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## **Internal Investigations**

This directive states policy and establishes the purpose, authority and responsibilities of the Office of Inspector General's investigative function.

### **AUTHORITY**

The Internal Investigations Section operates within the department's Office of Inspector General under the authority of [Section 20.055](#), and [Section 112.3187 through 112.31895](#), Florida Statutes (F.S.)

### **POLICY**

It shall be the policy of the Office of Inspector General to conduct, supervise and coordinate investigations, reviews, inquiries, or other investigative activities designed to detect, deter, prevent and eradicate fraud, waste, misconduct, mismanagement and other abuses in the department. All Office of Inspector General Investigations Section staff members will comply with constitutional, statutory, and employee union/bargaining unit requirements when conducting investigations.

It shall be the policy of the department to have all formal allegations of misconduct investigated by the Internal Investigations Section of the Office of Inspector General. This is not to preclude directors from initiating informal inquiries into lesser administrative violations or employee performance matters. Managers are encouraged to pursue the quickest and most efficient course to address minor administrative violations and performance matters at the lowest management level with the authority to take the necessary steps to correct the problem.

In accordance with Subsection 20.055 (6)(c), F.S., the Inspector General and staff shall have access to any records, data, and other information of the Agency deemed necessary to carry out his or her duties.

### **INTERNAL INVESTIGATIONS CODE OF ETHICS**

Internal Investigations shall have a written code of ethics.

Annually, the Inspector General and each staff member will be provided the Code of Ethics and will sign an acknowledgement of receipt attesting to the staff member's understanding and responsibility to abide by the Code of Ethics.

The signed acknowledgement of receipt will be maintained in the Code of Ethics file located on the Investigations drive.

New Internal Investigations staff members are required to sign the Code of Ethics form upon employment with the department.



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## **CAMPAIGNING, LOBBYING, AND POLITICAL PRACTICES**

All members of the Office of Inspector General Investigations Section will comply with Florida Statutes, Florida Administrative Code, and Department of Environmental Protection policies regarding campaigning, lobbying, and political practices, as specified in Directive DEP 490 Political Activities and Directive DEP 202 Code of Ethics.

## **INDEPENDENCE FROM IMPAIRMENTS**

Internal Investigations staff members shall be free from personal, organizational, and external impairments to independence in the performance of their duties and responsibilities.

Annually, the Inspector General and each staff member will be provided an Independence from Impairments Attestation form.

Each Internal Investigations staff member will complete and sign the acknowledgement of understanding and responsibility as an annual attestation of their independence from impairments. The signed acknowledgements of receipt will be maintained in the Independence from Impairments file located on the Investigations drive.

If an impairment occurs during the year, the staff member will document and report the situation to the Inspector General and execute a new attestation form. The Inspector General shall notify, in writing, any impairments to the Secretary of the Department of Environmental Protection and the Chief Inspector General.

New Internal Investigations staff members are required to sign the attestation form upon employment with the department.

## **RESPONSIBILITY**

Any employee or supervisor who observes or becomes aware of a violation of a law, rule, directive, or General Orders, or receives a complaint from any source, in any manner, alleging a violation by a department employee, has the responsibility to promptly report the allegation to either their immediate supervisor or the Office of Inspector General.

- An employee with questions or concerns should contact their supervisor or the Office of Inspector General for information and guidance.
- Anonymous complaints or allegations should provide sufficient detail, including dates, locations, specific examples and/or descriptions of wrongdoing, witnesses, and other pertinent information.
- Any manager, supervisor, or director who has questions about handling a complaint should seek guidance from the Office of Inspector General.



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The Office of Inspector General shall document complaints received and shall be responsible for conducting or coordinating all internal investigations.

- All internal investigation case numbers shall be assigned by the Office of Inspector General.
- All completed internal investigation case files shall be filed and maintained in the Office of Inspector General.
- All completed internal investigation case reports shall be prepared to include the following at a minimum:
  - Name, contact information, and summary of the complaint, including the allegations.
  - Name(s) of Assigned Investigator(s) and date assigned.
  - Subject(s) Information.
  - Introduction/Predicate.
  - Report of Investigation to include witnesses interviewed and exhibits collected.
  - Conclusions of fact to include disposition for each potential violation.
  - Proved or disproved allegations are based on developed facts related to governing directives.
  - Other Findings and Recommendations when applicable.
  - Attestation that the investigation was conducted in compliance with the Quality Standards for Investigations found within the Principles and Standards for Offices of Inspector General, as published by the Association of Inspectors General.
  - Signature of Assigned Investigator(s).
  - Signature of the Inspector General documenting supervisory approval and review of the case report and contents therein. The supervisory review shall also include a review of case evidence to ensure it is relevant; has a logical, sensible relationship to the allegation; is consistent with the facts; and is sufficient to support conclusions.
- The Office of Inspector General shall maintain an automated case tracking system for all internal investigative files, from time of case initiation until the files are purged, consistent with records retention requirements established by the Florida Department of State.

