Department of Administrative Services

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**Date:** February 20, 2024

**Topic: Workplace Investigation Advisory Bulletin: Interview Recordings**

**TOPIC BACKGROUND**

The Department of Administrative Services Chief Human Resources Office has published an [Oregon State Government Investigations Toolkit](https://www.oregon.gov/das/HR/Documents/Investigations%20Toolkit%20Final.pdf) to serve as a resource and reference in preparation for workforce investigations. Within the toolkit is guidance for conducting interviews — a compilation of best practices and considerations before interviewing witnesses, complainants and complaint respondents.

The CHRO receives a significant number of inquiries on the topic of recording interviews, and there is an even wider range of opinion. Generally, the state does not discourage the use of recording devices throughout the investigatory process. While statewide policy or the toolkit does not speak directly to the use of recording devices, with this bulletin, the *Workplace* *Investigation Advisory Group* wishes to communicate considerations and acceptable standards for use of recordings within the scope of workplace investigations.

**INTERVIEW RECORDING CONSIDERATIONS AND GUIDANCE**

1. **Should an agency provide recording equipment for investigators?**

Yes. If an agency has an expectation or option of using recording devices for workplace investigations, it is recommended the agency standardize and issue this equipment. It is *strongly* *recommended* that those conducting investigations **not** use personally owned devices (like personal phones) for recording workplace investigation interviews. DAS policy and most agency policies outline prohibitions against using personal IT devices for work-related functions. In addition, these personal devices could become subject to discovery and subpoena.

1. **Should I record case intake/initial reports from complainants?**

Like all guidance in this bulletin, there is no statewide policy mandate to record intake interviews, but there are considerations. A recording offers a memorialized account of an intake interview and is generally supported as prudent guidance. There are, however, a few considerations that may make an initial audio recording of an intake meeting less practical or even less desirable. These include, but are not limited to:

A. Complaint is received by a manager or investigator that was not immediately prepared to conduct a thorough interview or in a setting that is not conducive to an interview.

B. The complainant may be imparting sensitive information and the manager or investigator receiving the information may decide against an initial audio recording to develop a rapport or trust with the complainant.

C. The manager or investigator receiving the initial information is only obtaining a summary from the complainant for assessing eventual assignment of the investigation to a third party.

1. **Should I record witness and subject/respondent interviews?**

Like the intake interview guidance, there is no statewide policy mandate to record witness or subject/respondent interviews. Although it is generally recommended these interviews are recorded, every situation is unique and there may be times that recording an interview is not a trauma-informed approach or does not best support a person who may have been harmed by the alleged actions. This recommendation includes the following considerations:

A. Recordings memorialize statements from individuals that may not be available at later dates or events (court, arbitration or related labor actions).

B. Recordings mitigate interpretation of statements made or questions asked. They also afford a level of ease and recall for the investigator when distilling statements to a report.

C. Recordings allow the interviewer to focus on the conversation with interviewee instead of trying to take copious notes of what’s being said, and they allow the interviewer more latitude to note main points and frame follow-up questions.

C. Recordings offer a level of protection for the investigator if misconduct or procedural claims are made after the interview.

D. Recordings may be subject to public records law and/or may have to be shared with the subject of the investigation or other witnesses.

E. Being recorded while recounting a traumatic experience such as sexual or racial harassment, assault, etc., may keep a witness from participating in an interview due to fear, shame, other forms of emotional distress, concern about the recording being released as a public record or otherwise made public, etc. The suggestions in section 5 provide alternatives to support both the witness and the investigative process in these situations.

1. **What is some suggested language for notification of interview recording? What if a witness elects to record the conversation?**

A. The Oregon Department of Justice offers comprehensive sample language for introducing the topic of recording interviews. A link to that guidance can be found here:

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B. It is never recommended an HR investigator conduct a recorded interview without notifying the employee of the recording’s existence, even when lawfully permissible. \*

C. Recording without consent or notification, even when lawful, may call into question the motives and professionalism of an intended neutral and transparent investigation.

D. If an interviewee elects to record an interview, it is recommended the HR investigator also initiate a recording, if possible.

E. It is not uncommon for either party in an interview to ask for a copy of the recording of their individual interview. Compliance is not required and left to the discretion of the parties, but the sharing of recordings is recommended and can serve to put the involved parties at ease and set the tone of transparency and cooperation.

\**Look for a policy from CHRO in 2024 that covers guidance and expectations regarding the required notices and circumstances of audio and video recordings.*

1. **What are some alternatives to recording to ensure accuracy?**

Advisory group members offer some alternative considerations if an investigator does not wish to audio record their respective interviews:

A. Take very detailed notes and retain the notes in your case file.

B. Have a second person attend the interview to compare recollection and notes or take all the notes while the interviewer asks questions.

C. If taking notes, try not to write while listening to avoid distraction.

D. Read back or share your notes (but retain) with the witness to ensure accuracy of statements.

E. If taking notes, avoid quotation marks unless they appropriately capture the actual language used by a witness.

F. Do not delay the writing of reports after an interview; complete them in an appropriate timeframe to ensure accurate recall.

G. Ensure all appropriate admonishments are documented with time and date (Garrity, notice of recording, management directives, etc.).

1. **What is the best way to store audio recordings and how long do we keep them?**

Ideally, investigation audio recordings would accompany case notes and documents in Workday, however, the application cannot support the inclusion of most audio files at this time (due to file size).

The advisory group recommends storing workplace investigation audio in a confidential drive or similar format that has restricted access for agency personnel that are authorized to view workplace conduct investigation material. The agency retention policy should be considered, along with applicable CBA language, to ensure documents and related audio are not maintained past a desired date — absent material that is retained through a mandate (tort notice, arbitration, judicial notice).

**SUMMARY AND DISCLAIMER**

Although this guidance is intended to be a useful resource, it does not and cannot override federal and state law, administrative rules and collective bargaining agreements. Further, this guide is not a substitute for ongoing agency or professional organization training. While the intent is to periodically update the material to comply with applicable laws, rules, polices and bargaining agreements, it is incumbent upon the user to use the current and effective laws, rules, policies and agreements. Where in conflict, the applicable law, rule, policy or bargaining agreement provision takes precedence over information contained in this advisory bulletin.

Like most investigation decisions, investigators often process decisions and circumstances through a “decision tree” of events. Investigators are encouraged to seek guidance and support when unsure of appropriate actions.