



1. **PURPOSE:** This document establishes a Transportation Security Administration (TSA) policy addressing the procedures used to conduct informal administrative inquiries. It sets forth TSA's policies, requirements and procedures for appointing Inquiry Officers and conducting informal administrative inquiries pertaining to TSA operations, including, but not limited to, security violations, loss of property, equipment failure and/or employee conduct. This directive does not alter the responsibility of all TSA employees to identify and report potential security violations, threat information, and criminal activity as specified in the Memorandum from Deputy Administrator Stephen J. McHale regarding the same subject dated November 7, 2003.
2. **SCOPE:** The requirements and procedures set forth in this directive apply to all TSA employees.
3. **AUTHORITIES:** The Aviation and Transportation Security Act, Pub. L. 107-71 (Act).
4. **DEFINITIONS:**
  - A. Findings - A finding is a clear and concise statement of a fact that can be readily deducted or directly established from evidence in the record. Negative findings (e.g., that the evidence does not establish a fact) are appropriate. The number and nature of the findings required depend on the purpose of the inquiry and on the instructions of the appointing authority.
  - B. Conclusion - A conclusion is the position, opinion or judgment the inquiry officer reaches after consideration of all findings.
  - C. Kalkines Warning - Warning given to an employee when the possibility of criminal prosecution has been removed, usually by a declination to prosecute by the Department of Justice, and the employee is required to answer questions relating to the performance of his or her official duties or be subject to disciplinary action.
5. **RESPONSIBILITIES:**
  - A. All personnel at the Chief of Staff and Assistant Administrator levels or above, and Federal Security Directors, or their designees, are authorized to appoint Inquiry Officers as specified in this directive.
  - B. The Office of the Chief Counsel is responsible for providing legal advice to management and Inquiry Officers regarding, among other issues, the appropriateness of appointing Inquiry Officers, the issuance of Kalkines warnings, evidence gathering, and the individual review of cases as specified in section 6.J.4 of this directive.

**TSA MANAGEMENT DIRECTIVE No. 700.2**  
**INFORMAL ADMINISTRATIVE INQUIRIES**

- C. All employees must fully cooperate with informal agency inquiries as specified in section 6.E.6 of this directive.

**6. POLICY & PROCEDURES:**

A. Scope of Inquiries

- (1) Inquiry officers can be appointed to gather information and data on all matters of suspected misconduct, except in the following cases in which the matter must be referred to the TSA Office of Internal Affairs and Program Review (IAPR) for investigation.<sup>1</sup>

All allegations of:

- a. criminal misconduct by an employee of TSA; serious, non-criminal misconduct by a law enforcement officer. "Serious, non-criminal misconduct" is conduct that, if proved, would constitute perjury or material dishonesty, warrant suspension as discipline for a first offense, or result in the loss of law enforcement authority. "Law enforcement officer" is defined as any individual who is authorized to carry a weapon, make arrests, or conduct searches;
- b. non-criminal misconduct by employees at the K pay band level or higher, and all political and Schedule C appointees;
- c. non-criminal misconduct by an employee in the internal affairs division of TSA; and
- d. misuse or improper discharge of a firearm (other than accidental discharge during training, qualifying or practice).

Note: Nothing in this Directive alters TSA employees' responsibility to submit to IAPR, or directly to the Department of Homeland Security Office of Inspector General (DHS/IG), reports of alleged criminal and/or administrative employee misconduct, mismanagement of TSA resources or programs and serious or sensitive incidents that could affect TSA's mission.

- (2) Inquiry Officers may not be appointed to investigate matters that are the subject of a pending IG or IAPR inquiry.
- (3) Without the prior consultation and approval of the TSA Office of Security, INFOSEC Program Manager, Inquiry Officers may not be appointed to inquire into matters regarding the alleged improper handling of classified material.

---

<sup>1</sup> IAPR will investigate alleged misconduct in accordance to the Memorandum of Understanding (MOU) between the Under Secretary for Border and Transportation Security and the Inspector General of the Department of Homeland Security (DHS/IG) dated March 25, 2003.