Upon receipt of an allegation or complaint, the Office of Inspector General shall notify the subject employee's director. The Inspector General may withhold notification when it might compromise an investigation or affect the collection of case supporting materials.

The Inspector General shall ensure that Investigative Teams possess the necessary skills to conduct the investigation to include:

- Familiarity with the programs and policies of the agency being investigated;
- Prior investigative experience in the subject area;
- Training in the subject matter;
- Educational background in the subject area;

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- Preliminary research of the program area; or
- Specialized skills.

All Office of Inspector General internal investigative activities shall be properly documented and reviewed. Internal investigations shall be concluded within sixty (60) days from the date the case is assigned to an Investigator. An Investigator can request an extension. Such requests must be made in writing and must be approved by the Inspector General.

- Complaints received by the Office of Inspector General shall be recorded on the Case Initiation Form, located in the OIG Investigative Tracking System.
  - Case files for investigations shall include the following:
    - Written Final Report of Investigation;
    - Documented investigative activity;
    - Case Initiation Form;
    - The initial complaint;
    - Initial written case plan and related updates;
    - Florida Whistle-blower analysis, if applicable;
    - Interviews;
    - Exhibits and case supporting documentation;
    - Referral documentation, if applicable;
    - Sixty-day status memorandum, if applicable;
    - Management's response(s) to Inspector General recommendations, if applicable, and;
    - Any other appropriate investigation related documents.
- All employees are required to cooperate with any Office of Inspector General review, preliminary inquiry or investigation. Additionally, all employees are required to give truthful and requested information during the course of an internal investigation. Failure to give complete or truthful information during a sworn interview for an internal investigation can result in discipline up to and including dismissal and can lead to criminal violations relating to perjury or providing a false statement.
- It is a violation of this directive for any employee to discuss the facts or circumstances of an investigation prior to the investigation being officially closed. Any discussion or questions



about the issues of a case should be directed to the assigned Investigator, or the Inspector General. This provision does not apply to discussions between a subject employee and that person's union representative or a legal representative, as provided by Florida law and any recognized collective bargaining agreements or contracts.

- Employees shall immediately report suspected criminal activity occurring in the workplace to their supervisor and the Office of Inspector General. When there are reasonable grounds to believe a criminal violation has occurred in the workplace, the Office of Inspector General will also make a timely report to the proper law enforcement officials.
- Legal Consultation: The Inspector General may seek a review of cases for legal sufficiency when deemed necessary.
  - The Inspector General may seek legal consultation, either verbally or in writing from the following resources:
    - ✓ The Department of Environmental Protection, Office of General Counsel;
    - ✓ The Office of the Chief Inspector General's legal counsel;
    - ✓ Any other legal resource as deemed appropriate by the Inspector General.
  - Documentation: Legal sufficiency reviews will be documented in the investigative case file.

## **PROCEDURES**

When a complaint is received, the Office of Inspector General shall:

- Review the information available from the allegation or complaint to determine if the issue warrants an inquiry/investigation;
- Document the complaint and assign a case number on the Case Initiation Form and the Case Log; and
- Ensure that the appropriate persons are notified of the complaint.

The Office of Inspector General shall conduct a preliminary inquiry, review, investigation, or other investigative activity into the allegation(s) and shall:

- Determine investigative responsibility, categorize the allegation (i.e., administrative, or whistle-blower), and assign the matter to the appropriate entity. If there are reasonable grounds to believe a criminal violation has occurred, the matter will be reported timely to proper law enforcement officials.

