

Dear:

We received your (DATE), letter to the Department of The Army Inspector General concerning (WHAT).

The matters you present are under the jurisdiction of (COMMAND). We referred your correspondence to that headquarters for appropriate action and direct reply to you. We will review their reply to ensure it is responsive to your concerns.

Sincerely,

(Action Officer)
(RANK), U.S. Army
Inspector General

CF:
DAIG
(COMMAND)

Acknowledgment of Records Release Request

(Date)

<Office Symbol>

(Full Name)
(Address)

Dear:

This acknowledges receipt of your letter, dated (WHEN), requesting copies of Inspector General records.

We have forwarded your request to the Records Release Office, Office of The Inspector General, 1700 Army Pentagon, Washington, DC 20310-1700, for processing.

That office will act upon your request and respond directly to you.

Sincerely,

(Action Officer)
(RANK), U.S. Army
Inspector General

[NOTE: Do not state whether you do or do not have the records. Also, send this letter with the initial complainant's letter attached, signed with 2 copies of the case to DAIG Records Release Office. Ensure that the complainant provides an address to which DAIG, Records Release Office can respond to the complainant.]

2. Tasking Documents -- Referral Memorandum.

a. DAIG uses the referral memorandum to task IGs to conduct inquiries in accordance with the Assistance and Inquiries and Investigations Guides. It tasks and transmits the allegations, complaints, or request for assistance to the IG who is in the best position to provide the answers. Included along with the referral memorandum is a copy of the complainant's documentation outlining the problems.

(1) Suspense date is the date the completed action is due back to DAIG.

(2) The referral memorandum can direct one of three actions. It may direct the IG to take appropriate action, to conduct an inquiry or investigation IAW the Assistance or Investigations Guide, but not both, or take appropriate action and reply directly to the writer. Tasking the IG to take appropriate action means that the office has the latitude to handle the case as they best judge. The last option is to direct the IG to take appropriate action and reply directly to the writer. This is included as an option in the tasking document to give the local IG the latitude to get a directive, if he determines an investigation is more appropriate.

(3) This memorandum can be modified and used by IGs in correspondence with other IGs. You must decide what information you want back from the IG. If you have requested that the IG reply directly to the writer, then it is appropriate to have the IG send you a copy of the reply to include in the file. If you will reply to the complainant, you will need information upon which to base your reply. Have the IG provide you with either information upon which to base a reply or a copy of the report of inquiry or investigation. In most cases you will want a copy of the report of inquiry or investigation.

(4) Often times we, as IGs, act on behalf of third parties. If so, we always attempt to protect personal information. If we receive requests for assistance or complaints on behalf of anyone, we need written authorization to release personal information to third parties. The referral memorandum is a good means of getting that authorization by asking the field IG to get it, yes or no, from the subject of the inquiry. Get it in writing, either yes or no.

b. The referral memorandum is the other tasking document used to get information to a staff or agency that does not have a detailed IG. Surprisingly, complaints made against officials on staff are routine. Not referring these type complaints to the

appropriate staff agency for appropriate action would result in the IG conducting the inquiry.

(1) The nature of the complaint or allegation will determine what action you expect the agency to take. Generally refer the matter to the agency for appropriate action. More often than not the agency will appoint an investigating officer under the provisions of AR 15-6.

(2) Keeping control of these actions is important. Often we do not have tasking authority, but because we are the IG, people tend to pay attention to what we ask. Provide the agency with a suspense, but keep in mind that it is for administrative purposes only.

(3) Finally, you must decide what information you want back concerning the case.

(4) An example of both referral memorandums is provided.

Referral Memorandum from DAIG, Assistance Division

S: XX XXX XX

<Office Symbol> (20-1e) XX XXX XX

MEMORANDUM FOR

SUBJECT: Inspector General Action Request (Case Label/XXX 9X-)

1. The enclosed correspondence (Enclosure 1), with interim response (Enclosure 2), is forwarded for:

a. Appropriate action.

b. Inquiry or investigation IAW the Assistance or Inquiries and Investigations Guide into the matters presented.

c. Direct reply to the writer.

2. **You must contact the complainant** to ensure that all matters (i.e., allegations and issues) are identified and that expectations are clarified. When appropriate, interview the subject of the IGAR. You are authorized direct referral to other commands for this purpose. Protect the confidentiality of the complainant IAW AR 20-1, paragraph 1-11.

3. Request:

a. A copy of your reply, (Information on which to base a reply), to reach OTIG by (DATE).

b. A copy of the inquiry or investigation and a completed IGAR coding sheet (back side of DA Form 1559), to reach OTIG by (DATE). Reference the originator code and case number listed above beside your code and case number.

c. That you immediately notify this office (within 2 working days) if any additional field grade officer (MAJ/O4 or above and MSG/SGM)) is identified as a subject/suspect.

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Dissemination is prohibited except as

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA.

authorized by AR 20-1. Exemptions 5 & 6 apply.

Referral Memorandum from DAIG, Assistance Division (Continued)

<Office Symbol> (20-1e) XX XXX XX
SUBJECT: Inspector General Action Request (Case Label/XXX 9X-)

You are required to provide the complete subject block information (Last Name, first Name, MI, and SSN) at time of notification.

d. A Privacy Act Release Statement authorizing or denying release of information to the individual inquiring on behalf of the subject.

e. A legal review is required on all substantiated allegations. DAIG-AC strongly encourage a legal review of any non-substantiated allegations as well.

4. This memorandum is not a directive for the conduct of an inspector general investigation; such a directive must be signed by the proper directing authority.

5. This office is the IGARS office of record, therefore, DAIG will make the **final** notifications. Enter this as a referred case on your IGARS data base.

or

5. Your office is the IGARS office of record. As the IGAR office of record, you are required to conduct the appropriate notifications (command, initial **and final**). Notify subjects/ suspects of the final results in writing for all inquiries and/or investigations. Do **not** enter this as a referred case unless you refer this case to a subordinate IG office as the office of record.

6. The point of contact at this office is the undersigned at DSN: 225-1578 or commercial (703) 695-1578.

FOR THE INSPECTOR GENERAL:

2 Encls
as

(ACTION OFFICER)
(RANK), IG
Inspector General

CF:

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Dissemination is prohibited except as authorized by AR 20-1.

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions 5 & 6 apply.

Referral Memorandum to an agency without an IG

S: XX XXX XX

<Office Symbol> (20-1e) XX XXX XX

MEMORANDUM FOR (Addressee)

SUBJECT: (Subject)

1. The Department of the Army Inspector General Agency received a request for assistance from XXXXXXXXXXXXX.

2. We are referring this matter to your office for appropriate action and (direct reply to the writer as appropriate). We provide additional information at the Enclosure.

or

2. Request your office thoroughly review enclosed allegation and determine whether the complainant received due process. Upon conclusion of your inquiry please provide us with information with which we can respond to the writer. We provide additional information at the Enclosure.

3. The above suspense is established for administrative control purposes only. Request a copy of your findings reaches the Office of the Inspector General by XXXXXXXXXXX.

4. This Inspector General document contains privileged information and will be protected in accordance with the provisions of Army Regulation 20-1. Dissemination of this document will be restricted to the absolute minimum consistent with the effective management of the internal affairs of the Army. Dissemination outside any office having temporary custody of this document, and/or reproduction of any portion of this document, or any attributed direct quotation from this document will not be made without specific permission of The Inspector General.

FOR OFFICIAL USE ONLY
Dissemination is prohibited except as

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA.

authorized by AR 20-1. Exemptions 5 & 6 apply.

Referral Memorandum to an agency without an IG (Continued)

<Office Symbol> (20-1e) XX XXX XX
SUBJECT: (Subject)

5. The point of contact at this office is the undersigned at DSN: 225-1578 or commercial (703) 695-1578.

FOR THE INSPECTOR GENERAL:

Encl(s)
as (or list)

(ACTION OFFICER)
(RANK), IG
Inspector General

CF:

FOR OFFICIAL USE ONLY
Dissemination is prohibited except as authorized by AR 20-1.

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions 5 & 6 apply.

3. Interim responses

a. IG credibility hinges on timely and accurate responses to IGARs. If the IG provided a specific suspense date in the acknowledgment to the complainant and cannot meet it, an interim response to the complainant should be provided within five days, before or after, the suspense date.

b. Interim responses may be verbal, although a written response is preferred. Whatever the form used, record the interim response in the case notes and establish a new suspense.

c. In rare instances, a substantive interim response may be appropriate. For instance, the inquiry may have been completed and the findings finalized; however, a final response cannot be provided, pending the outcome of an administrative action that may take a long time to resolve. In this case, the IG should prepare a substantive interim response providing the appropriate information. The interim should explain what administrative action is pending and provide an approximate date when the action is expected to be completed. An example of an interim response is provided.

Interim Response Letter

(DATE)

<Office Symbol>

(FULL NAME)
(ADDRESS)

Dear :

This is an interim response to your (DATE), (LETTER or REFERRAL) on behalf of (WHOM) concerning (WHAT).

The inspector general inquiry into the matters presented requires more time than was initially anticipated. We expect to be able to advise you of the results of the inquiry not later than (DATE). Thank you for your patience.

Sincerely,

(Action Officer)
(RANK), U.S. Army
Inspector General

4. Closing Letter.

a. Generally, the inspector general responds to the complainant or writer. The exception is when a MC intervenes. In this case, the MC receives the response.

b. Keeping the final reply brief is the principle in corresponding with complainants. Do not give more information than is absolutely necessary. The information provided pertains only to the individual the letter is addressed. Ensure that when responding to a third party that the complainant provided the required Privacy Release Statement authorizing release of information to the third party. An example of a closing letter is provided.

Final response Letter

(DATE)

<Office Symbol>

(FULL NAME)
(ADDRESS)

Dear:

This letter responds to your (DATE), LETTER or TELEPHONE CALL to (WHOM) concerning (WHAT).

We conducted a thorough inquiry into your complaint/ request for assistance/ allegations. Our inquiry determined that (Explain what you found from your inquiry). (If more than one issue or complaint was provided, suggest that you address in the same order that complainant listed them in the initial letter/phone call).

(Privacy act considerations prohibit discussing (WHAT).(If applicable). We trust this information responds to your concerns.

Sincerely,

(Action Officer)
Lieutenant Colonel, U.S. Army
Inspector General

Appendix C -- Administrative Information

Section I -- Publications

a. The Army Electronic Library (EM0001) is available on CD-ROM. The U.S. Army Publishing Agency produces it quarterly (OCT/JAN/APR/JUL). You must have a valid account number to order publications. Place a subscription for EM 0001 Army Electronic Library (AEL) CD-ROM. The IDN is 040803. The easiest way to change your requirements is to use the U.S. Army Publishing Agency's web site for Army Publications Ordering and Subscription System at (http://www.usapa.army.mil/pubs/orders.html).

b. The Army Electronic Library (EM 0001) CD-ROM includes six separate applications: DA Pam 25-30, Consolidated Index of Army Publications and Blank Forms, Army Electronic Publications (E-Pubs), Army Electronic Forms (E-forms), CSS Software (DOS Application), Ordering software (Windows Application) for electronic ordering of publications, and excerpts from the Joint Electronic Library.

c. All Army CD-ROM products are produced according to International Standards Organization (ISO) 9660 format and require an IBM XT/AT or compatible computer with at least 500 KB RAM and an MS-DOS operating system of 3.3 or higher. Each personal computer must have an attached CD-ROM drive or have access to CD-ROM reader via local area network (LAN) connections.

d. Contact information:

(1) U.S. Army Publishing Agency
2461 Eisenhower Avenue
ATTN: ASQZ-PD
Alexandria, VA 22331-0302
DSN 221-6292, or (703) 325-6292

(2) U.S. Army Publications Distribution Center, ST Louis
ATTN: ASQZ-SDC
1655 Woodson Road
ST Louis, MO 63114-6181

Section II -- Titles of United States Code (USC). United States Codes can be accessed through the following web site: http://www4.law.cornell.edu/uscode/

Appendix D -- Case File

1. Opening a Case.

a. The case file is the center piece of an IG's work. It is a historical document which tracks IG actions and the results of the case. A new case file consists of a file folder with the name of the complainant and case number typed on a file label, a partially filled out DA Form 1559, front and backside, reflecting the case number, the opening date, the complainant or initiator's name, if known. At this point the case is open until it is closed.

b. Once in receipt of the IGAR, the first step is to conduct a preliminary analysis to determine if it is appropriate for IG involvement, what the allegations are, and the appropriate agency to conduct the inquiry. AR 20-1, paragraph 4-3 and 4-4, may help you in making your determination. When you can answer these questions you are ready to start building your case file.

c. The chronology is the document used to capture all information and actions relevant to the case. The chronology consists of four sections which must be completed by the time the case closes.

(1) The next step is to name the chronology and thereby, the case is named. You must follow the naming convention prescribed by the word processing program your office uses. DAIG uses Microsoft Word. The naming convention uses up to eight letters or numbers before the period (.) followed by "DOC." This identifies Word documents. A letter identifier designates an action officer. The letter identifier is usually the first letter of the action officer's last name and is the last letter used in the document name. In naming a document use the first four letters of the subject/suspect/complainant's last name, the first letter of the first name, followed by c, for chronology, followed by the letter identifier and ended with a period (.) followed by DOC. For example, Miller, Daniel filed a complaint with you and you have the case. Using the naming convention, if "e" is your letter identifier, your case name would look like this: MILLDCE.DOC. The next step is to fill-in the case number, it's on the file label, and suspense dates if you have determined them.

(2) The synopsis section follows next. At this time you may not know enough to complete this section. However, by the time the case is closed you will have enough information and must complete this section to close the case. The synopsis is a general summary of the case. This section tells what the complainant wanted, what actions were taken, the results of the inquiry and any action taken.

(3) The casenote section follows and is the place used to fully identify the complainant, the allegations or assistance requested, the subject of the allegations, the actions you intend to take in resolving the case. Each entry in the casenote section is identified by a date and the action officer's last name, for example **5 JAN 95 (JONES)**. This is particularly helpful when a case is transferred to another action officer or an old case is reopened and another action officer must work the case. Under this date you explain what you have done, to whom you have spoken, and what was said.

(4) The Document Control section is the last section of the chronology. In this area, you list all the documents you created while working on this case. A new chronology will list three documents in this section. Those documents look like this LNamFCE.DOC, LNamF2E.DOC, and LNamF10E.DOC. As you create documents you simply change these examples. In the example used in paragraph c (1), above, we named our chrono MILLDCE.DOC. In the Document Control section you want to list this document. Simply change LNamFCE.DOC to MILLDCE.DOC and fill in the date you opened the case. Following the Seven Step process, you know to acknowledge receipt of an IGAR and that it may be appropriate to refer the IGAR to another IG for action. You would choose the appropriate type of acknowledgment letter, in this case identified as “Doc 2”. After preparing the acknowledgment letter, you would name it using the name convention discussed above. The acknowledgment letter would be named like this: MILLD2E.doc. The referral memorandum is known as a “Doc 10”. The referral memorandum would be named like this: MILLD10E.doc. All three documents would be listed in the document control section of the casenotes. An example of the chronology is at Appendix 2.

(5) An acknowledgment letter is generated and the appropriate field on the backside of the DA Form 1559 is completed. Once the acknowledgment letter is approved, the appropriate signature is obtained. The original letter is mailed after a copy of the signed acknowledgment is made and placed in the file.