**TSA MANAGEMENT DIRECTIVE No. 700.2**  
**INFORMAL ADMINISTRATIVE INQUIRIES**

- (4) Without the prior consultation and approval of the Office of Civil Rights (OCR), Inquiry Officers may not be appointed to inquire into allegations of employment discrimination, including sexual harassment, if it is known that a formal or informal complaint related to the matter has been filed with OCR.

**B. Function of Inquiry Officers**

The primary function of Inquiry Officers is to ascertain facts and report them to the appointing authority. The officer's duty is to ascertain and consider the evidence on all sides of each issue, thoroughly and impartially, and to make findings, conclusions and recommendations (as requested or appropriate) that are warranted by the facts and that comply with the instructions of the appointing authority. Generally, upon appointment, the duties of an Inquiry Officer will take priority over the individual's regular daily duties.

**C. Appointment of Inquiry Officers**

- (1) Authority: Inquiry Officers may be appointed in the field by Federal Security Directors or their designees. In Headquarters, Inquiry Officers may be appointed by officials at or above the Chief of Staff and Assistant Administrator levels, or their designees, and may be assigned to address matters at both Headquarters and the field.
- (2) Method of Appointment: The appointment of Inquiry Officers must be in writing and it must clearly specify the purpose and scope of the inquiry and the nature of the findings, conclusions, and recommendations required. The appointment must include a reasonable timeframe for completion of the inquiry, which should not exceed 15 calendar days. The appointment may be initiated by oral direction, if necessary, but must be followed by written direction within five calendar days.
- (3) Who May be Appointed: Persons who, in the opinion of the appointing authority, are best qualified for the duty by reason of their education, training, experience, length of service and temperament. Ideally, the inquiry officer should be senior or equal, but not subordinate, to any person whose conduct or performance may be inquired upon or against whom adverse findings or recommendations may be made, except when the appointing authority determines that it is impracticable because of operational exigencies or the special expertise of the individual appointed. The appointed Inquiry Officer must not have been involved, in any manner, in the situation under inquiry.

**D. Concurrent Investigations**

- (1) An informal inquiry may normally be conducted before, concurrently with, or after an investigation into the same or related matters by another TSA office or Federal agency, with the exception of investigations conducted by other offices as discussed in section 6.A. above. Appointing authorities and Inquiry Officers must ensure that inquiries do not hinder or interfere with any other investigations. In cases of

**TSA MANAGEMENT DIRECTIVE No. 700.2**  
**INFORMAL ADMINISTRATIVE INQUIRIES**

concurrent investigations, Inquiry Officers should coordinate with the other investigators to avoid duplication of effort wherever possible. If available, the results of other investigations may be incorporated into the informal inquiry and considered by the Inquiry Officer. Additionally, an Inquiry Officer should immediately coordinate with agency legal counsel and IAPR if he or she discovers evidence of criminal misconduct.

- (2) Accident investigations take priority over informal administrative inquiries for purposes of access to evidence, witnesses, and the accident scene. Inquiry Officers shall coordinate with the TSA Office of Occupational Safety and Health prior to initiating any informal administrative inquiries concurrent with an accident investigation.

**E. Guidance for Inquiry Officers**

- (1) General Guide for Informal Inquiries: Inquiry Officers will follow the guidance provided in the General Guide for Informal Inquiries, attached as Appendix 1 of this directive.
- (2) Preliminary responsibilities: Before beginning an informal inquiry, an Inquiry Officer shall review all written materials provided by the appointing authority and consult with agency legal counsel, as necessary, to obtain appropriate legal guidance.
- (3) Impartiality: Any person who is aware of facts indicating a lack of impartiality or other qualification on the part of an inquiry officer should present the facts to the appointing authority.
- (4) Counsel: Neither witnesses, nor individuals who might be the subjects of the inquiry, are entitled to be represented by counsel during the inquiry proceedings.
- (5) Rules of evidence and proof of facts: Proceedings under this management directive are administrative, not judicial. Accordingly, anything that in the minds of reasonable persons is relevant and material to an issue may be accepted as evidence. For example, medical records, counseling statements, police reports, and other records may be considered regardless of whether the one who prepared the record is available to give a statement or testify in person. All evidence will be given such weight as circumstances warrant.
- (6) Employee Responsibilities
  - a. All TSA employees must fully cooperate with informal agency inquiries. This includes an obligation to make an affirmation about his/her testimony or written statement and to provide information pertinent to matters under inquiry.