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- Assign an Investigator or refer to other department entity within ten (10) working days of receipt by the Office of Inspector General. Any exception to this deadline must be approved and documented by the Inspector General, based upon reasonable grounds.
  - Document in the case file that written notification of the disposition of the complaint has been provided to the complainant(s).
  - Ensure that for each internal investigation, the Investigator has completed a written investigative plan, which includes the following:
    - Elements of the complaint and the potential violation(s);
    - Case plan updates, as necessary;
    - Documented supervisory review and approval prior to implementation of the plan; and
    - Documented supervisory review and approval of significant plan updates.
  - Inquiries, reviews, or investigations involving law enforcement officers shall be in accordance with 112.532-112.534, F.S., and recognized collective bargaining agreements or contracts.
  - Provide to a subject, who is a sworn law enforcement officer with the department, a copy of 112.532, F.S., *Law Enforcement Officer's Rights* prior to the investigator conducting his/her interview, when such interview could lead to disciplinary action, including suspension, demotion, or dismissal.
  - A subject who is a sworn law enforcement officer must be informed of the nature of the investigation before interrogation begins, the names of all complainants, witness and complainant(s) statements and all other existing evidence must be provided to the subject officer before the beginning of any investigative interview of that officer.
  - The formal interrogation of a law enforcement officer, including all recess periods, must be recorded and there shall be no unrecorded questions or statements. Upon the request of the interrogated officer, a copy of any recording of the interrogation session must be made available no later than 72 hours, excluding holidays and weekends, following said interrogation.
  - Bill of Rights/Union Contracts – When applicable, the rights granted by collective bargaining agreements or contracts, and Florida Statutes will be honored throughout the investigative process.
  - Ensure that for each internal investigation interviews are conducted of the following:
    - The complainant(s), with exceptions documented;
    - Witnesses, with exceptions documented; and
    - The subject(s) are interviewed regarding all allegations prior to case completion, with exceptions documented.



- Place persons interviewed under oath and record or document the interviews. Any exceptions will be documented.
- Ensure that the Inspector General reviews and signs the investigative report to verify compliance with the above interview provisions.
- Ensure that for each internal investigation, the case files include all relevant documents, descriptions of exhibits, and other case supporting materials gathered during the course of the investigation.
- Investigative staff shall do the following upon discovery of a significant investigative issue:
  - The Investigative staff member will immediately notify the Inspector General.
  - The Inspector General will notify the Chief Inspector General, as well as the department's Secretary, if appropriate.
- Ensure that for each other investigative activity, as defined by the Inspector General, includes the following elements:
  - The complainant is contacted to obtain an understanding of their concerns prior to closure of the other investigative activity, with exceptions documented;
  - Witnesses are contacted, with exceptions documented;
  - Evidence or case supporting materials are reviewed, with exceptions documented;
  - Closure documentation or memorandum summarizing the other investigative activity is completed, with exceptions documented.
  - Each other investigative activity is assigned a number for documentation and tracking purposes.

## **INTERNAL INVESTIGATION CONCLUSION**

Upon completion of an internal investigation, the final investigative report will be distributed to the management authority of the subject employee(s) or program area via hand delivery or email who shall:

- Notify the subject employee of the outcome of the investigation and, when appropriate, the corrective or disciplinary action to be taken. When there are sustained findings, and both are employees of the same program area, provide the subject and complainant a copy of the investigative report simultaneously. The Office of Inspector General will be notified when this has been done.
- Notify the Bureau of Human Resource Management and the Office of Inspector General of the results of Program Recommendations and any corrective or disciplinary action taken. The Bureau of Human Resource Management will maintain records in a subject's personnel file if an allegation is sustained, and disciplinary action is taken against the subject.

When the complainant(s) and subject(s) have not previously been notified of the conclusion of the investigation, the Office of Inspector General shall inform them, in writing, when the investigation is

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concluded, including the finding(s). The Office of Inspector General will not make recommendations regarding corrective or disciplinary action and will refer any such questions to the affected director and the Bureau of Human Resource Management.

Post investigative responses to final reports will be documented in the case file and include:

- The Office of Inspector General's review of issues raised along with a copy of any correspondence; and
- The Inspector General or designee's response to the comments, if any, or documentation that no response was made.

Requests for information about investigations will be responded to according to the requirements of the Public Records Law, Chapter 119, F.S. or other applicable statutory provisions.

The Office of Inspector General will secure and retain the investigative files and all related information in accordance with the Internal Investigations Evidence Procedures, DEP Directive 335 "Records Management", and Florida's Archive and Public Records retention requirements.