2. Closing the Case.

a. The action officer conducted the inquiry or investigation or received the Report of Inquiry or Investigation (ROI). Following the Seven Step process, the action officer is ready for Step 7, Close the IGAR.

b. The action officer reviews the ROI for thoroughness and whether it adequately addresses the complaint. If it does, the action officer should transfer the allegation or complaint, evidence, discussion, and conclusion paragraph, into the

chronology. Each allegation and the attending paragraphs should be transferred into the chronology.

c. Prepare the final response to the complainant. This letter should adequately address the allegations, complaints or issues presented, while protecting everyone's privacy. A signed copy of the final response should be included as part of the case file.

d. Complete the backside of the DA Form 1559.

e. Either complete or update the synopsis. The synopsis is a generic summary of the case. It identifies the allegations, issues, or complaints, the determination, and the actions taken to resolve the complaint.

3. Final Review

a. The last action is to review the case and organize it. The file begins with the complainant's letter, telephone call or walk-in interview and is built from there. An example of how a case file is organized is provided.

b. The final review should be conducted with the idea of eliminating any unnecessary notes or documents which do not support the case. Remember IG records can be released under the Privacy Act and Freedom of Information Act.

Case File

Backside DA 1559 [Completed}

Chronology

Closing letter (signed copy)

Report of Investigation or Inquiry [Use the form in the A&I Guide]

Acknowledgment letter (signed copy)

Referral Memorandum

Complainant’s letter

Chronology

(FILENAME)

CASENO: **DIH 96-** CLOSEDDATE: **1996/ /**

OPENEDDATE: **1996/01/** SUSPENSE: **1996/ /**

EXTERNALSUSPENSE: **1996/ /**

RECIPIENT: RECEIPTMODE: CASESTATUS:

SYNOPSIS:

CASE NOTES:

JAN 96 (JONES) -

**********Document Control**********

LNamFCE.DOC	9601dd	Internal
LNamF2E.DOC	9601dd	Complainant
LNamF10E.DOC	9601dd	_____ IG, CF: IG

****

Sample Chronology

XXXXLCZ.DOC
(Chronology: 1st four letters, 1st name; 1st letter 2d name; c [chronology]; 1st letter of the IG AO's last name)

CASE NO: **DIH 99-0XXX** CLOSED DATE: **1999/XX/XX**

OPENED DATE: **1999/XX/XX** SUSPENSE: **1998/XX/XX**

CASE LABEL: **Name/Rank/Grade.**

NOTIFICATION: **1999/XX/XX**

SYNOPSIS:

1. FIRST SENTENCE:

a. The complainant/initiator, (Name/Rank/Grade)

b. assigned to (wherever)
or
The spouse/parent (or whatever the relationship) of (Name/Rank/Grade), assigned to (wherever)

c. contacted/wrote/faxed (whoever)

d. alleging someone acted improperly by (whatever).
or
complaining of (what).
or
requesting (what).

2. SECOND SENTENCE:

Assistance/inquiry/investigation was completed by (who).

3. THIRD SENTENCE:

(Summary of IG conclusion). ("The allegation against (Name/Rank/Grade) was/was not substantiated")

4. FOURTH SENTENCE:

Case was closed by (describe method of case closure and final assistance provided. ("Case closed by providing the complainant with results of the inquiry and with contact information to the ABCMR")

CASE NOTES:

28 MAY 99 (IG'S NAME): Received case.

********** **Document Control** **********
Felgscs.doc 980528 Chronology
****

Case Control Sheet

CASE CONTROL SHEET

SECTION I - CASE INFORMATION

CASE NAME:	NO:
ACTION OFFICER:	A BRANCH ☐ B BRANCH ☐ HOTLINE ☐
DOCUMENT FILE NAME:	
_____ _____ _____	
_____ _____ _____	
_____ _____ _____	

SECTION II - PROCESSING CONTROL

ACTION OFFICER COMMENTS:	DATE:	PEER REVIEW:
DIVISION CHIEF COMMENTS:	DATE:	
LEGAL REVIEW_____		

	RETURN TO ACTION OFFICER	DATE TO CLERK:				
	FORMAT DOCS		PRINT DOCs		ASSEMBLE CASE FILE	
	CLERK/TYPIST:	DATE COMPLETED:				
	ACTION OFFICER SIGNATURE		DIVISION CHIEF SIGNATURE			
	DISPATCH	DATE DISPATCHED/INITIALS:		/		
	DATA ENTRY	OPEN		INTERIM		CLOSE
	SUSPENSE CHANGE		FOLLOW-UP			

ACTION COMPLETED - RETAIN THIS CONTROL SHEET IN CASE FILE

APPENDIX E ACTION MEMORANDUM EXAMPLE

MEMORANDUM FOR COMMANDER

SUBJECT: Directive for Investigation--ACTION MEMORANDUM

1. Purpose. To obtain a directive to conduct an inspector general investigation.

2. Background. (Briefly describe what you plan to investigate. Include the source of allegation(s), by whom received, and the full names and organizations of subjects or suspects.)

3. Allegation(s). (State the allegation(s) you intend to investigate.)

4. Proposed Scope of the Investigation. (Outline the specific issues you intend to investigate.)

5. Discussion. (Provide other information, such as the SJA's opinion.)

6. Recommendation. That you sign the directive at Tab A.

Encl

ALBERT P. RIGHTWAY
LTC, IG
Inspector General

APPENDIX F DIRECTIVE EXAMPLE

MEMORANDUM FOR THE INSPECTOR GENERAL

SUBJECT: Directive for Investigation

1. Investigate alleged improprieties by an Army official assigned to (Installation/Organization).

2. Submit your report to me as soon as possible, but protect the rights of all persons involved and ensure the investigation is complete and accurate.

MOTTIN DE LA BLAME
Major General, U.S. Army
Commanding

NOTE: Do not use the name(s) of subjects or suspects in the Directive. Remember, this is the document you will show the witness. PROTECT CONFIDENTIALITY.

APPENDIX G NOTIFICATION FORMATS

G-2 Commander/Senior Official

G-3 Subject

G-4 Suspect

COMMANDER/SENIOR OFFICIAL NOTIFICATION FORMAT

To: (Rank and Name)_____
Position and Organization: _____
Phone number: _____

(CHECK WHEN DONE)

1. ( ) _____, this is _____ from the _____ IG office. I am calling to inform you (directing authority) _____ has directed this office to investigate/inquire into allegations that: (as stated in Action Memorandum)* _____
_____
_____

*Note: Generally, commanders need to know exactly what you are investigating, and you should state the allegations as written in the action memorandum. If you believe you should be less specific, use the more general language in the directive.

2. ( ) It may be necessary to interview members of your organization regarding these matters. _____ (Investigating Officer) from my office will arrange witness interviews.

3. ( ) (You may/may not) (I will/will not) notify intermediate commander(s)/ supervisor(s).

4. ( ) To help protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them, we ask you not to discuss this matter with anyone.

5. ( ) _____ was (telephonically/personally) notified of the above at _____ (time) on _____ (date).

_____
(Signature of Notifying Official)

SUBJECT NOTIFICATION FORMAT
(For Non-criminal Allegations)

To: (Rank and Name) _____
Position and Organization: _____
Phone number: _____
(CHECK WHEN DONE)

1. ( ) _____, this is _____ from the_____ IG Office. We have been directed by _____ (directing authority) to investigate allegations that you: (as stated in Action Memorandum)
_____
_____

2. ( ) It will be necessary to interview you regarding these matters. (Choose a. or b.)

a. You will be contacted by [Investigating Officer(s)] _____ or _____ to make necessary arrangements; or

b. We want to interview you at (time) _____ on (date) ____ at (location) _____. Our telephone number is _____.

3. ( ) You are a subject in this investigation. Although the allegation(s) against you is/are non-criminal, you do not have to answer any questions that may tend to incriminate you. The investigators will give you an opportunity to respond to the allegation(s). You have the right to consult with an attorney before being questioned, but you do not have the right to have an attorney present during the interview.

4. ( ) _____ has been notified of this investigation.

5. ( ) We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone except your attorney, if you consult one, without permission of the investigating officers.

6. ( ) _____ was (telephonically/personally) notified of the above at _____(time) on _____ (date).

_____
(Signature of Notifying Official)

SUSPECT NOTIFICATION FORMAT
(Criminal Allegations)

To: (Rank and Name) _____
Position and Organization: _____
Phone number: _____

(CHECK WHEN DONE)

1. ( ) _____, this is _____ from the _____ IG Office. We have been directed by _____ (authority) to investigate allegations that you: (as stated in Action Memorandum)
_____
_____

2. ( ) It will be necessary to interview you regarding these matters. (Choose a. or b.)

a. You will be contacted by (Investigating Officers) _____ or _____ to make necessary arrangements; or

b. We want to interview you at (time) _____ on (date) ____ at (location) _____. Our telephone number is _____.

3. ( ) You are a suspect in this matter. Therefore, you do not have to answer any questions or say anything. Anything you say or do can be used as evidence against you in a criminal trial. You have the right to talk to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. The lawyer can be a civilian you arrange at no expense to the government. (If suspect is subject to UCMJ add the following): Or a military lawyer detailed for you at no expense to you, or both.

4. ( ) _____ has been notified of this investigation.

5. ( ) We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone except your attorney, if you choose to consult one, without permission of the investigating officers.

6. ( ) _____ was (telephonically/personally) notified of the above at _____ (time) on _____ (date).

_____
(Signature of Notifying Official)

APPENDIX H INQUIRY/INVESTIGATION PLAN FORMAT

INQUIRY/INVESTIGATION PLAN OUTLINE

MEMORANDUM FOR RECORD

SUBJECT: Inquiry (or Investigation) Plan - (Case Name)

1. Mission. (Information should be similar to that stipulated in the first paragraph of your Directive to investigate.)

2. Facts bearing on mission.

a. Background and Allegations. (Information should be similar to that contained in the second paragraph of the Action Memorandum. However, the allegations should be specific enough to adequately describe the scope of the investigation. Note when the directive was signed, by whom and reference any relevant correspondence from or to VIPs.)

b. Applicable Regulations and Reference Publications. (List those applicable regulations/publications that apply to the allegation(s). For example, if the allegations pertained to procurement irregularities, the Federal Acquisition Regulation (FAR) would probably be a reference. Ensure the referenced regulation was in effect at the time of the alleged incident.)

c. Commands involved. (List the various commands that might be involved. For example, if the allegation pertained to an incident in a unit in Europe, the commands could include the specific division, corps and, possibly, HQ, USAREUR.)

d. Staff Agencies Having Knowledge of Case. (Include any staff agencies made aware of the allegation(s) and how they were informed. Identify any staff agency that may be a proponent for regulations or guidelines that could be related to the allegation(s).)

3. Evidence and Data Required.

a. Witnesses. (From information available to you, list the names of witnesses that you want to interview for each allegation. Remember, the number of witnesses and possibly the allegations, within the scope of the directive, may change. You may not need to question all witnesses about every allegation.)

(1) Allegation 1: (State the specific allegation)

(a) Witness #1

(b) ....

(2) Allegation 2: (State the specific allegation)

(a) Witness #1

(b) ....

b. Documents. (List documents and records you need to substantiate or refute the allegation. These may include SOPs, training records, contracts and more.)

c. Physical evidence. (List any required physical evidence).

4. Administrative Matters.

a. Itinerary: (When, where, and how you plan to conduct the investigation. The list should include: courtesy calls, transportation requirements, lodging requirements, interview locations, and witness interview sequence.)

b. Notifications. (Identify commanders and Subject(s)/Suspect(s) who should be notified IAW this Guide and the directing authority's guidance.)

(1) Command(s).

(2) Subject(s)/suspect(s).

c. Travel Requirements. (TDY orders, passports, car rentals.)

List of Enclosures that may be relevant

INVESTIGATOR'S SIGNATURE

FORMAT TO SCHEDULE WITNESSES

To: (Rank and Name) _____
Position and Organization: _____
Phone number: _____
(CHECK WHEN DONE)

1. ( ) _____, this is _____ from _____ IG Office. We have been directed by the _____ to investigate the following allegations: (as stated in Directive)*
_____
_____

NOTE: Use the general wording from the directive. If you need to be more specific, use the wording from the action memorandum but don't tell the witness more than he or she needs to know!

2. ( ) We do not suspect you of wrongdoing, but believe you have information relevant to the investigation and need to interview you as a witness. We would like to interview you at (time) _____ on (date) _____ at (location) _____. The investigators are _____ and _____. Our telephone number is _____.

3. ( ) _____ has been notified of the investigation. (Can omit for non-DOD civilians.)

4. ( ) We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone except your attorney, if you choose to consult one, without permission of the investigating officers.

5. ( ) _____ was (telephonically/personally) notified of the above at _____ (time) on _____ (date).

_____
(Signature of Notifying Official)

APPENDIX I SUMMARIZED TESTIMONY FORMAT

MEMORANDUM FOR RECORD

SUBJECT: Summarized (sworn and recorded) testimony of (NAME), (SSN), (DUTY POSITION), (LOCATION), obtained by interview at (LOCATION), (DATE), from (TIME) to (TIME) hours by (INVESTIGATION OFFICERS)

Name of Witness:

Grade of Witness:

SSN of Witness:

Organization:

Duty assignment of Witness:

Telephone number of Witness:

(NAME) was interviewed and informed of the role of the IG, that we were conducting an investigation, that testimony would be recorded and either transcribed verbatim or summarized and would become part of the report. The witness was informed of the authority for the investigation, information required by the Privacy Act of 1974, and of the rights of a witness.

.....
(Present a brief summary of the KEY POINTS of the witness' testimony. Do not include information provided by the witness that is not EVIDENCE relevant to the investigation.)
.....

(NAME) did/did not agree to the release of this testimony outside official channels IAW FOIA.

John L. Doe
LTC, IG
Investigating Officer

APPENDIX J LETTER OF IDENTIFICATION - EXAMPLE

DEPARTMENT OF THE ARMY
66TH INFANTRY DIVISION (M) AND FORT VON STEUBEN
FORT VON STEUBEN, VIRGINIA 22060

TO WHOM IT MAY CONCERN:

The officer whose signature is here presented, LTC Albert D. Rightway, 000-00-0000, is representing The Inspector General, 66th Infantry Division (M) and Fort Von Steuben, United States Army, Fort Von Steuben, on duty with the Assistance and Investigations Division, Ft Von Steuben, VA. His responsibilities include conducting investigations and inquiries into matters for the **Commanding General**.

LTC Rightway is entitled unlimited access and all information and assistance, consistent with his security clearance in the execution of his mission.

/s/
MOTTIN DE LA BLAME
Major General, U.S. Army
Commanding

/s/
ALBERT P. RIGHTWAY
LTC, IG

APPENDIX KPRE-TAPE BRIEFING

SEE INSTRUCTIONS IN PARA 4-3b OF THIS GUIDE
USE YOUR OWN WORDS. BUT COVER EACH ITEM LISTED

1. Identify Investigators -- Show Military ID and IG Detail Card

2. Show Directive

3. Explain Investigative Procedure - “This is a four part interview...”

   1. PRE-TAPE briefing (doing now).
   2. Formal READ-IN. (Formality designed to ensure rights of individual fully explained and legal requirements are met.)
   3. Questioning.
   4. Formal READ-OUT.

4. Explain IG investigator's role

   - Confidential fact finders for directing authority.
   - Collect and examine all pertinent evidence.
   - Make complete and impartial representation of all evidence in the form of a written report.
   - No authority to make legal findings, impose punishment, or direct corrective action.
   - Dual Role of IG:
     - Protect best interests of U.S. Army.
     - Establish truth of allegations or establish that allegations are not true and clear a person's good name. Anyone can make allegations.
   - IG confidentiality:
     - Protect the confidentiality of everyone involved but do not guarantee that protection.
     - Will not reveal sources of information.
     - Will not tell you to whom we have talked.
     - Will not tell you specific allegations being investigated (except for subjects and suspects).