**TSA MANAGEMENT DIRECTIVE No. 700.2**  
**INFORMAL ADMINISTRATIVE INQUIRIES**

- b. No individual will be required to make a statement or produce evidence that would deprive him or her of rights against self-incrimination under the Fifth Amendment of the U.S. Constitution.
  - c. A person refusing to provide information under i. or ii. above must state specifically that the refusal is based on the protection afforded by the Fifth Amendment. The Inquiry Officer will, after consultation with agency legal counsel, decide whether the individual may be ordered to answer.
- (7) Questions of Criminal Exposure: An employee who is reluctant to talk after the Inquiry Officer has explained that there is no foreseeable criminal exposure, or that the Government is willing to forego, after consultation with agency counsel, the use of the employee's answers in any subsequent criminal proceeding relating to the allegations under inquiry, should be given a Kalkines Warning as described in the General Guide for Informal Inquiries, Appendix 1. **NOTE: Kalkines Warnings may never be given without prior coordination with agency counsel and IAPR.**
- (8) Witnesses: Statements of witnesses may be obtained at informal sessions in which they first relate their knowledge and then summarize those statements in writing. A tape recorder may be used to facilitate later preparation of written statements, but the witness must be informed if one is used. The Inquiry Officer should assist the witness in preparing a written statement to avoid inclusion of irrelevant material or the omission of important facts and circumstances. However, care must be taken to ensure that the statement is phrased in the words of the witness. The interviewer must scrupulously avoid coaching the witness or suggesting the existence or nonexistence of material facts. The witness should be asked to read, correct, and sign the final statement.
- (9) Communications with the appointing authority: If, in the course of the inquiry, something causes the Inquiry Officer to believe there may be a need to enlarge, restrict, or terminate the inquiry, the Inquiry Officer should report this situation to the appointing authority with recommendations.

**F. Findings and Conclusions**

- (1) Standard of proof: The findings of inquiries must be supported by a greater weight of evidence than supports a contrary conclusion, that is, evidence which, after considering all evidence presented, points to a particular conclusion as being more credible and probable than any other conclusion. The weight of the evidence is not determined by the number of witnesses or volume of exhibits, but by considering all the evidence and evaluating such factors as witness demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and other indications of veracity.
- (2) Form: Findings should be stated to reflect clearly the relevant facts established by the evidence and the conclusions thereon of the inquiry officer.

**TSA MANAGEMENT DIRECTIVE No. 700.2**  
**INFORMAL ADMINISTRATIVE INQUIRIES**

**G. Recommendations**

- (1) Each recommendation, even a recommendation that no further action be taken, must be consistent with the findings and conclusions. Inquiry Officers should make their recommendations according to their understanding of the rules, regulations, policies, and customs of the agency, guided by their concept of fairness both to the agency and to individuals.
- (2) Inquiry Officers shall not make specific disciplinary action recommendations, but may recommend that the appointing authority consider appropriate disciplinary action.

**H. Report of Inquiry**

- (1) Format: The report will be in writing. Every report should include findings and, unless the instructions of the appointing authority indicate otherwise, conclusions and recommendations. See Appendix 2 a & b for sample formats using very simple fact patterns.
- (2) Exhibits: Every item of evidence offered to or received by the Inquiry Officer should be marked as a separate exhibit.
- (3) Sensitive Security Information (SSI): Inquiry Officers must ensure that SSI is marked and protected.
- (4) Report in need of further information: The appointing authority will notify the Inquiry Officer if further action, such as taking further evidence or making additional findings or recommendations, is required. Such additional proceedings will be conducted under the provisions of the original appointing memorandum, including any modifications.

