



SUBJECT POLICY #95 (INVESTIGATIONS)

MEETING DATE FEBRUARY 14, 2017

Forwarded to the Board of Governors on the Recommendation of the President

APPROVED FOR SUBMISSION

Santa J. Ono, President and Vice-Chancellor

For Information

Report Date January 9, 2017

Presented By Hubert Lai, Q.C., University Counsel
Lisa Castle, Vice-President Human Resources

EXECUTIVE SUMMARY

The proposed amendments are intended to ensure the integrity, fairness and effectiveness of investigations conducted at UBC by providing guidance on the principles that apply to these investigations.

INSTITUTIONAL STRATEGIC PRIORITIES SUPPORTED

- Learning
 - Research
 - Innovation
 - Engagement
(Internal / External)
 - International
- or Operational

DESCRIPTION & RATIONALE

Policy #95, Formal Investigations, was created in 1997 to “provide guidance to University officials who commission formal investigations of situations or incidents at UBC.” The Policy was intended to apply in situations where an investigation process has not already been set up by UBC. While the Policy itself does not contain substantive guidance on how to conduct an investigation, it requires the University Counsel/Human Resources to produce advice or written guidelines upon request.

The proposed amendments are intended to provide additional guidance by clarifying the scope of the Policy and outlining the key principles and requirements that must be followed when conducting investigations under the Policy.

Responsible Executives: This has been narrowed from “all executives” to the University Counsel and the Vice President, Human Resources, who are the two executives who are accountable under the Policy for providing advice and written guidelines.

Title: As the word “formal” was unclear, the title of the policy has been simplified to “Investigations”.

Background and Purposes: This part has been amended to clarify that the Policy applies to “any conduct that warrants discipline, restrictions on movements or activities, or any other limitation of the Respondent’s privileges, entitlements, rights, or obligations.”

Part 1 (General): This part has been amended to clarify that this Policy only applies where there are no existing investigation processes in place. It also states that the University Counsel and the Department of Human Resources are responsible for issuing Guidelines for Responding to and Investigating Complaints.

Part 2 (Principles): This part outlines the principles that apply to all investigations, namely the principles of procedural fairness, timeliness, and confidentiality.

Part 3 (Confidentiality and Privacy): This part is intended to ensure that investigations are conducted in a privacy-sensitive manner. Section 3.2 sets out the general rule that individuals are required to maintain confidentiality over personal information they obtain through their participation in an investigation. There are limited exceptions to this rule:

- any participants in the investigation may disclose information about themselves, or information they have obtained outside the investigation;
- UBC employees, contractors, or volunteers may disclose investigation-related information under the circumstances listed in section 3.3; and
- complainants and respondents may disclose the outcome of the investigation that they have received under sections 3.4 and 3.5.

Section 3.3, 3.4 and 3.5 set out the limited circumstances under which the University will share information about the investigation, including a requirement to provide Complainants and Respondents with a copy of the investigation report.

Section 3.6 cautions complainants or respondents that while the Policy does not oblige them to keep the outcome of the investigation confidential, if they choose to disclose such information this may result in a legal claim being made against them by the other party or other individuals (including, for example, a defamation or breach of privacy claim).

After this policy is finalized, the University Counsel and the Department of Human Resources will issue updated Guidelines for Responding to and Investigating Complaints. We will also recommend the amendment of other investigation-related policies with similar confidentiality and privacy provisions, to ensure consistency among the many types of investigations that UBC conducts.

BENEFITS
Learning, Research,
Financial,
Sustainability &
Reputational

These amendments will provide greater certainty about the principles of fairness, timeliness and confidentiality that apply to UBC investigations. This ensures the University complies with its legal obligations to act in accordance with the principles of procedural fairness and protection of privacy. These principles will also be inserted into other UBC investigation policies, to ensure a broad level of consistency.

- CONSULTATION** The University Counsel constituted a Policy Review Committee to consider and advise on the proposed new Policy. The Committee is comprised of the following members:
- Relevant Units,
Internal & External
Constituencies
- Paul Hancock, Legal Counsel, Information and Privacy (Chair)
 - Pauline Brandes, Director, Human Resources - UBC Okanagan
 - Mike Evans, Associate Dean, Research, Graduate, and Post-Doctoral Studies, Irving K. Barber School of Arts & Sciences - UBC Okanagan
 - Lindi Frost, Associate Director, Employee Relations, Human Resources
 - Kathryn Harrison, Acting Dean, Faculty of Arts
 - Allison Matacheskie, Director of Faculty Relations
 - Shirley Nakata, Ombudsperson for Students
 - Kimberly Rutledge, Vice-President External, UBC Students' Union Okanagan
 - Samantha So, Vice-President Academic & University Affairs, Alma Mater Society
 - Janet Teasdale, Managing Director, Student Development and Services

The proposed amendments are unanimously recommended by the members of the Committee.