5. Interview ground rules

- Sworn and recorded testimony. We normally take sworn and recorded testimony. Recorders improve accuracy. (Ask if the witness objects to swearing; some people would prefer to affirm.)
- All answers must be spoken. Tape recorder cannot pick up nods or gestures.
- Classified information: If classified information comes up, we will discuss off tape first.
- Break procedures: Can go off tape at any time, but
- We never go off record.

6. Release of your testimony

- The last question we ask you during the READ-OUT is whether you consent to release your testimony to members of the public under the FOIA.
- FOIA allows members of the public to request government records for unofficial purposes. It is your choice whether you want to protect your testimony from release outside the Federal government.
- You will be asked to decide at the end of the interview if you consent to the release of your testimony (we do not infer anything from your answer).
- "NO" = Do not consent. "YES" = Do consent.
- Our report, INCLUDING YOUR TESTIMONY, will be used as necessary for official government purposes.

7. *Privacy Act of 1974

- Disclosure of SSAN is voluntary.
- Describes authority to ask for personal information.
- LET THEM READ PRIVACY ACT STATEMENT. Will refer to it during the formal read-in.

8. *Testimony Information Sheet (Header Sheet)

- Individual fills out first four (4) lines (name, rank, address, phone, SSN). Note: SSN is voluntary per the Privacy Act of 1974.
- Used by investigators for notes, acronyms, proper names, etc.
- Aids in preparing an accurate transcript.

9. Confirm Witness Status

10. *Rights warning/waiver. EXECUTE DA FORM 3881 (When appropriate.)

11. Wrap-up

- Administrative procedure, not court of law.

- Can accept and use hearsay and opinion.
- We protect everyone's confidentiality, but do not guarantee confidentiality.
- TO KEEP THIS CASE AS CONFIDENTIAL AS POSSIBLE YOU WILL BE ASKED NOT TO DISCUSS YOUR TESTIMONY WITH ANYONE WITHOUT OUR PERMISSION.

* Provide interviewee with appropriate document.
** Privacy Act pertains to US citizens only, unlike FOIA, which applies to the world.

APPENDIX L PRIVACY ACT INFORMATION

DATA REQUIRED BY THE PRIVACY ACT OF 1974
PRIVACY ACT STATEMENT
FOR PERSONAL INFORMATION TAKEN DURING
INSPECTOR GENERAL WITNESS TESTIMONY

AUTHORITY: Title 5 US Code, Section 552a.

PRINCIPAL PURPOSE(S): Information is collected during an investigation to aid in determining facts and circumstances surrounding allegations/problems. The information is assembled in report format and presented to the official directing the inquiry/investigation as a basis for Department of Defense/Department of the Army decision making. The information may be used as evidence in judicial or administrative proceedings or for other official purposes within the Department of Defense. Disclosure of Social Security Account Number, if requested, is used to further identify the individual providing the testimony.

ROUTINE USES:

a. The information may be forwarded to federal, state or local law enforcement agencies for their use.

b. May be used as a basis for summaries, briefings or responses to Members of Congress or other agencies in the Executive Branch of the Federal Government.

c. May be provided to Congress or other federal, state and local agencies, when determined necessary by The Inspector General (DAIG).

MANDATORY OR VOLUNTARY DISCLOSURE AND EFFECT ON INDIVIDUAL NOT PROVIDING INFORMATION:

For Military Personnel: The disclosure of Social Security Account Number is voluntary where requested. Disclosure of other personal information is mandatory and failure to do so may subject the individual to disciplinary action.

For Department of the Army Civilians: The disclosure of Social Security Account Number is voluntary. However, failure to disclose other personal information in relation to your position responsibilities may subject you to adverse personnel action.

For All Other Personnel: The disclosure of Social Security Account Number, where requested, and other personal information is voluntary and no adverse action can be taken against you for refusing to provide information about yourself.

APPENDIX M TESTIMONY INFORMATION SHEET

INFORMATION FOR HEADING of TESTIMONY TRANSCRIPT

To be completed in each interview, including recall witnesses.

Testimony of (Full Name):_____
(FIRST) (MI) (LAST)
SSN:_____, Rank/Grade:_____
Position/Title:_____, Organization:_____
Address:_____ ZIP:_____ Phone:_____

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(Completed by IG)

Testimony taken at:_____, Date: _____
From:_____(hrs), To:_____(hrs).
By:_____ and _____

Does this witness consent to release? _____Yes _____No

APPENDIX N RIGHTS WARNING/WAIVER CERTIFICATE

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30, the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION		2. DATE	3. TIME	4. FILE NO
5. NAME *(Last, First, MI)*		8. ORGANIZATION OR ADDRESS		
6. SSN	7. GRADE/STATUS			

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army _____ and wanted to question me about the following offense(s) of which I am suspected/accused: _____

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any questions or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. *(For personnel subject to the UCMJ)* I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

   - or -

   (For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.
4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS *(Continue on reverse side)*

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES *(If available)*	3. SIGNATURE OF INTERVIEWEE
1a. NAME *(Type or Print)*	
b. ORGANIZATION OR ADDRESS AND PHONE	4. SIGNATURE OF INVESTIGATOR
2a. NAME *(Type or Print)*	5. TYPED NAME OF INVESTIGATOR
b. ORGANIZATION OR ADDRESS AND PHONE	6. ORGANIZATION OF INVESTIGATOR

Section C. Non-waiver

1. I do not want to give up my rights:
   ☐ I want a lawyer. ☐ I do not want to be questioned or say anything.
2. SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT *(DA FORM 2823)* SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

DA FORM 3881, NOV 89 EDITION OF NOV 84 IS OBSOLETE

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PART II - RIGHTS WARNING PROCEDURE

THE WARNING

1. WARNING - Inform the suspect/accused of:
   a. Your official position.
   b. Nature of offense(s).
   c. The fact that he/she is a suspect/accused.
2. RIGHTS - Advise the suspect/accused of his/her rights as follows:
   "Before I ask you any questions, you must understand your rights."
   a. "You do not have to answer my questions or say anything."
   b. "Anything you say or do can be used as evidence against you in a criminal trial."
   c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."

   - or -

   (For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."
   d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."

Make certain the suspect/accused fully understands his/her rights.

THE WAIVER

"Do you understand your rights?"
(If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)

"Have you ever requested a lawyer after being read your rights?"
(If the suspect/accused says "yes," find out when and where. If the request was recent *(i.e., fewer than 30 days ago)*, obtain legal advice on whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)

"Do you want a lawyer at this time?"
(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" *(If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)*

SPECIAL INSTRUCTIONS

WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.

PRIOR INCRIMINATING STATEMENTS:

1. If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.
2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.

NOTE. If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.

WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")

COMMENTS *(Continued)*

REVERSE OF DA FORM 3881

* U.S Government Printing Office1992- 311-830/60267

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APPENDIX N RIGHTS WARNING/WAIVER CERTIFICATE

NOTES:

(1) Complete administrative data on the front side of the DA 3881 prior to the interview. Summarize the allegations contained in the action memorandum. Ask the suspect to review the personal data and other information. Advise the suspect that you will formally advise him of his rights, explain his options and then, ask him if he is willing to waive his rights by signing the DA 3881. Also inform the suspect that you will refer again to the rights warning/waiver when you conduct the Read-in (if you are taking testimony while interviewing a suspect).

(2) Read the appropriate paragraphs in Part II on the back of the DA Form 3881 (THE WARNING) to the suspect verbatim. Ensure the suspect understands what you have read. Note that different paragraphs are applicable for military personnel only and civilian personnel only.

(3) Ask the suspect verbatim the four questions in the second part of Part II on the back of the DA Form 3881 (THE WAIVER). Ensure the suspect answers "yes" or "no" to the questions. Do not accept "I guess so" as an answer.

(4) If the suspect waives his rights, ask him to sign the front of the DA Form 3881 in block 3. of Section B (SIGNATURE OF INTERVIEWEE). If the suspect does not agree to waive his rights, have him check the appropriate block and sign in Section C (NON WAIVER).

(5) Do not recall a suspect who has earlier invoked his rights, unless such recall is agreed to and coordinated with his attorney. He will be notified of unfavorable information in writing and advised that he has the right to comment on the information if he chooses.

(6) See notes in Suspect Read-In Script in dealing with a witness who becomes suspected of knowingly making a false statement under oath or of having committed another criminal offense.

(7) If you have any questions regarding the DA Form 3881 or encounter any difficulty when executing the warning/waiver, consult with SJA.

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APPENDIX O INTERVIEW GUIDES

O-2 WITNESS

O-5 WITNESS (RECALL)

O-7 SUBJECT

O-10 SUBJECT (RECALL)

O-12 SUSPECT

O-16 SUSPECT (RECALL)

WITNESS INTERVIEW GUIDE

(BEGIN READ-IN. DO NOT USE YOUR OWN WORDS.)

1. *The time is* _____. *This tape recorded interview is being conducted on* (date) _____, *at* (location) _____ _____(if telephonic, state both locations). *Persons present are the witness* (name) _____, *the investigating officers* _____, _____, (court reporters, attorney, union representative, others) _____. *This* (investigation directed by _____/inquiry) *concerns allegations that*: (as stated in directive)

NOTE: If the investigation concerns classified information, inform witness that the report will be properly classified and advise witness of security clearances held by IG personnel. Instruct witness to identify classified testimony.

2. *An inspector general is an impartial fact-finder for the commander. Testimony taken by an IG and reports based on the testimony may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons, such as the subject of an action that may be taken as a result of information gathered by this inquiry/investigation, may be required by law or regulation, or may be directed by proper authority. Upon completion of this interview, I will ask you whether you consent to the release of your testimony but not your personal identifying information such as name, social number, home address, or home phone number, if requested by members of the public pursuant to the Freedom of Information Act.*

3. *Since I will ask you to provide your social security number to help identify you as the person testifying, I provided you a Privacy Act Statement.* (If telephonic, it may have been necessary to read the Privacy Act Statement.) *Do you understand it?* (Witness must state yes or no)

4. *You are not suspected of any criminal offense and are not the subject of any unfavorable information.*

5. *Before we continue, I want to remind you of the importance of presenting truthful testimony. It is a violation of Federal law to knowingly make a false statement under oath. Do you have any questions before we begin? Please raise your right hand so I may administer the oath.*

"Do you swear that the testimony you are about to give shall be the truth, the whole truth and nothing but the truth so help you God?"

NOTE: The witness should audibly answer, "yes" or "I do." If the witness objects to the oath, the word "swear" may be changed to the word "affirm," and the phrase "so help me God" may be omitted.

6. *Please state your*: (as applicable)

Name
Rank (Active/Reserve/Retired)
Grade/Position
Organization
Social security number (voluntary)
Address (home or office)
Telephone number (home or office)

(END READ-IN)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

7. Question the witness.

NOTE: (1) If during this interview the witness suggests personal criminal involvement, the witness must be advised of his rights using DA Form 3881, Rights Warning Procedure/Waiver Statement. Unless rights are waived, the interview ceases. If during the interview you believe the witness has become a subject, advise him that he need not make any statement which may incriminate him.

NOTE: (2) If during the interview it becomes necessary to advise a witness about making false statements or other false representations, read the following statement to the witness, as applicable:

7a. For active duty or USAR/ARNG personnel subject to UCMJ:

I consider it my duty to advise you that any person subject to the UCMJ who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, may be subject to action under the provisions of UCMJ, Art. 107. Additionally, under the provisions of the UCMJ, Art. 134, any person subject to the UCMJ who makes a false statement, oral or written, under oath, believing the statement to be untrue, may be punished as a court-martial may direct.

Do you understand? (Witness must state yes or no.)

7b. For USAR/ARNG and civilian personnel not subject to UCMJ:

I consider it my duty to advise you that under the provisions of section 1001, title 18, United States Code, whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by a trick, scheme, or device, a material fact, or makes any false, fictitious, or fraudulent statement or representation, shall be fined not more than $10,000 or imprisoned for not more than five years, or both. Additionally, any person who willfully and contrary to his oath testifies falsely while under oath may be punished for perjury under the provisions of section 1621, title 18, United States Code.

Do you understand? (Witness must state yes or no.)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(BEGIN READ-OUT)

8. *Do you have anything else you wish to present?*

9. *Who else do you think we should talk to, and why?*

10. *We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone except your attorney, if you choose to consult one, without permission of the investigating officers.*

NOTE: Others present should also be advised against disclosing information.

11. *Your testimony may be made part of an official inspector general record. Earlier, I advised you that while access is normally restricted to persons who clearly need the information to perform their official duties, your testimony may be released outside official channels. Individual members of the public who do not have an official need to know may request a copy of this record, to include your testimony. If there is such a request, do you consent to the release of your testimony, but not your personal identifying information such as name, social security number, home address, or home phone number, outside official channels? (Witness must state "yes" or "no.")*

12. *Do you have any questions? The time is _____, and the interview is concluded. Thank you.*

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(END READ-OUT)

RECALL WITNESS INTERVIEW GUIDE

(BEGIN READ-IN. DO NOT USE YOUR OWN WORDS.)

1. *The time is* _____. *This tape recorded recall interview is being conducted on* (date) _____ *at* (location) _____(if telephonic, state both locations). *The persons present are the witness* (name) _____, *the investigating officers* _____, _____, (court reporter, attorney, union representative, others) _____. *This is a continuation of an interview conducted on* (date)_____ *as part of an* (investigation directed by _____/inquiry) *concerning allegations of*: (as stated in directive)

NOTE: If the investigation concerns classified information, inform witnesses that the report will be properly classified and advise witnesses of security clearances held by IG personnel. Instruct witnesses to identify classified testimony.

2. *You were previously advised of the role of an inspector general, of restrictions on the use and release of IG records, and of the provisions of the Privacy Act. Do you have any questions about what you were previously told?* (Witness must state yes or no.).

3. *You were also informed you are not suspected of any criminal offense and are not the subject of any unfavorable information. During the previous interview, you were put under oath before giving testimony and were reminded it is a violation of Federal law to knowingly make a false statement under oath. You are still under oath.*

4. *For the record, please state your*: (as applicable.)

Name
Rank (Active, Reserve, Retired)
Grade/Position
Organization
Social security number (voluntary)
Address/Telephone (home or office)
(END READ-IN)

5. Question the witness.

NOTE: If during this interview the witness suggests personal criminal involvement, the witness must be advised of his rights using DA Form 3881, Rights Warning Procedure/Waiver Statement. Unless rights are waived, the interview ceases. If during the interview you believe the witness has become a subject, advise

him that he need not make any statement which may incriminate him. See Witness Read-In Script for dealing with false statements.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(BEGIN READ-OUT)

6. *Do you have anything else you wish to present?*

7. *Who else do you think we should talk to, and why?*

8. *We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone except your attorney, if you choose to consult one, without permission of the investigating officers.*

NOTE: Others present should also be advised against disclosing information.

9. *In our first interview, I advised you that your testimony may be made part of an official inspector general record and that while access is normally restricted to persons who clearly need the information to perform their official duties, any member of the public could ask the Inspector General for a copy of these records. You* (did/did not) *consent to the release of your testimony. Do you consent to the release of the testimony you gave today, but not your personal identifying information such as name, social security number, home address, or home phone number?* (Witness must state "yes" or "no.")