**I. Abbreviated Procedures**

- (1) Appointment: Appointing officers may, in appropriate circumstances, appoint an Inquiry Officer to conduct an expedited inquiry using abbreviated procedures. Under abbreviated procedures, the appointing officer will instruct the Inquiry Officer to look into a narrow and specific issue and request a prompt response. Appropriate circumstances for abbreviated procedures include incidents where prompt responses to correct serious problems are necessary, or in cases where the incident is minor and a full report and inquiry may not be appropriate.
- (2) Action: The Inquiry Officer will interview witnesses as necessary and prepare a brief summary of the information collected. Individual statements from witnesses need not be collected. The Inquiry Officer will present an oral report to the appointing official, which later must be reduced to writing.

**TSA MANAGEMENT DIRECTIVE No. 700.2**  
**INFORMAL ADMINISTRATIVE INQUIRIES**

- (3) Legal Review: Any legal review required under this directive is not affected by the abbreviated procedures.

**J. Use of Report of Inquiry**

- (1) Generally: It is not required that an inquiry be conducted before disciplinary action can be taken against an individual. However, if an inquiry is conducted, the information obtained, including findings, conclusions and recommendations, may be used in any disciplinary action against an individual.
- (2) Action: The appointing authority is neither bound nor limited by the findings, conclusions, or recommendations of the inquiry. He or she may take action other than that recommended and may consider any relevant information in making a decision, even information that was not considered during the inquiry.
- (3) Final Review: The appointing authority is responsible for reviewing the inquiry report to ensure that all conclusions and recommendations are consistent with the findings of fact. The appointing authority will not consider any findings, conclusions, or recommendations that are outside the purpose and scope of the appointing instructions.
- (4) Legal Review: The appointing authority must seek legal review of all cases involving a death or serious bodily injury, heightened public attention, and those in which findings and recommendations may result in disciplinary action.

**K. Records Disposition**

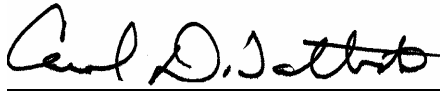
At this time, there is no authority to destroy reports of inquiry. Therefore, these reports must be maintained until TSA obtains an approved records disposition schedule from the National Archives and Records Administration.

**TSA MANAGEMENT DIRECTIVE No. 700.2**  
**INFORMAL ADMINISTRATIVE INQUIRIES**

**7. EFFECTIVE DATE & IMPLEMENTATION:**

This directive is effective immediately upon signature.

**APPROVAL**



Carol DiBattiste  
Chief of Staff

2/23/04  
Date

Filing Instructions:	File code 200.1.1
Effective Date:	February 23, 2004
Review Date:	February 23, 2006
Distribution:	TSA Assistant Administrators, Office Directors
Point of Contact:	Jose (Bill) Hernandez, (571) 227-2686



# **TRANSPORTATION SECURITY ADMINISTRATION (TSA)**

## **GENERAL GUIDE**

### **FOR**

### **INFORMAL**

## **ADMINISTRATIVE INQUIRIES**

**February, 2004**

## **A. INTRODUCTION**

### **1. PURPOSE:**

This guide is intended to assist Inquiry Officers, who have been appointed under the provisions of TSA Management Directive No. 700.2, in conducting timely, thorough, and legally sufficient inquiries. It is designed specifically for informal administrative inquiries. A brief checklist is included at the end of the guide as an attachment. The checklist is designed as a quick reference to be consulted during each stage of the inquiry. The questions in the checklist will ensure that the Inquiry Officer has covered all the basic elements necessary for a sound inquiry.

### **2. DUTIES OF AN INQUIRY OFFICER:** The primary duties of an Inquiry Officer are -

- a. to ascertain and consider the evidence on all sides of an issue;
- b. to be thorough and impartial;
- c. to make findings and recommendations warranted by the facts and comply with the instructions of the appointing authority, and;
- d. to report the findings and recommendations to the appointing authority.