At the conclusion of each investigation in which the subject of the investigation is a specific entity contracting with the state, or an individual substantially affected, and if the investigation is not confidential, or otherwise exempt from disclosure by law, the Inspector General shall, consistent with 119.07(1) and 20.055, F.S.:

- Submit investigative findings to the subject;
- Advise in writing that the subject may submit a written response within timeframes specified by statute, ordinance, or rule up to twenty (20) working days after receipt of the findings;
- Notify the subject that such response and the Inspector General's rebuttal to the response, if any, shall be included in the final investigative report; and

Provide the Secretary and the Chief Inspector General with copies of complaints or allegations of misconduct related to the Office of Inspector General or its staff members, when complaints are received from entities contracting with the state or individuals substantially affected by an Office of Inspector General investigation.

### WHISTLE-BLOWER CASES

Cases that fall under the definition and requirements of the Whistle-blower Act will be addressed in accordance with Sections 112.3187- 112.31895, F.S. to include:

- Documentation of each whistle-blower complaint review and determination;
- Confidentiality of the complaint is maintained;





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- Statutory timeframes are followed, with exceptions justified and documented;
  - Document notification has been made to the Florida Department of Law Enforcement, when applicable;
  - Ensure that whistle-blowers are provided an opportunity to respond to the final report; and
  - Investigative Policy 2-4, Whistle-blower's Act Protocol provides procedures for the dissemination of the final report to mandatory recipients in accordance with the provisions of the Whistle-blower's Act Sections 112.3187-112.31895, F.S.

### **TRAINING**

Newly appointed Investigators and investigative support staff within the Internal Investigation Section will receive orientation and training on the following areas within six months of assignment:

- Section 14.32, F.S., Office of the Chief Inspector General;
- Section 20.055, F.S., Agency Inspectors General Act;
- Chapter 119, F.S., Public Records Law;
- Chapter 112, F.S., Part III, Code of Ethics for Public Officers and Employees;
- Chapter 112, F.S., Part VI, Law Enforcement and Correctional Officers' Rights;
- Sections 112.3187-112.31895, F.S., Whistle-blower's Act;
- Principles and Standards for the Office of Inspector General;
- Agency specific statutes, rules, regulations, and directives;
- Department of Management Services Administrative Rule 60L-36.005 (minimal standards of conduct for state employees); and
- Florida Office of Inspector General Investigations accreditation standards and process.

Investigators and the Inspector General will receive a minimum of forty (40) hours of documented continuing education every two years, with at least twelve (12) of the forty hours in subjects directly related to the member's primary responsibility.

All Investigative Staff Members must receive refresher training annually in the following:

- Agency Ethics policies and procedures;



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- Agency Affirmative Action Plan, if applicable;
  - Agency Sexual Harassment policies and procedures;
  - Agency Discrimination policies and procedures;
  - Agency Computer Security and Acceptable Use policies and procedures;
  - Accreditation Standards and the OIG's corresponding policies and procedures.

## **DEFINITIONS**

**Allegation or Complaint.** Any accusation against a department employee, vendor, contractor or department practice, either verbal or in writing, made by a citizen, employee, or anonymous source (including accusations received through the Whistle-blower or Get Lean Hotlines).

**Assigned Investigator.** Person assigned to conduct a review, preliminary inquiry, or an internal investigation from the Office of Inspector General.

**Case File.** File containing allegations, case report, documents, transcripts, digital interviews, case supporting materials, and other pertinent information.

**Case Initiation Form.** A form used for receipt, categorization and assignment of allegations or complaints received by the Office of Inspector General.

**Case Number.** An identifying number assigned by the Office of Inspector General to track a complaint, review, preliminary inquiry, or investigation.

**Case Report.** Report containing investigative documents, conclusions of fact, findings, synopses of interviews, exhibit lists, and a case summary.

**Code of Ethics.** A summative declaration that outlines what the Office of Inspector General, Internal Investigations function aspires to and the principles which members will be expected to adhere to.

**Conclusions of Fact.** Final determination about allegations based on investigative activities:

- *Exonerated.* Alleged actions occurred but were lawful and proper.
- *Not Sustained.* There is insufficient evidence to prove or disprove that a violation occurred.
- *Sustained.* There is sufficient evidence to justify a reasonable conclusion that the allegation is true.
- *Unfounded.* The allegation is proved to be false, or there is no credible evidence to support it.

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- *Policy Matter.* The alleged actions occurred but were not addressed by departmental policy.
- *Non-Jurisdictional.* Not within the jurisdiction of the Department of Environmental Protection.
- *Withdrawn.* The cancellation of an investigation, after agreement between management and the Office of Inspector General that the original complaint was filed, but no longer warrants review. (Complainant requests withdrawal or is non-responsive to investigative efforts.)
- *Completed.* Closure for public records requests, preliminary inquiries, investigative reviews, and other investigative activities that do not warrant an investigation.