10. *Do you have any questions? The time is _____, and this recall interview is concluded. Thank you.*

(END READ-OUT)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

SUBJECT INTERVIEW GUIDE

(BEGIN READ-IN. DO NOT USE YOUR OWN WORDS)

1. *The time is* _____. *This tape recorded interview is being conducted on* (date) _____ *at* _____(location) _____ (if telephonic, state both locations). *Persons present are* (subject's name) _____, *the investigating officers* _____, _____, (court reporters, attorney, union representative, others) _____. *This* (investigation directed by _____/inquiry) *concerns allegations that*: (as stated in directive)

NOTE: If the investigation concerns classified information, inform subject that the report will be properly classified and advise subject of security clearances held by IG personnel. Instruct subject to identify classified testimony.

2. *An inspector general is an impartial fact-finder for the commander. Testimony taken by an IG and reports based on the testimony may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons, such as the subject of an action that may be taken as a result of information gathered by this inquiry/investigation, may be required by law or regulation, or may be directed by proper authority. Upon completion of this interview, I will ask you whether you consent to the release of your testimony but not your personal identifying information such as name, social number, home address, or home phone number, if requested by members of the public pursuant to the Freedom of Information Act.*

3. *Since I will ask you to provide your social security number to help identify you as the person testifying, I provided you a Privacy Act Statement.* (If telephonic, it may be necessary to have read the Privacy Act Statement.) *Do you understand it?*

4. *While you are not suspected of a criminal offense, we have information which may be unfavorable to you. We are required to give you the opportunity to comment on these matters. However, you do not have to answer any question that may tend to incriminate you. The information is that:*

5. *Before we continue, I want to remind you of the importance of presenting truthful testimony. It is a violation of Federal law to knowingly make a false statement under oath. Do you have any questions before we begin? Please raise your right hand so I may administer the oath.*

"Do you swear that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?"

NOTE: The subject should audibly answer, "yes" or "I do." If the subject objects to ,the oath, the word "swear" may be changed to the word "affirm," and the phrase "so help me God" may be omitted.

6. *Please state your*: (as applicable)

Name
Rank (Active, Reserve, Retired)
Grade/Position
Organization
Social security number (voluntary)
Address/Telephone (home or office)

(END READ-IN)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

7. Question the subject.

NOTE: (1) If during this interview, the individual suggests personal criminal involvement, the individual must be advised of his rights using DA Form 3881, Rights Warning Procedure/Waiver Statement. Unless rights are waived, the interview ceases.

NOTE: (2) If, during the interview, it becomes necessary to advise a subject about making false statements or other false representations, read the following statement to the subject:

7a. For active duty or USAR/ARNG personnel subject to UCMJ:

I consider it my duty to advise you that any person subject to the UCMJ who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, may be subject to action under the provisions of UCMJ, Art. 107. Additionally, under the provisions of UCMJ, Art. 134, any person subject to the UCMJ who makes a false statement, oral or written, under oath, believing the statement to be untrue, may be punished as a court-martial may direct.

Do you understand? (Subject must state “yes” or “no.”)

7b. For USAR/ARNG and civilian personnel not subject to UCMJ:

I consider it my duty to advise you that under the provision of section 1001, title 18, United States Code, whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by a trick, scheme, or device, a material fact, or makes any

false, fictitious, or fraudulent statement or representation, shall be fined not more than $10,000 or imprisoned for not more than 5 years, or both. Additionally, any person who willfully and contrary to his oath testifies falsely while under oath may be punished for perjury under the provisions of section 1621, title 18, United States Code.

Do you understand? (Subject must state “yes” or “no.”)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(BEGIN READ-OUT)

8. *Do you have anything else you wish to present?*

9. *Who else do you think we should talk to, and why?*

10. *We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone except your attorney, if you choose to consult one, without permission of the investigating officers*.

NOTE: Others present should also be advised against disclosing information.

11. *Your testimony may be made part of an official inspector general record. Earlier, I advised you that while access is normally restricted to persons who clearly need the information to perform their official duties, your testimony may be released outside official channels. Individual members of the public, who do not have an official need to know, may request a copy of this record, to include your testimony. If there is such a request, do you consent to the release of your testimony, but not your personal identifying information such as name, social security number, home address, or home phone number, outside official channels? (Subject must state "yes" or "no.")*

12. *Do you have any questions? The time is _____, and the interview is concluded. Thank you.*

(END READ-OUT)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

RECALL SUBJECT INTERVIEW GUIDE

(BEGIN READ-IN. DO NOT USE YOUR OWN WORDS.)

1. *The time is* _____. *This tape recorded recall interview is being conducted on* (date) _____ *at* (location) _____; (if telephonic, state both locations). *The persons present are* (subject's name) _____, *the investigating officers* _____, (court reporter, attorney, union representative, others) _____. *It is a continuation of an interview conducted on* (date)_____ *as part of an* (investigation directed by _____/inquiry) *concerning allegations of*: (as stated in directive)

NOTE: If the investigation concerns classified information, inform subject that the report will be properly classified and advise subject of security clearances held by IG personnel. Instruct subject to identify Classified testimony.

2. *You were previously advised of the role of an inspector general, of restrictions on the use and release of IG records, and of the provisions of the Privacy Act. Do you have any questions about what you were previously told?* (Subject must state “yes” or “no.”)

3. *You were also informed you are not suspected of any criminal offense. Therefore, I am not advising you of the rights to which such a person is entitled. I do want to remind you that you do not have to answer any question which may tend to incriminate you. You are reminded it is a violation of Federal law to knowingly make a false statement under oath.*

4. *Since our previous interview, our investigation has developed unfavorable information about which you have not yet had the opportunity to testify or present evidence. The unfavorable information is*:

5. *Earlier, we placed you under oath. You are advised you are still under oath*.

6. *For the record, please state your*: (as applicable)

Name
Rank (Active, Reserve, Retired)
Grade/Position
Organization
Social security number (voluntary)
Address/Telephone (home or office)

(END READ-IN)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

7. Question the subject.

NOTE: See notes in Subject Read-In Script for dealing with false statements and Suspect Read-In Script for dealing with suggested criminal involvement.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(BEGIN READ-OUT)

8. *Do you have anything else you wish to present?*

9. *Who else do you think we should talk to, and why?*

10. *We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone except your attorney, if you choose to consult one, without permission of the investigating officers.*

NOTE: Others present should also be advised against disclosing information.

11. *In our first interview, I advised you that your testimony may be made part of an official inspector general record and that any member of the public could ask the Inspector General for a copy of these records. You* (did/ did not) *consent to the release of your testimony. Do you consent to the release of the testimony you gave today, but not your personal identifying information such as name, social security number, home address, or phone number?* (Subject must state "yes" or "no.")

12. *Do you have any questions? The time is _____, and this recall interview is concluded. Thank you.*

(END READ-OUT)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

SUSPECT INTERVIEW GUIDE

(BEGIN READ-IN. DO NOT USE YOUR OWN WORDS)

1. *The time is* _____. *This tape recorded interview is being conducted on* (date) _____ *at* _____ (location) (If telephonic, state both locations). *Persons present are* (suspect's name) _____, *the investigating officers* _____, _____, (court reporters, attorney, union representative, others) _____. *This* (investigation directed by _____/inquiry) *concerns allegations*: (as stated in directive)

NOTE: If the investigation concerns classified information, inform suspect that the report will be properly classified and advise suspect of security clearances held by IG personnel. Instruct suspect to identify classified testimony.

2. *An inspector general is an impartial fact-finder for the commander. Testimony taken by an IG and reports based on the testimony may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons, such as the subject of an action that may be taken as a result of information gathered by this inquiry/investigation, may be required by law or regulation, or may be directed by proper authority. Upon completion of this interview, I will ask you whether you consent to the release of your testimony but not your personal identifying information such as name, social number, home address, or home phone number, if requested by members of the public pursuant to the Freedom of Information Act.*

3. *Since I will ask you to provide your social security number to help identify you as the person testifying, I provided you a Privacy Act Statement.* (If telephonic, it may have been necessary to read the Privacy Act Statement.) *Do you understand it?* (Suspect must state “yes” or “no.”)

4. *You are advised that you are suspected of the following allegations, which we want to question you about*:

(Advise suspect of general nature of all allegations made against him. Refer to action memorandum.)

5. *I previously advised you of your rights and you signed a DA 3881 waiver certificate*.

“Do you understand your rights?” (Suspect must state “yes” or ‘no.”)

“Do you agree to waive them at this time?” (Suspect must state “yes” or “no.”)

6. *Before we continue, I want to remind you of the importance of presenting truthful testimony. It is a violation of Federal law to knowingly make a false statement under oath. Do you have any questions before we begin? Please raise your right hand so I may administer the oath.*

"Do you swear that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?"

NOTE: The suspect should audibly answer, "yes" or "I do." If the suspect objects to the oath, the word "swear" may be changed to the word "affirm," and the phrase "so help me God" may be omitted.

7. *Please state your*: (as applicable)

Name
Rank (Active/Reserve/Retired)
Grade/Position
Organization
Social security number (voluntary)
Address/Telephone number (home or office)

(END READ-IN)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

8. Question the suspect.

NOTE: If, during the interview, it becomes necessary to advise suspect about making false statements or other false representations, read the following statement to the suspect as applicable.

8a. For active duty or USAR/ARNG personnel subject to UCMJ:

I consider it my duty to advise you that any person subject to the UCMJ who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, may be subject to action under the provisions of UCMJ, Art. 107. Additionally, under the provisions of UCMJ, Art. 134, any person subject to the UCMJ who makes a false statement, oral or written, under oath, believing the statement to be untrue, may be punished as a court-martial may direct. Do you understand? (Suspect must state "yes" or "no.")

8b. For USAR/ARNG and civilian personnel not subject to UCMJ:

I consider it my duty to advise you that under the provisions of section 1001, title 18, United States Code, whoever in any matter

within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by a trick, scheme, or device, a material fact, or makes any false, fictitious, or fraudulent statement or representation, shall be fined not more than $10,000 or imprisoned for not more than 5 years, or both. Additionally, any person who willfully and contrary to his oath testifies falsely while under oath may be punished for perjury under the provisions of section 1621, title 18, United States Code. Do you understand? (Suspect must state “yes” or “no.”)

NOTE: If, during this interview, the individual should become suspected of having committed an additional criminal offense, re-advise the suspect of his rights concerning the additional offense. The DA Form 3881 will be annotated and initialed by suspect and investigator(s).

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(BEGIN READ-OUT)

9. *Do you have anything else you wish to present?*

10. *Who else do you think we should talk to, and why?*

11. *We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone except your attorney, if you choose to consult one, without permission of the investigating officers.*

Note: Others present should also be advised against disclosing information.

12. *Your testimony may be made part of an official inspector general record. Earlier, I advised you that while access is normally restricted to persons who clearly need the information to perform their official duties, your testimony may be released outside official channels. Individual members of the public who do not have an official need to know may request a copy of this record, to include your testimony. If there is such a request, do you consent to the release of your testimony, but not your personal identifying information such as name, social security number, home address, or home phone number, outside official channels?* (Suspect must answer "yes" or "no.")

13. *Do you have any questions? The time is _____, and the interview is concluded. Thank you.*

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(END READ-OUT)

RECALL SUSPECT INTERVIEW GUIDE

(BEGIN READ-IN. DO NOT USE YOUR OWN WORDS)

1. *The time is* _____. *This tape recorded recall interview is being conducted on* (date)_____ *at* (location) _____ (if telephonic, state both locations). The persons present are (suspect's name) _____, *the investigating officers* _____, _____, (court reporter, attorney, union representative, others) _____. *It is a continuation of an interview conducted on* (date)_____ *as part of an* (investigation directed by _____/inquiry) *concerning allegations of*: (as stated in directive)

NOTE: If the investigation concerns classified information, inform suspect that the report will be properly classified and advise suspect of security clearances held by IG personnel. Instruct suspect to identify classified testimony.

2. *You were previously advised of the role of an inspector general, of restrictions on the use and release of IG records, and of the provisions of the Privacy Act. Do you have any questions about what you were previously told?*

3. *During our previous interview, you were advised that you were suspected of*:

You were warned of your rights, and you signed a DA Form 3881 in which you consented to answer questions. I will show you that DA Form 3881 now. You are reminded it is a violation of Federal law to knowingly make a false statement under oath.

NOTE: Show DA Form 3881 to suspect.

4. *Since our previous interview, I have obtained new information about which you have not yet had the opportunity to comment.*

NOTE: If new information is criminal, re-advise the suspect of his rights and annotate/initial DA Form 3881. If new information is unfavorable, advise the suspect that he does not have to answer any question that may incriminate him.

5. *Earlier, we placed you under oath. You are advised you are still under oath*.

6. *For the record, please state your*: (as applicable)

Name
Rank
Grade/Position
Organization
Social security number (voluntary)

Address/Telephone (home or office)

(END READ-IN)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

7. Question the suspect.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(BEGIN READ-OUT)

8. *Do you have anything else you wish to present?*

9. *Who else do you think we should talk to, and why?*

10. *We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone except your attorney, if you choose to consult one, without permission of the investigating officers.*

NOTE: Others present should also be advised against disclosing information.

11. *In our first interview, I advised you that while access is normally restricted to persons who clearly need the information to perform their official duties, your testimony may be made part of an official inspector general record and that any member of the public could ask the Inspector General for a copy of these records. You* (did/did not) *consent to the release of your testimony. Do you consent to the release of the testimony you gave today, but not your personal identifying information such as name, social security number, home address, or phone number?* (Suspect must answer "yes" or "no.")

12. *Do you have any questions? The time is _____, and this recall interview is concluded. Thank you.*

(END READ-OUT)
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

APPENDIX PINTERVIEW STATUS OF INDIVIDUALS

MILITARY STATUS AT TIME OF INTERVIEW	ROLE IN INVESTIG ATION	SUBJECT TO UCMJ	VERSION OF READ-IN	REQUIRED TO TESTIFY	LAWYER PRESENT	UNION REP-RESEN-TATION
ACTIVE ARMY	WITNESS SUBJECT SUSPECT	YES YES YES	O-2 O-8 O-14	YES YES NO (1)	NO NO YES	NA NA NA
USAR ON ANY OFFICIAL STATUS	WITNESS SUBJECT SUSPECT	YES YES YES	O-2 O-8 O-14	YES YES NO (1)	NO NO YES	NA NA NA
ARNG TITLE 10 (IADT, OCONUS, AGR) (2)	WITNESS SUBJECT SUSPECT	YES YES YES	O-2 O-8 O-14	YES YES NO (1)	NO NO YES	NA NA NA
ARNG TITLE 32 (IDT, AT, AGR) (4)	WITNESS SUBJECT SUSPECT	NO NO NO	O-2 O-8 O-14	YES YES NO (1)	NO NO YES	NA NA NA
USAR & ARNG WHEN NOT ON DUTY	WITNESS SUBJECT SUSPECT	NO NO NO	O-2 O-8 O-14	NO NO NO	NO NO YES (3)	NA NA NA
DA CIVILIAN EMPLOYEES	WITNESS SUBJECT SUSPECT	NO NO NO	O-2 O-8 O-14	YES YES NO (1)	NO NO YES (3)	YES (4) YES (4) YES (4)
CIVILIANS INCLUDING STATE NG EMPLOYEES AND FAMILY MEMBERS	WITNESS SUBJECT (5) SUSPECT (5)	NO NO NO	O-2 O-8 O-14	NO NO NO	NO NO YES (3)	NO (6) NO (6) NO (6)

NOTES:

(1) Duty of a suspect to cooperate is offset by his right to remain silent on all matters which may incriminate him.