Subject to input from the Governance Committee and/or the Board, community consultation will be undertaken. This will include publication on the website of the Office of the University Counsel with a call for comments from the broader UBC community, as well as broadcast e-mails via "Heads Up" to heads of academic units, administrative units, student governments, and unions/employee associations from the Okanagan and Vancouver campuses. Due to the significant and complex privacy issues raised by this Policy, UBC will also request feedback from the Office of the Information and Privacy Commissioner (OIPC). All input from the broader UBC community and the OIPC will be considered by the Committee in formulating its final proposal for amendments to the Policy.

Additional Materials

A copy of the current policy is available at <http://universitycounsel.ubc.ca/files/2010/08/policy95.pdf>. Copies of the following additional materials are attached:

1. a clean copy of proposed Policy #95
2. a blacklined copy showing the proposed amendments of Policy #95

Previous Report Date	N/A
Decision	None. This is an information item only.
Action / Follow Up	Subject to any feedback from the Board of Governors, the next step will be to post the proposed amendment of Policy #95 on UBC's website for public comment by the University community. The Policy Review Committee will be asked to consider any comments received. If necessary, revisions may be made before a recommendation is then submitted to the Board to approve the proposed amendment of Policy #95.

 The University of British Columbia Board of Governors	Policy No.: 95	Approval Date: February 1997 Last Revision: XXXXXXXXXXXXXX
	Responsible Executive: University Counsel Vice-President, Human Resources	
Title: <p style="text-align: center;">Investigations</p>		
Background & Purposes: To provide direction to University officials who commission or conduct investigations of situations or incidents at UBC. This Policy only applies to formal processes that may result in discipline, restrictions on movements or activities, or any other limitation of the Respondent's privileges, entitlements, rights, or obligations. This policy does not apply to informal inquiries or fact-finding that are intended to determine whether to commence an investigation.		

1. General

- 1.1. Investigations must be conducted in accordance with the processes established by UBC under policies such as Policy #3, Discrimination and Harassment; Policy #85, Scholarly Integrity; or procedures such as the Student Code of Conduct.
- 1.2. When no such process exists, the authorized UBC representative must conduct Investigations in accordance with the principles and confidentiality requirements set out in this Policy. In addition, they should refer to the non-binding Guidelines for Responding to and Investigating Complaints issued by the University Counsel and the Department of Human Resources. They may seek additional advice from the Office of the University Counsel (for situations/incidents involving students) or the Department of Human Resources (for situations/incidents involving members of faculty or staff).

2. Principles

- 2.1. **Fairness:** Investigations must be conducted in accordance with the principles of procedural fairness. Respondents have a right to know the nature of the allegations against them, to have an opportunity to respond to those allegations, to have those allegations investigated in an unbiased manner, and to receive reasons for any decision that impacts their privileges, entitlements, rights, or obligations.
- 2.2. **Timeliness:** Investigations must be concluded in a timely manner.
- 2.3. **Confidentiality:** Investigations are confidential, and Personal Information must only be disclosed as set out in section 3 of the Policy.

3. Confidentiality and Privacy

- 3.1. In order to protect the integrity, fairness, and effectiveness of Investigations and to ensure compliance with the *Freedom of Information and Protection of Privacy Act*, all participants in an Investigation must act in accordance with the requirements set out below.
- 3.2. Individuals, including the Complainant and Respondent, who have obtained Personal Information through their participation in an Investigation must not disclose this information to anybody except their own personal advisors or representatives, or as required by law. This section does not prevent:
 - 3.2.1. any participants in the Investigation from disclosing information about themselves, or information they have obtained outside the Investigation;
 - 3.2.2. UBC employees, contractors, or volunteers from disclosing Investigation-related information as authorized under section 3.3; or
 - 3.2.3. Complainants and Respondents from disclosing the information they have received under sections 3.4 and 3.5.
- 3.3. UBC will not disclose any Personal Information related to an Investigation except to the extent such disclosure is:
 - 3.3.1. expressly authorized by the affected individual;
 - 3.3.2. to a UBC employee, contractor, or volunteer, if necessary for the performance of that individual's duties;
 - 3.3.3. to a Complainant, Respondent, witness or other participant in the Investigation, if necessary for the conduct of the Investigation;
 - 3.3.4. to a Complainant or Respondent in accordance with sections 3.4 and 3.5;
 - 3.3.5. authorized by the University Counsel for compelling health or safety reasons;
 - 3.3.6. authorized by the University Counsel to correct misleading or inaccurate information if necessary to protect the integrity of the Investigation; or
 - 3.3.7. authorized or required under law or University policy.
- 3.4. For reasons of fairness, Complainants and Respondents will be provided with a copy of the Investigation Report, subject to the removal of Personal Information where required under the *Freedom of Information and Protection of Privacy Act*. If there are multiple Complainants or multiple Respondents, they will only receive the portions of the Investigation Report that are relevant to them.
- 3.5. Complainants do not have the right to know whether UBC has taken any disciplinary action against the Respondent because the disclosure of such information is considered to be an unreasonable invasion of the Respondent's privacy. However, if necessary for health or safety reasons, Complainants will be informed of any relevant restrictions that may have been imposed upon the Respondent's movements or activities.
- 3.6. Section 3.2 does not prevent Complainants and Respondents from disclosing the information they received under sections 3.4 and 3.5. However, Complainants or Respondents who choose to disclose such information are responsible for the consequences of their decisions, and should be aware that the disclosure of such information may result in a legal claim being made against them by the other party or other individuals (including, for example, a defamation or breach of privacy claim).