### **3. AUTHORITY:**

- a. TSA Management Directive No. 700.2 sets forth procedures for the conduct of informal administrative inquiries. These inquiries are those that usually have a single Inquiry Officer who conducts interviews and collects evidence.
- b. Informal procedures are not intended to provide a hearing for persons who may have an interest in the subject of the inquiry. Because no respondents are designated in informal procedures, no one is entitled to the rights of a respondent, such as notice of the proceedings, an opportunity to participate, representation by counsel, or the right to call and cross-examine witnesses. The Inquiry Officer may, however, make any relevant findings or recommendations concerning individuals, even where those findings or recommendations are adverse to the individual or individuals concerned.
- c. The Inquiry Officer appointed should be of equal or senior status to any person whose conduct or performance may be inquired upon or against whom adverse findings or recommendations may be made, except when the appointing authority determines that it is impracticable because of operational exigencies.

## B. PRELIMINARY MATTERS

1. **Appointing authority.** Inquiry Officers may be appointed in the field by Federal Security Directors or their designees. In Headquarters, Inquiry Officers may be appointed by officials at or above the Chief of Staff and Assistant Administrator levels, or their designees, and may be assigned to address matters at both Headquarters and the field.
2. **Appointment procedures.** Informal inquiry appointments must be in writing. The appointment orders are usually issued as a memorandum signed by the appointing authority or their designees. The appointment should specify clearly the purpose and scope of the inquiry and the nature of the findings and recommendations required. If the orders are unclear, the Inquiry Officer should seek clarification. The primary purpose of an inquiry is to report on matters that the appointing authority has designated for inquiry. The appointment orders may also contain specific guidance from the appointing authority, which, even though not required by Management Directive No. 700.2, nevertheless must be followed.
3. **Obtaining assistance.** The servicing field counsel or an attorney in the Office of Chief Counsel at Headquarters can provide assistance to an Inquiry Officer at the beginning of and at any time during the inquiry. Inquiry Officers should always seek legal advice as soon as possible after they are informed of this duty and as often as needed while conducting the inquiry. In complex or sensitive inquiries for which a legal review is mandatory, this requirement should be included in the appointment letter. Early coordination with agency legal counsel will allow problems to be resolved before they are identified in the mandatory legal review. Agency legal counsel can assist an Inquiry Officer in framing the issues, identifying the information required, planning the inquiry, and interpreting and analyzing the information obtained. The attorney's role, however, is to provide legal advice and assistance, not to conduct the inquiry or substitute his or her judgment for that of the Inquiry Officer.  
NOTE: Complex or sensitive cases include those involving a death or serious bodily injury, heightened public attention, and those in which findings and recommendations may result in disciplinary action.
4. **Administrative matters.** As soon as the Inquiry Officer receives an appointment, he or she should begin a chronology showing the date, time, and a short description of everything done in connection with the inquiry. The chronology should begin with the date the appointment is received. Inquiry Officers should also record the reason for any unusual delays in processing the case, such as the absence of witnesses. The chronology should be part of the final case file.
5. **Concurrent investigations.**
  - a. An informal inquiry may normally be conducted before, concurrently with, or after an investigation into the same or related matters by another TSA office or Federal agency, with the exception of investigations referred to IAPR or the IG, or as specified in section 6.A. of Management Directive No. 700.2. Appointing authorities and Inquiry Officers

must ensure that inquiries do not hinder or interfere with any other investigations. In cases of concurrent investigations, Inquiry Officers should coordinate with the other investigators to avoid duplication of effort wherever possible. If available, the results of other investigations may be incorporated into the informal inquiry and considered by the Inquiry Officer. Additionally, an Inquiry Officer should immediately coordinate with agency legal counsel and IAPR if he or she discovers evidence of criminal misconduct.

- b. Accident investigations take priority over informal administrative inquiries for purposes of access to evidence, witnesses, and the accident scene. However, a spirit of cooperation is also required to ensure that inquiry officers have equal access to the evidence. Accident investigators may only provide inquiry officers with copies of common source, factual information; for example, technical data, maintenance records, photographs, maps, diagrams, and lists of witness names. The content of witness statements, accident investigation findings, analysis, and recommendations may not be provided to inquiry officers.