(2) IG should check the guardsman's orders to determine status. ADT/ADSW/AGR can be either Title 10 or Title 32.

APPENDIX PINTERVIEW STATUS OF INDIVIDUALS

(3) Must be civilian lawyer at own expense or as appointed by law.

(4) Only applicable if the civilian employee's position is covered by a collective bargaining agreement. The employee does not have to be a member of a union.

(5) Normally a civilian-civilian will not be either a subject or a suspect in an IG investigation. Consult with your SJA.

APPENDIX Q EXTRACT - SECTION 4, TITLE 18 USC

4. Misprision of Felony. Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than $500 or imprisoned not more than three years, or both.

APPENDIX R EVIDENCE MATRIX

SOURCE	ALLEGATION 1 LTC FRATERNIZATION	ALLEGATION 2 LTC TRAVEL FRAUD
CPT BRIGHT BN ADJUTANT	1. Saw LTC and LT B holding hands and Bn party, 23 DEC. 2. CPT Fox said he saw LTC and LT B embracing in parking lot.	1. LTC went TDY 7-14 NOV. LT B on leave at same time. 2. LTC went TDY to attend training conference.
SFC GOOD PSNCO	1. Had no direct knowledge of LTC having an affair with anyone. 2. LTC told him to take LT B off duty roster in AUG.	1. Never saw TDY documents.
LT SMALL LT B'S ROOMMATE	1. LT B told her she stayed with LTC in Savannah, 7-13 NOV. 2. Came home at noon on 25 OCT and found LTC and LT B in bed.	1. LT B told her she stayed with LTC in Savannah, 7-13 NOV. 2. LT B had to borrow $50 from her on 6 NOV. Only money LT B had.
LT B'S DA 31 7-14 NOV	1. Shows leave address as Savannah, GA.	1. Shows leave address as Savannah, GA.
LTC'S 1351-2 7-14 NOV	1. Shows Savannah, GA for period 7-17 NOV.	1. Shows lodging cost of $37.50 per night.

APPENDIX SROI/ROII FORMAT and SPECIFIC INSTRUCTIONS

REPORT OF INVESTIGATION/INVESTIGATIVE INQUIRY
(Case #)

EXECUTIVE SUMMARY
The executive summary must be written as a stand alone document. It should be concise, and when possible, limited to one or two pages. Do not assume the reader has any knowledge of the case.

NAME/POSITION: Provide the name, grade, and duty positions of all subjects or suspects as of the date the improprieties allegedly occurred.

AUTHORITY: Cite the authority for the investigation. Usually this is the directive. Include the date of the directive and the names and organizations of the investigating officers. Cite any changes in the scope of the investigation (e.g., new allegations) that may have occurred after the directive was signed. Include a copy of your directive and any changes to it as Exhibit A of your ROI.

BACKGROUND: Briefly describe how the allegations were received. Identify the complainant, if known. Add any other information the reader needs to understand the case.

SUBSTANTIATED ALLEGATION: State the first allegation that you substantiated. It should be worded exactly the same as in the action memorandum unless you modified it during the course of the investigation.

SYNOPSIS: Concisely summarize the complaint and key evidence that led you to conclude the allegation was substantiated. Do not include all the details; these are available in the ROI itself. This paragraph is a brief summation of the highlights of the evidence.

(In succeeding paragraphs list other substantiated allegations followed by summaries of the key evidence for each)

UNSUBSTANTIATED ALLEGATION: State the first unsubstantiated allegation. Again, it should be worded exactly the same as in the action memorandum unless you modified it.

SYNOPSIS: As in the previous discussion, summarize the complaint and key evidence that led you to conclude that the allegation was not substantiated.

(In succeeding paragraphs list the remaining allegations that you did not substantiate with each followed by its synopsis).

Each page of the executive summary and the ROI must have as a footer, "FOR OFFICIAL USE ONLY. DISSEMINATION IS PROHIBITED EXCEPT AS AUTHORIZED BY AR 20-1" and starting with page 2, a page number. Should the ROI be released outside Army IG channels, add these sentences to the first and last page of the ROI following the footer: "This document contains information EXEMPT FROM MANDATORY DISCLOSURE UNDER FOIA. Exemptions 5, 6, and 7 apply.)

INTRODUCTION

1. Begin the main body of the ROI on a new page. The introduction is optional. Use it to present extensive background or introductory material that is necessary for a reader to understand the case, but is not appropriate for inclusion in the executive summary. Do not repeat information in the executive summary. Do not include evidence in the introduction.

CONSIDERATION OF ALLEGATIONS

2. Allegation 1: Should you have more than one allegation, the first allegation that you address in the body of your ROI/ROII need not be the first allegation in your action memo, nor the first allegation listed in you Executive Summary. Sometimes you can make your ROI/ROII more readable by listing your allegations in chronological order. On other occasions, you may wish to cover the most serious allegation first. Frequently, investigators will address the simplest allegations early in their ROI and address the most complex last. In all cases, restate the allegations exactly as they are written in the executive summary.

(Note: If you omit the introduction, the first allegation becomes paragraph 1 of the body of the ROI).)

a. Evidence: In the evidence subparagraph for an allegation, introduce all the evidence pertaining to that single allegation. Normally you use succeeding subparagraphs for each item of evidence, beginning with the complaint, followed by the standard or standards, documentary evidence, testimony and statements (with the complainant's testimony first and the subject's or suspect's testimony last).

(1) Standard. In this and succeeding subparagraphs, describe the standards. Summarize or quote the guidance contained in regulations, policies, or the UCMJ. Also describe the elements of proof contained in the standard. Attach extracts of the regulations, polices or UCMJ to your report as exhibits. Ensure that the standards you use were in effect at the time the misconduct allegedly occurred -- personnel and travel regulations change frequently.

(2) Documentary Evidence. In succeeding subparagraphs, introduce each item of documentary evidence. The first item of documentary evidence is a description of the allegation initially made by the complainant. It can be the IGAR or letter signed by the complainant. Describe each item of documentary evidence by identifying the document and describing the evidence it contains. Example: "(n) DA 1351-2, Travel Voucher or Subvoucher, Control # XXXXXXXX, shows that COL Smith claimed reimbursement for 400 POC miles pursuant to official travel from XXXXX to XXXXX on 5 through 8 June 19XX." Append all documents to your ROI as exhibits.

Note: Address physical evidence like documentary evidence. Identify the object and describe its relevance. Since you will usually not maintain the object with the ROI/ROII, explain where it is stored. Frequently you may have documentary evidence in lieu of physical evidence (e.g.: an accident report instead of a damaged vehicle).

(3) Complainant's Evidence. Conduct the complainant’s interview early in the investigation. Frequently your complainant is the primary source of evidence against the suspect. Also, the complainant is frequently able to identify other witnesses. The ROI more will be more easily read by introducing your complainant's evidence first.

(4) Evidence from other Witnesses. You should introduce evidence provided by all witnesses for this allegation in separate subparagraphs -- one for each witness. There is no prescribed order for the witnesses or for the detail you must provide, unless you interviewed a witness who is a subject matter expert (SME), list the SME witness first because the SME often explains the policy, process, procedure, or standard involved in the case -- introduce the evidence in a manner that is logical and understandable for a reader who is not familiar with the details of the case. Normally it is better for you to paraphrase and summarize what witnesses said, rather than quoting them directly. Append the transcripts or summarized testimony to the ROI/ROII as exhibits.

NOTE: As an exception to providing separate subparagraphs for each witness, should you have several witnesses who all provided the same evidence, you may aggregate them in a single subparagraph (e.g. "(n) SSG Jones, SSG Smith, and SSG Taylor, squad leaders in 3d Platoon, B Company, all observed . . . .")

(5) Evidence provided by the subject or suspect. In the preceding subparagraphs you have entered the evidence to support or refute the facts resident in a single allegation. When you interview the suspect or subject, you should provide him the opportunity to comment on all unfavorable information that will be used in the ROI/ROII (this is the rationale for interviewing

the subject or suspect after all witnesses). In the final evidence subparagraph, you should summarize the subject's or suspect's comments.

b. Discussion:

(1) In the discussion paragraph, concisely evaluate the evidence. You must make judgments regarding the credibility of the evidence. You must determine if the evidence supports or refutes each element of proof resident in the allegation. You must resolve discrepancies and contradictions (witnesses' recollections of events will rarely be the same). Finally, you must determine if you have a preponderance of credible evidence to either substantiate or refute the allegation. If you have no preponderance, you must determine what additional fact gathering will yield a preponderance.

(2) There is no specified style for the discussion paragraph (use past tense). The burden is upon you to logically and clearly lay out the evidence you gathered so that your commander will understand the case and draw the same conclusions you did. You must explain why you reached your conclusion in a logical step by step method. Your reasoning and writing skills are key. Remember, your job is to remain impartial and fairly tell both sides of the story.

c. Conclusion: The allegation that _____ (was/was not) substantiated.

The conclusion is a concise statement of your determination that it is more likely than not that the allegation did or did not occur. State the allegation exactly as stated in the beginning of the paragraph and the executive summary (who, improperly, the alleged misconduct, and the standard) followed by “. . .was substantiated” or “. . .was not substantiated Neither/nor conclusions are no longer used per the direction of the TIG.

3. Allegation 2: State the next allegation followed by its evidence, discussion, and conclusion.

a. Evidence: Frequently witnesses will provide evidence on more than one allegation. You must sort through their testimony and enter the evidence where appropriate in the ROI/ROII. For clarity, you may cite specific pages where the evidence can be found. Example: "(n) SPC Jones testified that he and PFC McSpivit. . . . (Exhibit B-7, p. 5-6, 11)." If evidence entered for a previous allegation is pertinent to this allegation, refer to it again in summary. Example: "(n) CPT Smith, as previously indicated, testified that . . . . (Exhibit B-9, p. 7)."

b. Discussion: Discuss evidence entered for this allegation only.

c. Conclusion: The allegation that _____ (was/was not) substantiated (was neither substantiated nor refuted).

4. Allegation: . . . .

a. Evidence: . . . .

b. Discussion: . . . .

c. Conclusion: . . . .

OTHER MATTERS

5. Frequently during the course of investigations you will uncover situations that, while not pertinent to the allegations, require your commander's attention. Often these are systemic problems that require correction by a staff agency or perhaps an inspection by your own office. Document these situations in separate paragraphs in the “Other Matters” paragraphs (one for each issue). For example, an “Other Matters” might read: “During the course of the investigation, we determined that the procedures for verifying travel vouchers outlined in DA message XXXX were not being followed in XX Brigade. This was evident in the documents examined (Exhibits E-1 through E-17) and the testimony of LTC Smith and MAJ Doe (Exhibits B-7 and B-3)."

RECOMMENDATIONS

6. The most common recommendation for a ROI/ROII is, "This report be approved and the case closed." If you have substantiated allegations of misconduct and you believe that a follow-on investigation is appropriate, add, "Appoint a follow - on investigator to investigate the substantiated allegations" or words to that effect. Do not recommend adverse action.

7. Any other recommendations. If you have documented other matters, you probably require a recommendation for each of them. Ensure your recommendations are appropriate for the issues that you raise. These recommendations are normally written like an IG inspection report recommendation (Who will fix it, How to fix it) found in the Inspections Guide. Often it is helpful for you to coordinate in advance to ensure the agencies who must take action are not "blindsided." Keep in mind, however, your guidelines for release of information and the need to maintain confidentiality.

Investigator's signature block	Investigator's signature block
CONCUR:	APPROVED:
Inspector General's signature block	Directing Authority's signature block

Encl
Exhibit List

Attach exhibits to your ROI/ROII or include them in separate volumes if you have many of them. Identify exhibits by letter. Attempt to arrange exhibits in the order they appear in the report. The directive for investigation is normally Exhibit A. All testimony is Exhibit B (with sub-numbers such as B-1, B-2, etc. for each witness). Other exhibits are marked alphabetically beginning with Exhibit C and continuing into double and triple letters as necessary (e.g. AA, AB, AC). If an exhibit is several pages long, but only one page pertains to the investigation, consider including only that one properly identified page with the ROI/ROII.

An index of exhibits precedes Exhibit A. This index identifies each exhibit and its letter designation.

Index of Witnesses. An index of witnesses which gives the full name, rank, organization, and consent to or denial of release of testimony IAW FOIA immediately precedes the testimony (Exhibit B). List all persons who testified, including those whose testimony was summarized. For civilians, list title, employing organization and address. Note: If you informally interviewed a witness, and did not administer an oath, you do not have testimony. You would include an MFR summarizing that witness' statement as an exhibit. Instead of summarizing that "CPT Smith testified," write "CPT Smith stated," when introducing evidence provided by a witness' statement.

Other Exhibits. Attach all exhibits in the order you introduce them in the ROI/ROII, except testimony which are always exhibit B. These include: extracts of regulations, policies, of the UCMJ which establish standards; documentary evidence; memorandums for record summarizing informal interviews.

STYLE

1. The first time you refer to an individual, include his grade, full name, and position. Thereafter, simply refer to him by grade and last name. If an individual has changed grade, name (marriage, for instance), or duty position, you should indicate it in your report. (e.g.: "MAJ Jane Smith, Executive Officer, 37th S&T Battalion (formerly CPT Jane Jones, Commander, B Company, 37th S&T Battalion), testified . . . ."

2. Spell out all acronyms the first time they are used. Abbreviate after that.

3. Use the word "alleged" in your report when referring to the matters under investigation.

4. Write your report entirely in the past tense. The document is a "snapshot" of a particular time and the situation may have changed.

CLASSIFICATION

1. Classify and safeguard ROI/ROIIs which contain classified defense information IAW AR 380-5.

2. Mark ROI/ROIIs "CLASSIFIED IAW AR 380-5. WHEN DECLASSIFIED, DOCUMENT BECOMES FOR OFFICIAL USE ONLY. DISSEMINATION IS PROHIBITED EXCEPT AS AUTHORIZED BY AR 20-1."

3. Mark an ROI/ROII which does not contain classified defense information IAW AR 25-55. Place "FOR OFFICIAL USE ONLY" in letters 3/16 of an inch high on the bottom of the front cover and on the outside of the back cover. Do not use the abbreviation "FOUO." Extracts of ROI/ROIIs must be similarly marked. (NOTE: Each page should be marked "FOR OFFICIAL USE ONLY. DISSEMINATION PROHIBITED EXCEPT AS AUTHORIZED BY AR 20-1.")

4. ROIs transmitted outside IG channels should be handled and marked in accordance with instructions contained in para 3-2, AR 20-1, Chapter 3.

REVIEWS

1. Internal (Peer) Review. While your ROI/ROII is in draft, have it reviewed by as many IGs as practical to ensure it is complete, correct and understandable. You will find that when you work directly on a case and write the ROI/ROII, you become so close and familiar with the issues that you will make mental connections that are not apparent to a first time reader. Your peers can point these out to you, as well as grammatical errors, faulty logic, and gaps in evidence. Accept peer criticism in a positive manner. Don't be defensive. Evaluate all comments with a open mind. Make sure your discussion points are supported by evidence and your conclusions flow logically from the discussion.

2. Senior IG Approval. Once the peer review process is complete and the ROI assembled, you and your partner should sign your report and submit it through your senior IG. The senior IG can concur with your report and forward it, or return it to you with recommended changes. Obtain the SJA's opinion prior to sending the report to the directing authority. The Senior IG will approve the ROII if there is no Directive from the Commander or TAG.