**Corrective Actions.** Actions such as counseling, training, or reassignment taken by a supervisor in response to a sustained finding.

**Director.** This term, as used in this directive, refers to a Division Director, a Regulatory District Director, or any other member of senior management.

**Disciplinary Actions.** Actions such as oral or written reprimand, reduction in pay, demotion, suspension, or dismissal of an employee as defined in DEP Directive 435.

**Entities Contracting with the State.** For-profit and not-for-profit organizations or businesses having a legal existence, such as corporations or partnerships, as opposed to natural persons, which have entered into a relationship with a state agency to provide for consideration, certain goods or services to the state agency or on behalf of the state agency. The relationship may be evidenced through payment by warrant or purchasing card, contract, purchase order, provider agreement, or other such mutually agreed upon relationship. This definition does not apply to entities which are the subject of audits or investigations conducted pursuant to F.S. sections 112.3187-112.31895 or s. 409.913, or which are otherwise confidential and exempt under s. 119.07.

**Individuals Substantially Affected.** Natural persons who have established a real and sufficiently immediate injury in fact due to the findings, conclusions, or recommendations of a final report of a state agency inspector general, who are the subject of the audit or investigation, and who do not have, or are not currently afforded an existing right to an independent review process. Employees of the state, including Career Service, Probationary, Other Personal Service, Selected Exempt Service, and Senior Management Service employees, are not covered by this definition. This definition also does not cover former employees of the state if the final report of the state agency inspector general relates to matters arising during a former employee's term of state employment. This definition does not apply to persons who are the subject of audits or investigations conducted pursuant to ss. 112.3187-112.31895 or s. 409.913, or which are otherwise confidential and exempt under s. 119.07.

**Inspector General.** Position within the Office of the Secretary with centralized authority for monitoring internal investigations in the department.



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**Internal Investigation.** A formal process by which information and case supporting materials are obtained relevant to allegations, complaints, or violations posed or suspected. Internal investigations are required when the employee is accused of acts of misconduct that may result in suspension, demotion, or dismissal.

**Investigative Review.** A review into an expressed concern which may not identify a specific subject or violation but does identify a program area or project in which there are allegations of questionable actions. An investigative review is often initiated as a preliminary step to answer concerns that are not stated as an allegation or complaint, and to determine if the issue warrants an internal investigation.

**Investigative Teams.** A group of personnel assigned to work on an investigative project. This group would include Office of Inspector General staff members and other external staff, depending on the specific type of investigation or review.

**Legal Sufficiency.** A review of documents for determination of jurisdictional authority; compliance with applicable statutes, regulations, and other governing directives; an examination of case supporting materials for factual sufficiency of findings; or other legal reasons deemed necessary by the Inspector General.

**Other Investigative Activity.** Complaints that do not constitute formal investigations but include reviews or inquiries as determined by the Inspector General.

**Preliminary Inquiry.** An assessment of an allegation or complaint, to determine whether there is credible factual information to reasonably suspect that an administrative violation has occurred. An inquiry may involve some questioning of witnesses, review of relevant documentation, and assessment of credibility.

**Significant Case Plan Updates.** Includes any updates to allegations, potential violations, subject(s), or witnesses.

**Significant Investigative Issue.** Any matter which poses a significant potential impact to the Florida Department of Environmental Protection.

**Sixty-Day Status Memorandum.** A memorandum submitted to the case file by the assigned Investigator(s) and reviewed by the Inspector General documenting the reason(s) the investigative activity on that case continued past sixty (60) days.

**Subject.** An employee against whom an allegation or complaint is directed.

**Supervisory Inquiry.** A factual review of an employee performance matter or minor administrative violation, which can be addressed at a supervisor level. Examples include tardiness, accidents, or rudeness.

**Violation.** Any act of noncompliance with department directives, procedures or rules, of any departmental program, Florida or applicable federal statutes, Florida Administrative Code, or ordinances of any appropriate jurisdiction whether city, county, state, or federal.

**Whistle-blower Violation.** Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty, committed by an employee or agent of an agency or

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independent contractor, which creates and presents a substantial and specific danger to the public's health, safety, and welfare.

**Contact Sources:**

DEP Inspector General  
3900 Commonwealth Boulevard, MS 40  
Tallahassee, Florida 32399  
Telephone: 850-245-3151  
Fax: 850-245-2994  
Website: <https://floridadep.gov/oig>