## **C. CONDUCTING THE INQUIRY**

### **1. Developing an inquiry plan.**

- a. The Inquiry Officer's primary duty is to gather evidence, and make findings of fact and appropriate recommendations to the appointing authority. Before obtaining information, however, the Inquiry Officer should develop an inquiry plan that consists of (1) an understanding of the facts prompting the inquiry and required to reach a conclusion, and (2) a strategy for obtaining evidence. This should include a list of potential witnesses and a plan for when each witness will be interviewed. The order in which witnesses are interviewed may be important. An effective, efficient method is to interview principal witnesses last. This best prepares the Inquiry Officer to ask all relevant questions and minimizes the need to re-interview these critical witnesses. As the inquiry proceeds, it may be necessary to review and modify the inquiry plan.
- b. The Inquiry Officer should begin the inquiry by identifying the information already available, and determining what additional information will be required before findings and recommendations may be made to the appointing authority. An important part of this effort is identifying the appropriate standards, rules, or procedures that govern the circumstances under inquiry. Agency legal counsel or other functional experts can assist the Inquiry Officer in determining the information that will be required.

### **2. Obtaining documentary and physical evidence.**

- a. The Inquiry Officer may need to collect documentary and physical evidence such as applicable regulations, existing witness statements, accident or police reports, and photographs.<sup>2</sup> This information can save valuable time and effort. Accordingly, the

---

<sup>2</sup> As specified in Section B.5.b., accident investigators are restricted from sharing some documents and information.

Inquiry Officer should obtain this information at the beginning of the inquiry. In some cases, the information will not be readily available, so the request should be made early so the Inquiry Officer may continue to work on other aspects of the inquiry while the request is being processed. The Inquiry Officer should, if possible and appropriate, personally inspect the location of the events being investigated and take photographs, if they will assist the appointing authority.

- b. It is just as important to back findings of no fault, no loss, or no wrongdoing with documentary evidence, as it is to document adverse findings. The report of inquiry must include sufficient documentation to convince the appointing authority and others who may review the inquiry that the finding of no fault, no loss, or no wrongdoing is supported by the evidence.

### **3. Obtaining witness testimony.**

- a. In most cases, witness testimony will be required. Clearly, the best interviews occur face-to-face; but, if necessary, interviews may be conducted by telephone or mail. Because of the preference for face-to-face interviews, telephone and mail interviews should be used only in unusual circumstances. Information obtained telephonically should be documented in a memorandum for record.
- b. Legible handwritten witness statements and/or questions and answers are ordinarily sufficient. If the witness testimony involves technical terms that are not generally known outside the witness's field of expertise, the witness should be asked to define the terms the first time they are used.
- c. Inquiry Officers do not have the authority to subpoena witnesses. However, all TSA employees must fully cooperate with agency informal inquiries. This includes an obligation to take an oath or make an affirmation about his/her testimony or written statement and to testify and provide information pertinent to matters under inquiry.

### **4. Kalkines Warning.**

**(Note: Kalkines Warnings may never be given without prior coordination with agency counsel and IAPR).**

- a. A Kalkines Warning comes into play where there is no foreseeable criminal exposure, or the Government is willing to forego (following the obtaining of the required approvals) the use of the employee's answers in any subsequent criminal proceeding relating to the allegations under inquiry, and the employee is nevertheless reluctant to talk. If it is necessary to issue a Kalkines warning, legal counsel must be consulted prior to issuing the warning. The employee should be advised:
- b. That the purpose of the interview is to ask questions and solicit responses, which may be used to determine whether disciplinary action is warranted.

- c. That the answers given may be used in a disciplinary proceeding, which could result in administrative action against the employee, up to and including dismissal.
- d. That all questions asked regarding the performance of official duties must be answered *fully and truthfully*, and that failure to do so could result in disciplinary action up to and including dismissal.
- e. That no answers given, or information obtained from these statements, may be used against the employee in any subsequent criminal proceeding (except that the employee may be subject to criminal prosecution for any false statements provided in response to interview questions).