3. SJA Review. Ask the SJA to review your report while it is in draft (after an internal peer review, but before you send it to your senior IG). This allows you to correct any possible problems before you finalize the ROI. After your ROI is approved by the senior IG, refer it formally to the SJA to determine if there are any legal objections and that your conclusions are supported by a preponderance of the credible evidence. You should also ask for your SJA's opinion concerning whether you have properly interpreted laws, regulations or policy. Remember if you expect the SJA to do a good job, this should not be the first time he has seen the case. The SJA should have agreed with your initial analysis of how to handle the case and should have been pre-briefed as a minimum before each update or decision brief to the directing authority. An excellent tool for keeping the SJA abreast of the case is to use an evidence matrix. Depending on the nature of the allegations and whom the allegations are against, the SJA may want to accompany you when you brief the commander.

COPIES

The circumstances of each case and local SOP dictate the number of copies required, but in most cases, one copy in addition to the original is sufficient. In many cases, you need not copy the exhibits. Attach implementing documents and transmittal letters to the report. Examples of letters of transmittal are at Appendix W.

COMMON PITFALLS

The following points may be helpful in developing your report.

1. Lack of Evidence to Support Conclusions. You may not have provided sufficient credible evidence to support the conclusions that you reached. Continue to investigate. If the evidence does not exist, you may have to alter your conclusion. You may have gathered sufficient evidence to support your conclusion, but did not introduce it in the evidence subparagraph. If this is the case, correct your report.

2. Inconsistent Conclusions. By misreading or misinterpreting the evidence gathered, not wording allegations correctly, or by not having the fortitude to be candid, you may draw incorrect conclusions. This, in turn, will adversely affect your recommendations, erode the integrity of the IG system, and subject you to an allegation of bias. A thorough peer review will help avoid this problem.

3. Recommendations Not Synchronized With the Conclusions. Common errors are that a recommendation is not supported by a conclusion or that a conclusion required a recommendation, but none is presented. All recommendations should be based on your conclusions.

4. Interjection of Investigating Officer Opinions. In the evidence subparagraph of an allegation, you may appropriately use investigating officer notes (IO NOTE:) to clarify information for the reader. You may also enter your personal observations as evidence, if they are pertinent, but avoid interjecting your opinions in the <u>evidence</u> sections of your ROI/ROII. Naturally you must repeatedly exercise your judgment as you evaluate evidence in the discussion subparagraphs of your ROI/ROII. You must write out the rationale for your judgments in a logical, cogent manner so that they transcend mere opinions.

NOTE: If you are in doubt regarding any aspect of your ROI/ROII, do not hesitate to use tech channels and call either the Investigations Instructor at TIG-U or the Investigations Division at DAIG. They will discuss your case with you and maintain the confidentiality you require.

DISPOSITION OF INVESTIGATION REPORTS

1. General. IG records include ROI/ROIIs, extracts of ROI/ROIIs and other supporting records and summaries. See Chapter 3, AR 20-1, for disposition, protection, use and release instructions. All IG records, regardless of where initiated, are the property of the Secretary of the Army.

a. As an advisor to your commander, it is imperative that the confidentiality of your reports be scrupulously maintained. However, under some conditions, information contained in IG reports may be provided to commanders or higher military authority in the discharge of their official duties.

b. Nothing prevents a senior commander or higher military authority from getting, upon proper request for official use, a copy of a completed ROI/ROII.

c. An ROI/ROII is NOT normally provided to anyone who is not a member of the directing authority's command or higher authority (except as noted in paragraph 3-4, AR 20-1), for the following reasons:

(1) The ROI/ROII contains recommendations made in confidence by a subordinate (you) to a superior (your boss);

(2) The ROI/ROII contains allegations or accusations which may be substantiated by IG standards, but may not provide proof beyond a reasonable doubt in a court of law.

(3) The ROI/ROII is advisory in nature, and the conclusions and recommendations are not binding upon the commander.

(4) The ROI/ROII may have your comments and conclusions and may have personal opinions or the conclusions of witnesses.

Therefore, whenever practicable you should furnish information summaries rather than the ROI/ROII itself while complying with the proper IG records management procedures set forth in AR 20-1.

d. Providing an extract from the ROI/ROII or a summary of the pertinent information to a staff or higher headquarters may be preferable to providing the complete report. A summary or extract allows the staff agency or headquarters to focus on their problem without the possibility of a breach of confidentiality concerning witness testimony (see Summaries paragraph 4, below).

2. Release of ROI/ROIIs Outside DA.

a. Inspector general reports, including any witnesses' testimony and exhibits, will not be furnished to any agency or individual outside Department of the Army unless approved by TIG or higher authority.

b. Requests for complete or partial IG records are forwarded to DAIG IAW Chapter 3, AR 20-1.

3. Use of Reports For Official Purposes Within Department of the Army.

a. Distribution of ROI/ROIIs is restricted to the absolute minimum consistent with the effective management of the Army. Use of ROI/ROIIs within Department of the Army will be IAW paragraph 3-4, AR 20-1.

b. When a commander or the IG office of record finds it is necessary to use items of information contained in ROI/ROIIs, they may, IAW paragraph 3-4, AR 20-1, provide such information to agencies within their command or elsewhere within the Department of the Army. In such cases, information summaries are used whenever practicable (See Summaries, paragraph 4. below).

4. Summaries. Summaries are factual and complete; however, the following information is not normally included:

a. Classified material, except on a need-to-know basis to personnel possessing the appropriate security clearance and access.

b. Information received from agencies outside Department of the Army, particularly that received from the Federal Bureau of Investigation, unless approval of the pertinent agency is obtained.

c. Information revealing investigative techniques to include:

(1) Identity of confidential informants or sources of information.

(2) The name(s) of the IG who conducted the investigation.

(3) The opinions, conclusions or recommendations of the IG(s).

(4) Any other information, if disclosure would involve a breach of faith or violate a moral obligation to keep the information confidential.

(5) Derogatory testimony toward a superior, which, if released, could result in adverse action to the witness.

APPENDIX T EXAMPLES OF VIOLATIONS OF STANDARDS

The following are examples of alleged wrongdoing from recent cases. The bulk of allegations are violations of the DOD Joint Ethics Regulations (JER) or personal conduct in violation of UCMJ (for military personnel).

1. Improperly accepting gifts and gratuities.

    Expensive meals from contractors.
    Expensive departure and retirement gifts.

2. Misuse of government equipment and employees.

    Requiring dining facility personnel to cater social functions.
    Using government property or personnel to support private organizations.
    Using dining facility food for change of command receptions or award ceremonies.
    Requiring secretary to make personal vacation travel arrangements.
    Using driver for personal errands.

3. Improper personal conduct.

    Adultery.
    Sexual harassment.
    Public drunkenness.
    Fraternization with subordinates.
    Verbal abuse of civilians or soldiers.

4. Improper procurement activities.

    Committing government to acquisition without contract authority.
    Improperly influencing the acquisition process.
    Giving "inside information" to selected contractors.

5. Misuse of aircraft or vehicles.

    Domicile-to-duty transportation.
    Unauthorized use by spouses.
    Use of sedan or aircraft for personal errands.
    Transporting personal items on aircraft for resale.
    Supporting private organizations without authority.
    Misuse of government frequent flyer miles

6. Misuse of government funds (coordinate with CID prior to looking at these allegations).

Using appropriated funds for unauthorized purposes.
Diverting government funds for personal use.
Claiming pay for duty not performed (drill).
Going TDY principally to conduct personal business or private association business.
Claiming POV mileage when transported by government sedan.
Claiming per diem when not in TDY status.

7. Abuse of position or authority.

Inadequate or improper response to subordinates' impropriety, i.e., cover-up, whitewash.
Coercion or the perception of coercion to join a private organization.
Disregarding regulatory requirements for hiring, assigning, and firing subordinates.
Using inappropriate language (Cursing) at or in the presence of subordinates

APPENDIX U EXAMPLES OF TRANSMITTAL MEMORANDUMS

U-2. TRANSMITTAL OF REPORT OF INVESTIGATION TO SUBORDINATE COMMANDER

U-3. TRANSMITTAL OF REPORT OF INQUIRY TO A STAFF AGENCY

U-4. TRANSMITTAL OF SUMMARY OF REPORT OF INVESTIGATION

TRANSMITTAL TO SUBORDINATE COMMANDER

XXXX-XXX <Date>

MEMORANDUM FOR COMMANDER 3RD BDE, 66TH IN DIV (M)

SUBJECT: Transmittal of IG Report of Investigation

1. This inspector general Report of Investigation (or applicable portion) is forwarded for action deemed appropriate.

2. This Inspector General document contains privileged information and will be protected in accordance with the provisions of AR 20-1, paragraphs 3-2, 3-3 a, and 3-4 d (1) through (3). Dissemination of this document will be restricted to the absolute minimum consistent with the effective management of the internal affairs of the Army. IG records will not be reproduced or further disseminated without specific permission of this office. Use or attachment of IG records as exhibits or enclosures to records of other DA agencies is not authorized without written approval of TIG.

3. Use of IG records as a basis for adverse personnel action or attachment of IG records as exhibits or enclosures to records of other DA offices or agencies is not authorized without written approval of The Inspector General of the Army.

4. This report must be returned to the 66th Infantry Division & Fort Von Steuben IG office when it has served its purpose.

1 Encl

ALBERT P. RIGHTWAY
LTC, IG
Inspector General

TRANSMITTAL TO STAFF AGENCY

XXXX-XX <Date>

MEMORANDUM FOR DIRECTOR OF LOGISTICS

SUBJECT: Transmittal of IG Report of Inquiry

1. The enclosed 66th Infantry Division & Fort Von Steuben Inspector General Report of Inquiry (or applicable portion) is forwarded for action deemed appropriate.

2. This Inspector General document contains privileged information and will be protected in accordance with the provisions of AR 20-1, paragraphs 3-2, 3-3 a, and 3-4 d (1) through (3). Dissemination of this document will be restricted to the absolute minimum consistent with the effective management of the internal affairs of the Army. IG records will not be reproduced or further disseminated without specific permission of this office. Use or attachment of IG records as exhibits or enclosures to records of other DA agencies is not authorized without written approval of TIG.

3. Use of IG records as a basis for adverse personnel action or attachment of IG records as exhibits or enclosures to records of other DA offices or agencies is not authorized without written approval of The Inspector General of the Army.

4. This report must be returned to the IG office when it has served its purpose.

Enclosure

ALBERT P. RIGHTWAY
LTC, IG
Inspector General

TRANSMITTAL OF SUMMARY TO STAFF AGENCY

XXXX-XXX

MEMORANDUM FOR DIRECTOR OF PUBLIC WORKS

SUBJECT: Transmittal of Summary of IG Report of Investigation

1. Under the provisions of AR 20-1, you are provided, for official purposes, a summary of an Inspector General Report of Investigation into allegations of _____.

2. This Inspector General document contains privileged information and will be protected in accordance with the provisions of AR 20-1, paragraphs 3-2, 3-3 a, and 3-4 d (1) through (3). Dissemination of this document will be restricted to the absolute minimum consistent with the effective management of the internal affairs of the Army. IG records will not be reproduced or further disseminated without specific permission of this office. Use or attachment of IG records as exhibits or enclosures to records of other DA agencies is not authorized without written approval of TIG..

3. Use of IG records as a basis for adverse personnel action or attachment of IG records as exhibits or enclosures to records of other DA offices or agencies is not authorized without written approval of The Inspector General of the Army.

4. The report must be returned to this office upon completion of your review.

ALBERT P. RIGHTWAY
LTC, IG
Inspector General

APPENDIX VADVERSE PERSONNEL ACTIONS

Listed below are some of the adverse personnel actions for which a right of confrontation (a right to see the evidence) is required in some measure. If Inspector General reports or records are used as the basis for these actions, those IG records or applicable portions of the records may be made available to the individual the adverse action is against. This is not a complete list and is provided to give you some dimension as to the definition of an "adverse action." Further guidance should be provided by your local staff judge advocate.

CHECK WITH YOUR STAFF JUDGE ADVOCATE!!!

CRIMINAL ACTIONS.

1. General Courts-Martial
2. Special Courts-Martial (empowered to adjudge a Bad Conduct Discharge)
3. Special Courts-Martial
4. Summary Courts-Martial
5. Field Grade Article 15
6. Company Grade Article 15

ADMINISTRATIVE ACTIONS.

1. Rank Indiscriminate.
    a. Revocation of Security Clearance (AR 604-5)
    b. Letter of Reprimand (AR 600-37)
    c. Report of Survey (AR 735-5)
    d. Line of Duty Investigation (AR 600-33)
    e. Conscientious Objection (AR 600-43)
    f. Academic Evaluation Report (Ch 1, AR 623-1)

2. Officer.
    a. Special Adverse OER (Ch 5, AR 623-105)
    b. Relief from Command (Ch 3, AR 600-20)
    c. Involuntary Relief From Active Duty (Ch 3, AR 635-120)
    d. Elimination from Service (Ch 5, AR 635-100)
    e. Resignation for Good of the Service (Ch 5, AR 635-120)
    f. Removal from Promotion, School or Command List

3. Enlisted:
    a. Elimination for Alcohol/Drug Abuse (Ch 9, AR 635-200)
    b. Elimination for Unsatisfactory Performance (Ch 13, AR 635-200)
    c. Elimination for Good of Service (Ch 10, AR 635-200)
    d. Entry Level Separation (Ch 11, AR 635-200)
    e. Elimination for Misconduct (Ch 14, AR 635-200)
    f. Administrative Reduction (Ch 6, AR 600-200)
    g. Bar to Reenlistment (Ch 6, AR 601-280)

h. MOS Reclassification (Ch 2, AR 600-200)
i. Special Adverse EER (Ch 2, AR 623-205)
j. Removal from School or Promotion List

CIVILIAN PERSONNEL ACTIONS.

1. Removal (5 USC 7512, 7532)
2. Involuntary Resignation
3. Suspension (5 USC 7503, 7512, 7532)
4. Reduction in Grade (5 USC 7512)
5. Reduction in Pay (5 USC 7512)
6. Reclassification (5 USC 7512)

In addition, other "adverse" actions or grievance actions may be set out in local bargaining agreements. These may establish their own procedural requirements, and IGs must be familiar with them._

APPENDIX W RESULTS OF INVESTIGATION LETTER FORMATS

W-2.....SUBJECT/SUSPECT RESULTS OF INVESTIGATION LETTER

W-3.....COMMANDER/SENIOR OFFICIAL RESULTS OF INVESTIGATION LETTER

W-4.....IGAR REFERRAL FOR INVESTIGATION TO COMMANDER

W-6.....NOTIFICATION TO SUSPECT OF REFERRAL OF ALLEGATION TO A COMMANDER

W-7.....NOTIFICATION TO SUSPECT/SUBJECT OF RESULTS FROM A COMMAND INVESTIGATION

W-8.....NOTIFICATION TO SUSPECT/SUBJECT OF RESULTS FROM AN IG INVESTIGATION/INQUIRY

SUBJECT/SUSPECT RESULTS OF INVESTIGATION LETTER

(UNIT LETTERHEAD)

(DATE)

The Office of the Inspector General

SUBJECT: Results of Investigation

Rank/title and full name of subject/suspect
Address
City, State Zip Code

Dear Rank/title and name of subject/suspect:

The 66th Infantry Division and Fort Von Steuben IG has concluded an investigation into allegations against you. The results of the allegations are as follows.

a. The allegation that you improperly used government transportation from your quarters to your place of duty in violation of the Joint Ethics Regulation

b. The allegation that you.....was substantiated.

