

# Chapter 5

## Report Writing and Case File Documentation

### I. Scope.

This chapter sets forth the policies, procedures, and format for documenting the investigation and for properly organizing the investigative case file.

### II. Administratively Closed Complaints

In cases which are not docketed after the initial screening, the file arrangement of materials as outlined below need not be followed. All administratively closed cases must be appropriately entered into the IMIS system. Additionally, a letter to the complainant, documenting the discussion with the complainant and the reasons why the case is not appropriate for investigation, will be sent by the investigator. A copy of the letter, along with any related documents will be placed in the "Dead" File.

### III. Case File Organization.

A. As part of the case logging process, the investigator will prepare the case file.

B. The investigator will set up the file with the OSHA - 87 form, transmittal documents and administrative materials on the left side. All evidentiary material will go on the right side. Care should be taken to keep all material securely fastened in the file folder to avoid loss or damage.

1. Evidentiary material normally is arranged as follows:
  - a. Copy of the complaint, OSHA-87 form or the appropriate regional intake worksheet
  - b. Documents from IOSHA or other agency enforcement files
  - c. Complainant's signed statement
  - d. Remaining evidence (statements, records, etc., in logical sequence)
  - e. Investigator's rough notes
  - f. Case Activity/Telephone log
  - g. Report of Investigation
  - h. Table of Contents (Exhibit Log)

2. Separation of Materials. Administrative and evidentiary materials will be separated by means of blank paper dividers with numbered index tabs at the right or bottom.
  - a. Administrative documents will be arranged in chronological order, with the newest being on top.
  - b. Evidentiary material tabs (right side of file) will be numbered consecutively using Arabic numerals, with the highest number at the top of the stack.
  - c. A "Table of Contents" sheet identifying all the material by exhibit must be placed on top of the last exhibit on the right side. Nothing should be placed on top of the Contents of Case File sheet.

#### **IV. Documenting the Investigation**

##### **A. Report of Investigation (Formerly called Final Investigative Report or FIR).**

The Report of Investigation (ROI) is the summary of the investigation; and as such is written as a memo from the investigator to the IA. The ROI must contain the information below. The ROI must include citations to specific exhibits in the case file as well as other information necessary to facilitate supervisory review of the case file. The first page of the ROI must set forth the name of the case investigated and list the parties' and their attorneys' names, addresses, phone numbers, fax numbers, and e-mail addresses, but nothing else. See the appendix to this chapter for a sample format for the ROI.

##### **B. ROI Format.** The format for the ROI is as follows:

1. **Background.** Give a brief account of the Complainant's allegations; *e.g.*, "Complainant alleges she was discriminatorily discharged for refusing to work on an unsafe scaffold."
2. **Timeliness.** Indicate the actual date that the complaint was filed and whether or not the filing was timely.
3. **Respondent Defense.** Give a brief account of the Respondent's defense; *e.g.*, "Respondent claims the Complainant was discharged for excessive absenteeism."
4. **Company Information.** Give a brief description of the company to include location of main offices, nature of primary business, etc.
5. **Investigative Findings:** The Investigative Findings section should begin

with descriptive background information on the work site and history of safety and health activity, if any, and flow from there through the events relating to the alleged discrimination. The findings should be written in a narrative, “story telling” format. References should be made to the exhibit numbers of relevant information (and the location of the information within the exhibit, if necessary). References should be given with sufficient frequency to permit a reviewer of the file to easily locate the evidence supporting the findings. All exhibits should be referenced at some point in the Investigative Findings, or their relevance to the case should be questioned.

6. **The Elements of a Violation.** Evaluate the facts presented in the Complainant’s Closing Letter as they relate to the four elements of a violation, following Chapter 3, Section V. Questions of credibility and reliability of evidence should be resolved and a detailed discussion of the essential elements of a violation presented.
  - Protected Activity
  - Respondent Knowledge
  - Adverse Action
  - Nexus
  - Credibility
7. **Witnesses:** List all witnesses interviewed during the course of the investigation. Include the witnesses’ job title or classification, street address, city, state, zip code and a contact phone number.
8. **Other Relevant Information.** Any novel legal or other unusual issues, related complaints, investigator’s assessment of a proposed settlement agreement, or any other relevant consideration in the case may be addressed here. The closing conference should be documented in this section of the ROI.
9. **Recommendation.** This is a concise statement of the investigator’s recommendation for disposition of the case.
10. **Reinstatement.** In meritorious cases, the complainant may wish to be reinstated to his/her original position, or the complainant may no longer want to be employed by his/her former employer or work in his/her original position. In either case, document whether the complainant wants to be reinstated or not.
11. **Back Wages.** In meritorious cases, the complainant may want to back wages. Calculations of those wages should be kept using the Back Wage Calculator supplied by OSHA and a copy of those calculations attached to the ROI.

12. **Interest.** Interest can be paid to the complainant in addition to back wages. Indicate the amount of interest and include the calculations with the ROI.
13. **Punitive Damages.** In merit cases, the rationale for ordering any punitive damages should be concisely stated here.
14. **Expungement.** If the complainant wishes to have any documents expunged from his/her personnel file, indicate which documents here.
15. **Posting.** Posting of a Settlement Agreement should be indicated here.
16. **Other Damages.** Any other damages that are not discussed should be documented here.