**5. Scheduling witness interviews.** The Inquiry Officer will need to determine which witnesses should be interviewed and in what order. Often, information provided by one witness can raise issues that should be discussed with another. Organizing the witness interviews will save time and effort that would otherwise be spent "backtracking" to re-interview prior witnesses concerning information provided by subsequent witnesses. While re-interviewing may be unavoidable in some circumstances, it should be kept to a minimum. The following suggests an approach to organizing witness interviews; it is not mandatory.

- a. When planning who to interview, work from the center of the issue outward. Identify the people who are likely to provide the best information. When conducting the interviews, start with witnesses that will provide all relevant background information and frame the issues. This will allow the interviews of key witnesses to be as complete as possible, avoiding the "backtracking" described above.
- b. Concentrate on those witnesses who would have the most direct knowledge about the events in question. Without unnecessarily disclosing the evidence obtained, attempt to seek information that would support or refute information already obtained from others. In closing an interview, it is appropriate to ask if the witness knows of any other persons who might have useful information or any other information the witness believes may be relevant to the inquiry.
- c. Any information that is relevant should be collected regardless of the source; however, Inquiry Officers should collect the best information available from the most direct source and always identify the source of the exhibits.
- d. It may be necessary or advisable to interview experts having specialized understanding of the subject matter of the inquiry.
- e. At some point, there will be no more witnesses available with relevant and useful information. It is not necessary to interview every member of an office, for example, if only a few people have information relevant to the inquiry. Also, all relevant witnesses do not need to be interviewed if the facts are clearly established and not in dispute. However, the Inquiry Officer must be careful not to prematurely terminate an inquiry because a few witnesses give consistent testimony.

**6. Conducting witness interviews.** Before conducting witness interviews, Inquiry Officers may consult IAPR officials or law enforcement personnel for guidance on interview techniques. The following suggestions may be helpful:

- a. Prepare for the interview. While there is no need to develop scripts for the witness interviews, Inquiry Officers may wish to review the information required and prepare a list of questions or key issues to be covered. This will prevent the Inquiry Officer from missing issues and will maximize the use of the officer's and witness's time. Generally, it is helpful to begin with open-ended questions such as "Can you tell me what happened?" After a general outline of events is developed, follow up with narrow, probing questions, such as "Did you see Mr. X leave the office before or after Mr. Y?" Weaknesses or inconsistencies in testimony can generally be better explored once the general sequence of events has been provided.
- b. Ensure the witness's privacy. Inquiry Officers should conduct the interview in a place that will be free from interruptions and will permit the witness to speak candidly without fear of being overheard. Witnesses should not be subjected to improper questions, unnecessarily harsh and insulting treatment, or unnecessary inquiry into private affairs.
- c. Focus on relevant information. Unless precluded for some reason, the Inquiry Officer should begin the interview by telling the witness about the subject matter of the inquiry. Generally, any evidence that is relevant and useful to the inquiry is permissible. The Inquiry Officer should not permit the witness to get off track on other issues, no matter how important the subject may be to the witness. Information should be material and relevant to the matter under inquiry. Relevancy depends on the circumstances in each case. Compare the following examples:

Example 1: In an inquiry of a loss of government property, the witness's opinions concerning the manager's leadership style normally would not be relevant.

Example 2: In an inquiry of alleged harassment in the office, information on the manager's leadership style might be relevant.

Example 3: In an inquiry of allegations that a manager has abused his authority, the witness's observation of the manager's leadership style would be highly relevant.

- d. Let the witness testify in his or her own words. Inquiry Officers must avoid coaching the witness or suggesting the existence or non-existence of material facts. After the testimony is completed, the Inquiry Officer should assist the witness in preparing a written statement that includes all relevant information, and presents the testimony in a clear and logical fashion. Written testimony also should reflect the witness's own words and be natural. Stilted "police blotter" language is not helpful and detracts from the substance of the testimony.