4. Definitions

- 4.1. **“Complainant”** is an individual who has alleged that they have been directly subjected to Misconduct by a Respondent;
- 4.2. **“Investigation”** is the process undertaken by UBC to ascertain whether a Respondent has engaged in Misconduct;
- 4.3. **“Investigation Report”** sets out the alleged Misconduct and UBC’s findings as to whether this Misconduct occurred;
- 4.4. **“Misconduct”** is any conduct that warrants discipline, restrictions on movements or activities, or any other limitation of the Respondent’s privileges, entitlements, rights, or obligations;
- 4.5. **“Personal Information”** is information about an identifiable individual; and
- 4.6. **“Respondent”** is the person who is the subject of the Investigation.

 The University of British Columbia Board of Governors	Policy No.: 95	Approval Date: February 1997 Last Revision: XXXXXXXXXXXXXXXX
	Responsible Executive: —All-University Counsel Vice-Presidents President, Human Resources	
Title: <p style="text-align: center;">Formal Investigations</p>		
Background & Purposes: To provide <u>guidance/direction</u> to University officials who commission <u>formal or conduct</u> investigations of situations or incidents at UBC. <u>This Policy only applies to formal processes that may result in discipline, restrictions on movements or activities, or any other limitation of the Respondent's privileges, entitlements, rights, or obligations. This policy does not apply to informal inquiries or fact-finding that are intended to determine whether to commence an investigation.</u>		

1. General

1.1. University officials who consider there to be a need to investigate a situation or incident for which there is no existing policy at UBC seek advice on the terms of reference for the investigation and the appropriate level and nature of the investigation. For situations/incidents involving students and members of faculty, University Counsel in the President's Office is consulted. For situations/incidents involving members of staff, the Department of Human Resources is consulted. In all cases, the administrative head of unit keeps the appropriate dean and vice president informed of investigative activity contemplated or undertaken. University Counsel/Human Resources will provide advice and written guidelines as required to heads seeking such advice. Investigations must be conducted in accordance with the processes established by UBC under policies such as Policy #3, Discrimination and Harassment; Policy #85, Scholarly Integrity; or procedures such as the Student Code of Conduct.

1.2. When no such process exists, the authorized UBC representative must conduct Investigations in accordance with the principles and confidentiality requirements set out in this Policy. In addition, they should refer to the non-binding Guidelines for Responding to and Investigating Complaints issued by the University Counsel and the Department of Human Resources. They may seek additional advice from the Office of the University Counsel (for situations/incidents involving students) or the Department of Human Resources (for situations/incidents involving members of faculty or staff).

2. Principles

2.1. **Fairness:** Investigations must be conducted in accordance with the principles of procedural fairness. Respondents have a right to know the nature of the allegations against them, to have an opportunity to respond to those allegations, to have those allegations investigated in an unbiased manner, and to receive reasons for any decision that impacts their privileges, entitlements, rights, or obligations.

2.2. **Timeliness:** Investigations must be concluded in a timely manner.

2.3. Confidentiality: Investigations are confidential, and Personal Information must only be disclosed as set out in section 3 of the Policy.

3. Confidentiality and Privacy

3.1. In order to protect the integrity, fairness, and effectiveness of Investigations and to ensure compliance with the Freedom of Information and Protection of Privacy Act, all participants in an Investigation must act in accordance with the requirements set out below.