This office will take no further action pertaining to these allegations.

(SIGNATURE BLOCK)*
Lieutenant Colonel, U.S. Army
Inspector General

*Normally the Command IG or Directing Authority. You must coordinate this decision realizing it may change from case to case.

NOTE: Type and underline the words "Exclusive For" on the envelope IAW AR 25-50.

COMMANDER/SENIOR OFFICIAL RESULTS OF INVESTIGATION LETTER

XXXX-XX DATE

MEMORANDUM FOR Commander, 3rd Brigade, 66th Infantry Division, Fort Von Steuben

SUBJECT: Results of Investigation

1. The 66th Infantry Division and Fort Von Steuben Inspector General completed the investigation into allegations of impropriety against (name), a member of your command. The investigation concluded (List all allegations and findings pertaining to the individual(s) in the command whom the allegations are against):

The allegation the LTC Blank improperly used government transportation from domicile to duty in violation of the JER was not substantiated.

The allegation that LTC Blank .... was substantiated.

2. The Inspector General completed the investigation and will take no further action pertaining to these allegations.

(SIGNATURE BLOCK)*
LTC, IG
Inspector General

* Normally the Command IG or Directing Authority. You must coordinate this decision realizing it may change from case to case.

NOTE: Type and underline the words "Exclusive For" on the envelope IAW AR 25-50.

SAIG-AC (20-1e) 2 February 2001

MEMORANDUM FOR Commander, Unit you're referring to for action

SUBJECT: Inspector General Action Request (Case Name/ Case Number)

1. The Office of the Inspector General received complaints alleging misconduct by members of your command. In accordance with AR 20-1, we are referring the matters to your command for appropriate action.

2. Request you provide a complete copy of your investigation/inquiry to this office when completed. The results of your action will be used as the basis for our response and notification to the subject(s) of the investigation/inquiry.

2. Request that your Investigating Officer contact this office prior to beginning the investigation/inquiry to exchange relevant information and discuss/clarify the matters of concern.

3. Request your investigation/inquiry address, at a minimum, the following allegations and issues: (MAKE SURE YOU IDENTIFY ALL ALLEGATIONS AND ISSUES/CONCERNS OF THE COMPLAINANT IN THE PROPER 20-1 STANDARD SO THAT YOU CAN USE IN LIE OF AN ROI)

a. Allegation 1: SFC Name (Specify the NAME of the alleged subject) improperly made false statements against another NCO reference APFT cards, in violation of Article 107, *False Official Statements*, UCMJ.

b. Issue 1: That SFC Name (Specify the NAME of the alleged subject) improperly attempted to obstruct an IG inquiry by influencing and intimidating subordinates.

4. This Inspector General document contains privileged information and will be protected IAW paragraphs 3-4 and 3-5, AR 20-1. Dissemination of the document will be restricted to the absolute minimum consistent with your requirement to provide a reply and will be returned to this office when your action is complete. Unauthorized retention or reproduction of IG documents is strictly prohibited.

5. Your point of contact at DSN 329-1073 or CML (703) 601-1073.

FOR THE INSPECTOR GENERAL:

IG

June 8, 2001

COL Subject's Name
Address
Address

Dear Colonel Name:

The inspector general system received an allegation that you improperly directed a subordinate to make unauthorized purchases with your unit IMPAC credit card in violation of AR 600-20, *Army Command Policy*, and DoD Directive 5500.7-R, *Joint Ethics Regulation (JER)*.

In accordance with AR 20-1, *Inspector General Activities and Procedures*, we referred the allegations to the chain of command for appropriate action. We will notify you of the results when the chain of command has completed its action.

Sincerely,

IG

June 8, 2001

COL Subject's Name
Address
Address

Dear Colonel Name:

The inspector general system received an allegation that you improperly directed a subordinate to make unauthorized purchases with your unit IMPAC credit card in violation of AR 600-20, *Army Command Policy*, and DoD Directive 5500.7-R, *Joint Ethics Regulation (JER)*. In accordance with AR 20-1, *Inspector General Activities and Procedures*, we referred the allegations to the chain of command for appropriate action.

The chain of command conducted an AR 15-6 investigation/Commanders Inquiry and determined that the allegation **was or was not substantiated**.

The case is closed, however, under provisions of AR 20-1 and AR 25-50, *Modern Army Records Keeping System (MARKS)*, the results will be maintained the IG database.

Sincerely,

IG

March 23, 2000

Office of the Inspector General

SFC Subject's Name
Address
Address

Dear Sergeant Name:

The inspector general system received an allegation that you improperly did something in violation of AR Regulation /Command Policy Letter (Clearly state allegation is AR 20-1 format and the standard). We conducted an inquiry (or investigation) and determined that the allegation against you **was or was not substantiated.**

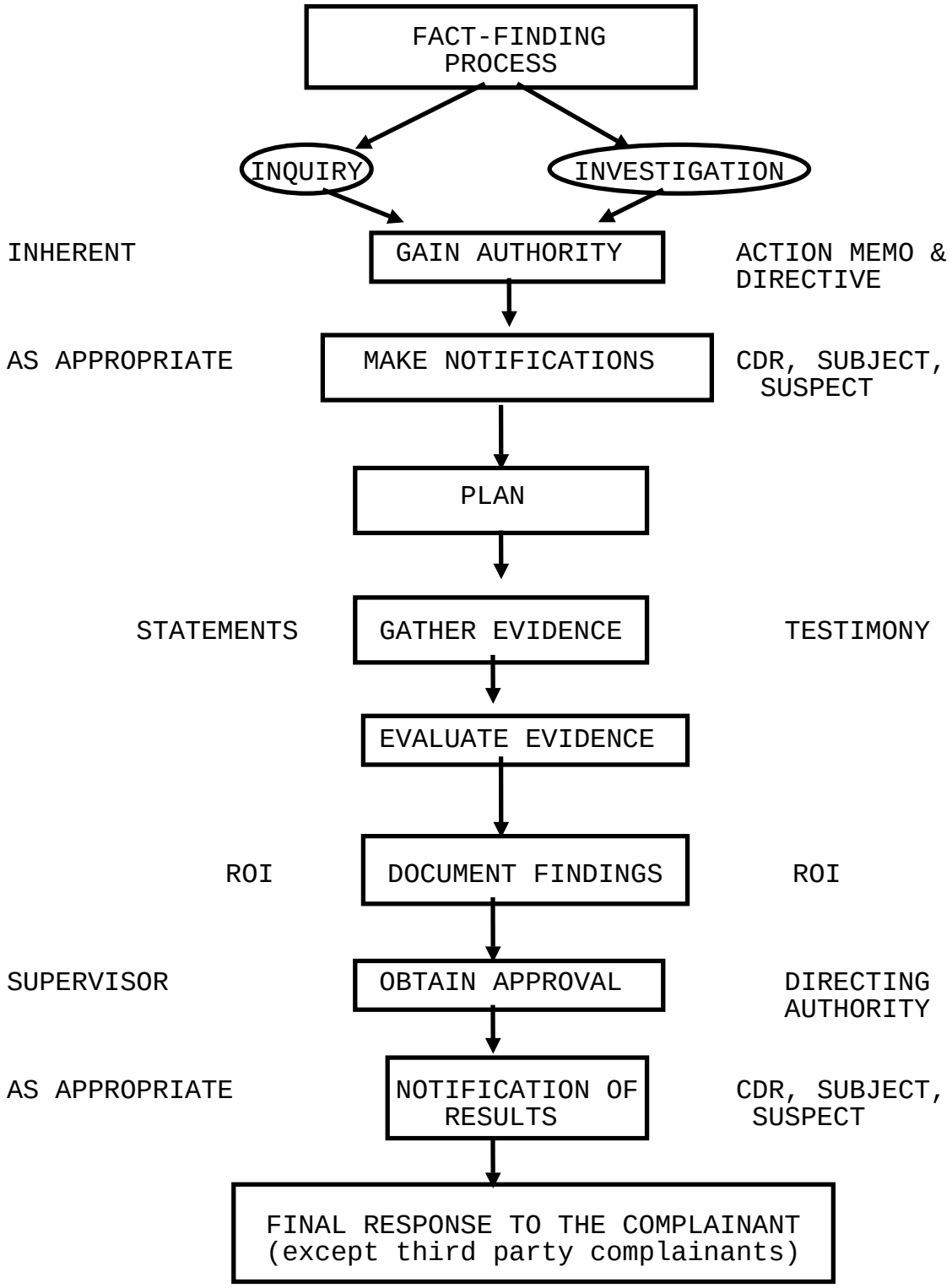
The case is closed, however, under provisions of AR 20-1 and AR 25-50, *Modern Army Records Keeping System (MARKS)*, the results will be maintained the IG database.

If you would like to receive a redacted copy of the report of inquiry you may request a copy from the Department of the Army Inspector General under the Freedom of Information Act. Specify that you want a copy of case number_____, (enter your case number) in which you were the subject. To initiate the process, send a written request to the following address: Office of the Inspector General, SAIG-ZXR, 1700 Army Pentagon, Washington D.C. 20310-1700, DSN 329-1093, FAX 327-5865.

Sincerely,

The IG Signature Block

APPENDIX X FACT FINDING STEPS



APPENDIX Y MENTAL HEALTH EVALUATION DOCUMENT FORMATS

Y-2.....COMMANDING OFFICER REQUEST FOR ROUTINE (NON EMERGENCY) MENTAL HEALTH EVALUATION

Y-4.....SERVICE MEMBER NOTIFICATION OF COMMANDING OFFICER REFERRAL FOR MENTAL HEALTH EVALUATION

Y-8.....MEMORANDUM FROM MENTAL HEALTHCARE PROVIDER TO SERVICE MEMBER'S COMMANDING OFFICER

Y-12....GUIDELINES FROM MENTAL HEATH EVALUATION FOR IMMINET DANGEROUSNESS'

SAMPLE
COMMANDING OFFICER REQUEST FOR ROUTINE
(NON EMERGENCY) MENTAL HEALTH EVALUATION

Date:

MEMORANDUM FOR COMMANDING OFFICER (Name of Medical Treatment Facility (MTF) or Clinic)

FROM: COMMANDING OFFICER, (Name of Command)

SUBJECT: Command Referral for Mental Health Evaluation of (Service Member Rank, Name, Branch of Service and SSN)

References: (a) DoD Directive 6490.1, "Mental Health Evaluations of Members of the Armed Forces," October 1, 1997
(b) DoD Instruction 6490.4, "Requirements for Mental Health Evaluations of Members of the Armed Forces," August 28, 1997
(c) Section 546 of Public Law 102-484,"National Defense Authorization Act for Fiscal Year 1993, " October 1992
(d) DoD Directive 7050.6, "Military Whistleblower Protection," August 12, 1995

(1) In accordance with references (Aa) through (d), I hereby request a formal mental health evaluation of (rank and name of Service Member).

(2) (Name and rank of Service Member) has (years) and (months) active duty service and has been assigned to my command since Z(date). Armed services Vocational Aptitude Battery (ASVAB) scores upon enlistment were: (list scores). Past average performance marks have ranged from ____ to (give numerical scores). Legal action is/is not currently pending against the Service Member. (If charges are pending, list dates and UCMJ articles). Past legal actions include: (List dates, charges, non judicial punishments (NJPs) and/or findings of Courts Martial.)

(3) I have forwarded to the Service Member a memorandum that advises (rank and name of Service Member) of his (or her) rights. This memorandum aldo states the reasons for this referral, the name of the mental health care provider(s) with whom I consulteed, and the mames and telephone numbers of judge advocates, DoD attorneys and/or Inspector General who may advise

and assist him (or her). A copy of this memorandum is attached for your review.

(4) (Service Member's rank and name) has been scheduled for evaluation by (name and rank of mental healthcare provider) at (name of MTF or clinic) on (date) at (time).

(5) Should you wish additional information, you may contact (name and rank of the designated point of contact) at (telephone number).

(6) Please provide a summary of your findings and recommendations to me as soon as they are available.

(Signature)
Rank and Name of Commanding Officer

Attachment:
As stated

SAMPLE
SERVICE MEMBER NOTIFICATION OF COMMANDING OFFICER
REFERRAL FOR MENTAL HEALTH EVALUATION

Date:

MEMORANDUM FOR (Service Member'S Rank, Name, SSN) Name of Medical Treatment Facility (MTF) or Clinic)

FROM: COMMANDING OFFICER, (Name of Command)

SUBJECT: Notification of Commanding officer Referral for Mental Health Evaluation (Non Emergency)

References: (a) DoD Directive 6490.1, "Mental Health Evaluations of Members of the Armed Forces," October 1, 1997
(b) DoD Instruction 6490.4, "Requirements for Mental Health Evaluations of Members of the Armed Forces," August 28, 1997
(c) Section 546 of Public Law 102-484,"National Defense Authorization Act for Fiscal Year 1993, " October 1992
(d) DoD Directive 7050.6, "Military Whistleblower Protection," August 12, 1995

(1) In accordance with references (a) through (d), this memorandum is to inform you that I am referring you for a mental health evaluation.

(2) The following is a description of your behaviors and /or verbal expressions that I considered in determining the need for a mental health evaluation: (Provide dates and a brief factual description of the Service member's actions of concern)

(3) Before making this referral, I consulted with the following mental health care provider(s) about your recent

actions: (list rank, name, corps, branch of each provider consulted) at (name of Medical Treartment Facility (MTF) or clinic) on (date(s)). (Rank(s) and name(s) of mental healthcare provider(s)) concur(s) that this evaluation is warranted and is appropriate.

OR

Consultation with a mental healthcare provider prior to this referral is (was) not possible because (give reason; e.g., geographic isolation from available mental healthcare provider, etc.)

(4) Per references (a) and (b), you are entitled to the rights listed below:

a. The right, upon your request, to speak with an attorney who is a member of the Armed Forces or is employed by the Department of Defense who is available for the purpose of advising you of the ways in which you may seek redress should you question this referral.

b. The right to submit to your Service Inspector General or to the Inspector General of the Department of Defense (IG, DoD) for investigation an allegation that your mental health evaluation referral was a reprisal for making or attempting to make a lawful communication to a Member of Congress, any appropriate authority in your chain of command, an IG or a member of a DoD audit, inspection, investigation or law enforcement organization or in violation of (reference (a)), (reference (b)), and/or any applicable Service regulations.

c. The right to obtain a second opinion and be evaluated by a mental healthcare provider of your own choosing, at your own expense, if reasonably available. Such an evaluation by an independent mental healthcare provider shall be conducted within a reasonable period of time, usually within 10 business days, and shall not delay nor substitute for an evaluation performed by a DoD mental healthcare provider.

d. The right to communicate without restriction with an IG, attorney, Member of Congress, or others about your referral for a mental health evaluation. This provision does not apply to a communication that is unlawful.

e. The right, except in emergencies, to have at least two business days before the scheduled mental health evaluation

to meet with an attorney, IG, chaplain, or other appropriate party. If I believe your situation constitutes an emergency or that your condition appears potentially harmful to your well being and I judge that it is not in your best interest to delay your mental health evaluation for two business days, I shall state my reasons in writing as part of the request for the mental health evaluation.

f. If you are assigned to a naval vessel, deployed or otherwise geographically isolated because of circumstances related to military duties that make compliance with any of the procedures in paragraphs (3) and (4), above, impractical, I shall prepare and give you a copy of the memorandum setting forth the reasons for my inability to comply with these procedures.