3.2. Individuals, including the Complainant and Respondent, who have obtained Personal Information through their participation in an Investigation must not disclose this information to anybody except their own personal advisors or representatives, or as required by law. This section does not prevent:

3.2.1. any participants in the Investigation from disclosing information about themselves, or information they have obtained outside the Investigation;

3.2.2. UBC employees, contractors, or volunteers from disclosing Investigation-related information as authorized under section 3.3; or

3.2.3. Complainants and Respondents from disclosing the information they have received under sections 3.4 and 3.5.

3.3. UBC will not disclose any Personal Information related to an Investigation except to the extent such disclosure is:

3.3.1. expressly authorized by the affected individual;

3.3.2. to a UBC employee, contractor, or volunteer, if necessary for the performance of that individual's duties;

3.3.3. to a Complainant, Respondent, witness or other participant in the Investigation, if necessary for the conduct of the Investigation;

3.3.4. to a Complainant or Respondent in accordance with sections 3.4 and 3.5;

3.3.5. authorized by the University Counsel for compelling health or safety reasons;

3.3.6. authorized by the University Counsel to correct misleading or inaccurate information if necessary to protect the integrity of the Investigation; or

3.3.7. authorized or required under law or University policy.

3.4. For reasons of fairness, Complainants and Respondents will be provided with a copy of the Investigation Report, subject to the removal of Personal Information where required under the Freedom of Information and Protection of Privacy Act. If there are multiple Complainants or multiple Respondents, they will only receive the portions of the Investigation Report that are relevant to them.

3.5. Complainants do not have the right to know whether UBC has taken any disciplinary action against the Respondent because the disclosure of such information is considered to be an unreasonable invasion of the

Respondent's privacy. However, if necessary for health or safety reasons, Complainants will be informed of any relevant restrictions that may have been imposed upon the Respondent's movements or activities.

3.6 Section 3.2 does not prevent Complainants and Respondents from disclosing the information they received under sections 3.4 and 3.5. However, Complainants or Respondents who choose to disclose such information are responsible for the consequences of their decisions, and should be aware that the disclosure of such information may result in a legal claim being made against them by the other party or other individuals (including, for example, a defamation or breach of privacy claim).

4. Definitions

4.1. "Complainant" is an individual who has alleged that they have been directly subjected to Misconduct by a Respondent;

4.2. "Investigation" is the process undertaken by UBC to ascertain whether a Respondent has engaged in Misconduct;

4.3. "Investigation Report" sets out the alleged Misconduct and UBC's findings as to whether this Misconduct occurred;

4.4. "Misconduct" is any conduct that warrants discipline, restrictions on movements or activities, or any other limitation of the Respondent's privileges, entitlements, rights, or obligations;

4.5. "Personal Information" is information about an identifiable individual; and

4.6. "Respondent" is the person who is the subject of the Investigation.

PROCEDURES

Approved: February 1997

Pursuant to Policy #1: Administration of Policies, "Procedures may be amended by the President, provided the new procedures conform to the approved policy. Such amendments are reported at the next meeting of the Board of Governors and are incorporated in the next publication of the UBC Policy and Procedure Handbook."

1. General

- 1.1. ~~University Counsel in the President's Office and the Department of Human Resources provide written guidelines that address issues common to most investigations as well as those identified as uniquely appropriate to the situation. Considerations include:~~
 - 1.1.1. ~~single investigator or more than one person~~
 - 1.1.2. ~~internal/external investigators~~
 - 1.1.3. ~~to whom does the investigator report~~
 - 1.1.4. ~~what is to be investigated—substance checklist method~~
 - 1.1.5. ~~clear and practically doable terms of reference, with advice on fair process, onus, standard of proof and evidence issues~~
 - 1.1.6. ~~opportunity for mediation (can the investigation be suspended partway through?)~~
 - 1.1.7. ~~access to people—personal interviews—confidentiality~~
 - 1.1.8. ~~access to information~~
 - 1.1.9. ~~timing—"report out" date; interim progress reports~~
 - 1.1.10. ~~resources available to them—legal, secretarial, administrative~~
 - 1.1.11. ~~format of report—sections, use of individuals' names in body of report, recommendation section, release of report to affected persons~~
 - 1.1.12. ~~disposition of notes and other documents collected as part of the investigation~~
 - 1.1.13. ~~level of thoroughness needed—examination, re-examination, a person's right to know all charges against him/her, characterization of the facts within the report as confirmed or not~~
 - 1.1.14. ~~is the end result a recommendation, finding, decision? to whom should it be addressed?~~
 - 1.1.15. ~~opportunity for response~~
 - 1.1.16. ~~should the report be considered by a committee or individual, nominated by the President or person commissioning the report, to suggest an appropriate course of action before implementation?~~
 - 1.1.17. ~~if there is a fee involved, or other compensatory arrangement (such as teaching release), this should be worked out and included in the terms of reference if possible.~~