(5) You are scheduled to meet with (name and rank of the mental healthcare provider) at (name of MTF or clinic) on (date) at (time).

(6) The following authorities available to assist you if you wish to question this referral:

a. Military Attorney: (Provided rank, name, location, telephone number and available hours.)

b. Inspector General: (Provided rank/title, name, address, telephone number and available hours for Service and IG, DOD. The IG, DOD number is 1-800-424-9098.)

c. Other available resources: (Provide rank, name corps/title of chaplains or other resources available to counsel and assist the Service member.)

(Signature)

Rank and Name of Commanding Officer

I have read the memorandum above and have been provided a copy.

Service member's signature:_____ Date: _____

OR

The Service Member declined to sign this memorandum which includes the Service Member's Statement of Rights because (give reason and/or quote Service Member).

Witness' signature:_____ Date: _____

Witness' rank and name:_____ Date: _____

(Provide a copy of this memorandum to the Service Member.)

SAMPLE
MEMORANDUM FROM MENTAL HEALTHCARE PROVIDER
TO SERVICE MEMBER'S COMMANDING OFFICER

Date:

MEMORANDUM FOR COMMANDING OFFICER, (Name of Subject's Command)

FROM: (Rank and Name of Mental Healthcare Provider)

THROUGH: COMMANDING OFFICER, (Medical Treatment Facility (MTF) or Clinic)

SUBJECT: Health Evaluation in the Case of (Service Member'S Rank, Name, SSN)

References: (a) DOD Directive 6490.1, "Mental Health Evaluations of Members of the Armed Forces," October 1, 1997

(b) DOD Instruction 6490.4, "Requirements for Mental Health Evaluations of Members of the Armed Forces," August 28, 1997

(1) The above named Service Member was seen on (date) at (location) by (mental healthcare provider's rank and name) after referral by (rank and name of Service member's commanding officer) for an emergency evaluation because of (brief summary of pertinent facts).

OR

for non-emergency command directed evaluation because of (brief summary of pertinent facts).

(2) The evaluation revealed (brief description of findings).

(3) The Diagnosis(es) is/are

Axis I
Axis II

Axis III

(4) The Service Member's diagnosis(es) do(es) not meet retention standards for continued military service and his/her case will be referred to the Physical Evaluation Board for administrative adjudication.

OR

The Service Member is deemed unsuitable for continued military service on the basis of the above diagnosis(es). (Provide explanation on how the Service Member's personality disorder or substance abuse, for example, is maladaptive to adequate performance of duty.)

(5) This Service Member is considered (Imminently Dangerous OR Potentially Dangerous) based upon (summary of clinical data to support this determination).

(6) The following clinical treatment plan has been initiated:

a. The Service member has been admitted to (ward and name of MTF or hospital) for further evaluation/observation/treatment. His/her physician is (rank/title and name) who may be reached at (telephone number).

OR

b. The Service member has been scheduled for outpatient follow-up (or treatment) on (date and time) at (name of MTF or mental health clinic) with (rank/title and name of privileged mental healthcare provider) who may be reached at (telephone number).

(7) RECOMMENDATIONS TO THE COMMANDING OFFICER - The Service member is returned to his/her Command, with the following recommendations (for potentially dangerous Service member, only):

a. Precautions: (e.g., order to move into military barracks; prevent access to weapons; consider liberty/leave restrictions; issue restraining order, etc.)

AND/OR

b. Process for expeditious administrative separation in accordance with applicable Service directive). The Service member does not have a severe mental disorder and is not considered mentally disordered. However, he/she manifests a long-standing disorder of character, behavior and adaptability that is of such severity so as to preclude adequate military service. Although not currently at significant risk for suicide or homicide, due to his/her lifelong pattern of maladaptive responses to routine personal and/or work-related stressors, he/she may become dangerous to him or herself or others in the furure.

AND/OR

c. The Service member (is/is not) suitable for continued access to classified material and his/her (Secret/Top Secret/Top Secret Special Compartmentalized Clearance) should be (retained/recinded).

AND/OR

d. Other _____(describe).

(8) The above actions taken and recommendations made have been discussed with the Service member who acknowledged that he/she understood them.

OR

The Service member’s condition (diagnosis(es)) prevent(s) him/her from understanding the actions taken and recommendations made above.

(9) If you do not concur with these recommendations, DOD Directive 6490.1 “Mental Health Evaluations of Members of the

Armed Forces," October 1, 1997, (reference (a)) requires that you notify your next senior commanding officer within two business days explaining your decision to act against medical advice regarding administrative management of the Service member.

(Signature)

Mental Healthcare Provider's Rank, Name and Corps

GUIDELINES FOR MATNTAL HEALTH EVALUATION FOR IMMINENT DANGEROUSNESS

Clinical evaluation should include:

I. Record Review

A. Medical Record

1. History of pertinent medical problems and treatment
2. History of substance abuse evaluations and/or treatment
3. History of mental health evaluation and/or treatment

B. Family Advocacy Program (if applicable)

C. Service Personnel Record (if applicable)
Review documentation for disciplinary problems and counseling

II. History

A. History as obtained from the Service member and assessment of reliability

1. History of past violence towards others: ("Have you evr hurt anyone physically? Who? What did you do? How badly was the person hurt? How did you feel about it afterward? How do you feel about it now?

2. Alcohol and illicit substance abuse/dependence

3. Personal/marital problems

4. Recent losses (job/family)

5. Legal/financial problems

6. History of childhood emotional, sexual and/or physical abuse or witnessing abuse
7. Past psychiatric history

8. Past medical history and current/recent medications

B. Information from command representative on Service member's behavior, work performance and general functioning

C. Pertinent information from family or friends

III. Mental Status Examination (emphasis on abnormal presentation)

A. Appearance (ability to relate to the examiner, eye contact, hygiene, grooming)

B. Behavior (psychomotor agitation or retardation)

C. Speech (rate, rhythm)

D. Mood (Service member's stated predominant mood)

E. Affect
Is examiner's observations of member's affect consistent with stated mood?
If inconsistent, in what way?

F. Thought Processes
Is there evidence of psychotic symptoms, paranoid thoughts or feelings?

G. Thought Content
What does the Service member talk about spontaneously when allowed the opportunity? How does the Service member respond to specific questions about the facts or issues which led to his psychological evaluation? Is there evidence of an irrational degree of anger, rage, jealousy?

H. Cognition
Is the Service member oriented to person, place, time, date, and reason for the evaluation? Can he/she answer simple informational questions and do simple calculations?

I. Assessment of Suicide Potential
Ideation: Do you have or have you had any thoughts about dying or hurting yourself?
Intent: Do you wish to die?
Plan: Will you hurt yourself or allow yourself to be hurt "accidentally or on purpose?
Do your have access to weapons at work or at home?
Behaviors: Have you taken any actions towards hurting yourself; for example, obtaining a weapon with which you could hurt yourself?
Attempts: Have you made prior suicide attempts? When? What did you do? How serious was the injury? Did you tell anyone? Did you want to die?

J. Assessment of Current Potential for Future Dangerous Behavior

Ideation: Do you have or have you recently had any thoughts to harm of kill anyone?

Intent: Do you wish anyone were injured or dead?

Plan: Will you hurt or try to kill anyone?

Behaviors: Have you verbally threatened to hurt or kill anyone? Have you obtained any weapons?

Attempts: Have you physically hurt anyone recently? (Describe)

IV. Psychological Testing Results (if applicable)

V. Physical Examination and laboratory Test Results (if applicable)

VI. Assessment Shall Include:

A. Axis I through III diagnoses, as indicated, and Axis IV and V assessments

B. A statement of clinical assessment of risk for dangerous behavior supported by history obtained from the Service member and others, the mental status examination, pertinent actuarial factors and if pertinent, the physical examination and laboratory studies results.

VII. Recommendation/Plans Shall Address:

A. Further clinical evaluation and treatment, as indicated

B. Precautions taken by the provider and recommendations to the Service member’s commanding officer per DOD Directive 6490.1 (reference(a)) and DOD Instruction (reference (b))

C. Recommendations to the Service member’s commanding officer for administrative management

VIII. Documentation

A. Documentation of the history, mental status examination, physical findings, assessment, and recommendations shall be recorded on Standard Forms for impatient or outpatient care.

B. In those cases of individuals clinically judged to be imminently or potentially dangerous, a memorandum documenting the summary of clinical findings, precautions taken by the provider, verbal recommendations made to the Service member’s commanding officer, and current recommendations shall be forwarded by the mental healthcare provider via the Medical Treatment Facility commanding officer to the Service members’ commanding officer within

one business day after the evaluation is completed. (See Appendix Y-2.)

APPENDIX Z GLOSSARY

Section I. ABBREVIATIONS

CIDC	Criminal Investigation Command
DAIG	Department of the Army Inspector General
DOD	Department of Defense
FOIA	Freedom of Information Act
FOUO	For Official Use Only
IG	Inspector General
IGAR	Inspector General Action Request
IGNET	Inspector General Worldwide Network
IO	Investigating Officers
MFR	Memorandum For Record
MP	Military Police
MPI	Military Police Investigation
PA	Privacy Act
ROI	Report of Investigation or Inquiry
SAIG	Office Symbol for DAIG
SES	Senior Executive Service
SJA	Staff Judge Advocate
TIG	The Inspector General
USAAA	US Army Audit Agency

Section II. TERMS

ADVERSE ACTION. As applies to guidance in AR 20-1, is any administrative or punitive action that takes away an entitlement, results in an entry or document added to the affected person's official personnel records which could be considered negative by boards or superiors, or permits the affected person to rebut or appeal the action.

ALLEGATION. A declaration or assertion made without proof concerning an individual or a detrimental condition. The findings resulting from an inquiry or investigation are expressed as follows:

1. SUBSTANTIATED ALLEGATION. An allegation in which the preponderance of credible evidence would lead to a conclusion that a violation of a law, regulation or accepted standard occurred.

2. NOT SUBSTANTIATED ALLEGATION. An allegation in which the preponderance of credible evidence would lead to a conclusion that a violation of a law, regulation, or other accepted standard did not occur.

ASSISTANCE. The process of receiving, inquiring, recording, and responding to complaints or requests either brought directly to the IG or referred to the IG for action.

ASSISTANCE INQUIRY. An informal fact-finding process used to address or respond to a complaint involving a request for help, information or issues, and not allegations of impropriety or wrongdoing.

COMPLAINANT. A person who submits a complaint, allegation, or other request for assistance to an IG.

COMPLAINT. An expression of dissatisfaction, resentment, discontent, or grief.

CONCLUSION. A reasoned judgment or inference which leads to the final decision.

DIRECTING AUTHORITY. An official authorized to direct that an IG investigation be conducted.

EVIDENCE. Something that furnishes proof; something submitted to or secured by an IG to ascertain the truth of a matter. In inspector general investigations, evidence includes testimonial, documentary evidence, and physical evidence.

EXTRACT. A verbatim quotation from a report of an inspection or investigation.

IMPROPRIETY. The quality or condition of being improper, incorrect, or inappropriate.

INFERENCE. A conclusion logically derived from facts or premises; implies arriving at a conclusion by reasoning from evidence.

INFORMATION ON WHICH TO BASE A REPLY. Those facts, judgments, and/or opinions submitted to the requester, which will permit preparation of a comprehensive and responsive reply on the matter of concern. The information may be based on an IG report of investigation; or it may be obtained by more informal means, depending upon the complexity and sensitivity of the issue.

IG INQUIRY. An informal fact-finding process. An assistance inquiry or investigative inquiry conducted by an IG (See assistance inquiry and investigative inquiry).

INSPECTOR GENERAL ACTION REQUEST (IGAR). A request for assistance or the presentation of a complaint to any detailed IG, acting IG, or assistant IG.

IG INVESTIGATION. A formal fact-finding process. A fact-finding examination by a detailed IG into allegations, issues, or adverse conditions to provide the directing authority a sound basis for decisions and actions. IG investigations normally address allegations of wrongdoing by an individual and are authorized by written directives. Conduct of IG investigations involves systematic collection, examination of testimony and documents, and may incorporate physical evidence. The results are reported using the ROI format addressed in Chapter 8 of AR 20-1.

IG RECORDS. Reports made by IGs; also extracts and summaries of them.

INTERVIEW. To systematically question informally or formally, either over the phone or in a face-to-face meeting.

INTERROGATORY. A list of written questions which are used to obtain information from a witness.

INVESTIGATIVE INQUIRY. A fact-finding examination by an IG into allegations, issues, or adverse conditions. The investigative inquiry is the fact-finding process followed by IGs to gather information needed to address allegations of impropriety against an individual which does not require an investigation. The process for an investigative inquiry is addressed in Chapter 8 of AR 20-1.

INVESTIGATING OFFICER. A detailed IG assigned the responsibility to conduct an IG investigation.

PROTECTED COMMUNICATION.

(a) Any lawful communication to Member of Congress or an IG.

(b) A communication in which a member of the Armed Forces communicates information that the member reasonably believes evidences a violation of law or regulation, including sexual harassment or unlawful discrimination, gross mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such a communication is made to any of the following:

1. A Member of Congress, an IG, or a member of a DoD audit, inspection, investigation, or law enforcement organization.

2. Any other person or organization (including any person or organization in the chain of command) designated under Component regulations or other established administrative procedures (i.e.: EOA , Safety Officer) to receive such communications. (See AR 600-20 for definition of chain of command)

PRELIMINARY ANALYSIS. An initial review and analysis conducted by an IG of a particular allegation, situation or condition to determine if the circumstances of the case are of sufficient magnitude, seriousness, or validity to warrant either an IG inquiry or investigation or some other form of action.

REFERRAL. The process of transferring issues or allegations to another agency or command for resolution.

REFERRAL MEMORANDUM. A memorandum used by DAIG Assistance Division to refer IGARs to field IGs.

REPORT OF INVESTIGATION/INVESTIGATIVE INQUIRY (ROI/ROII). Report of Investigation or Inquiry is a written report used by IGs to address allegations, issues, or adverse conditions to provide the directing authority a sound basis for decisions. The directing authority approves the ROI. The ROI format is addressed at Chapter 8 of this regulation. These same formats may be used by IGs who investigate or inquire into issues and adverse conditions

REQUEST FOR ASSISTANCE. Matter presented to IGs by individuals who are seeking information, advice or assistance.

REQUESTER. A person who asks for IG help in resolving an issue.

STATEMENT. A written or verbal declaration of facts made to an IG by a witness, subject or suspect, generally without an oath.

SUBJECT. A person against whom non-criminal allegations have been made, such as a violation of a local policy or regulation that is not punitive..

SUMMARIZED TESTIMONY/STATEMENT. A paraphrased version of testimony or a statement. Normally, it includes only those items directly related to the matters under investigation or inquiry.

SUSPECT. A person against whom criminal allegations were made and these are violations of punitive articles of the UCMJ or regulations that are punitive or violation of other criminal laws. A person may also become a suspect as a result of incriminating information that arises during an investigation or interview, or whenever the questioner believes, or reasonably should believe, the person committed a criminal offense.

SYSTEMIC ISSUE. Situation evidenced by a failure of an established process to function as designed; does not entail an allegation of impropriety against an individual.
TESTIMONY. Any oral, written, recorded response to prepared questions by an IG

1. SWORN TESTIMONY. Information given by a witness who has taken an oath or affirmed to tell the truth.

2. STATEMENT. Information given by a witness who has not taken an oath or affirmed to tell the truth.

VERBATIM TESTIMONY. A word-for-word transcript of a recorded testimony (questions and answers).