- e. Tape Recoding. A tape recorder may be used, but the witness should be advised of its use. Additionally, the tape should be safeguarded as a government record, even after the inquiry is completed. If the interviews involved SSI, the tape must be protected accordingly.
  - f. Protect the interview process. In appropriate cases, an Inquiry Officer may direct witnesses not to discuss their statement or testimony with other witnesses or with persons who have no official interest in the proceedings until the inquiry is complete. This precaution is recommended to eliminate possible influence on testimony of witnesses still to be heard. Witnesses, however, are not precluded from discussing matters with counsel.
- 7. Rules of Evidence.** Because an informal inquiry is an administrative and not a judicial action, the rules of evidence normally used in court proceedings do not apply. Therefore, the evidence that may be used is limited by only a few rules.
- a. The information must be relevant and material to the matter or matters under inquiry.
  - b. "Off-the-record" statements are not acceptable.

The Inquiry Officer should consult agency legal counsel if he or she has any questions concerning the applicability of any of these rules.

- 8. Standard of Proof.** Since an inquiry is not a criminal proceeding, there is no requirement that facts and findings be proven beyond a reasonable doubt. Instead, unless another specific directive states otherwise, Management Directive No. 700.2 provides that findings must be supported by "a greater weight of evidence than supports a contrary conclusion." That is, findings should be based on evidence which, after considering all evidence presented, points to a particular conclusion as being more credible and probable than any other conclusion.

## D. CONCLUDING THE INQUIRY

- 1. Preparing Findings, Conclusions and Recommendations.** After all the evidence is collected, the Inquiry Officer must review it and make findings. The Inquiry Officer should consider the evidence thoroughly and impartially, and make findings of fact, conclusions and recommendations that are supported by the facts and comply with the instructions of the appointing authority.
- a. Facts: To the extent possible, the Inquiry Officer should fix dates, places, persons, and events, definitely and accurately. The Inquiry Officer should be able to answer questions such as: What occurred? When did it occur? How did it occur? Who was involved, and to what extent? Exact descriptions and values of any property at issue in the inquiry should be provided.



- b. Findings: A finding is a clear and concise statement that can be deduced from the evidence in the record. In developing findings, Inquiry Officers are permitted to rely on the facts and any reasonable inferences that may be drawn from those facts. In stating findings, Inquiry Officers should refer to the exhibit or exhibits relied upon in making each finding. Findings (including findings of no fault, no loss, or no wrongdoing) must be supported by the documented evidence that will become part of the report. Exhibits should be numbered in the order they are discussed in the findings.
- c. Conclusions: A conclusion is the position, opinion, or judgment the Inquiry Officer reaches after consideration of all findings.
- d. Recommendations: Recommendations should take the form of proposed courses of action consistent with the findings, such as referral of disciplinary action (should not recommend specific discipline), or other corrective action. Recommendations must be supported by the facts and consistent with the findings. Each recommendation should cite the specific findings that support the recommendation.

## **2. Legal Review.**

- a. Management Directive No. 700.2 does not require that all informal inquiries receive legal review. The appointing authority must seek legal review of all complex or sensitive cases and in all cases where findings and recommendations may result in disciplinary action. Nonetheless, appointing authorities are encouraged to obtain legal review of all inquiries. Other specific directives may also require a legal review.
- b. If a legal review is requested or required, it is required before the appointing authority approves the findings and recommendations.

## **E. CHECKLIST FOR INQUIRY OFFICERS**

### **1. Preliminary Matters.**

- Has the appointing authority appointed an appropriate Inquiry Officer based on seniority, availability, experience, and expertise?
- Does the appointment memorandum clearly state the purpose and scope of the inquiry, the points of contact for assistance (if appropriate), and the nature of the findings and recommendations required?
- Has the initial legal briefing, if necessary, been accomplished?

**2. Inquiry Plan.**

- Does the inquiry plan outline the background information that must be gathered, identify the witnesses who must be interviewed, and order the interviews in the most effective manner?
- Does the plan identify witnesses no longer in the agency and address alternative ways of interviewing them?
- Does the plan identify information not immediately available and outline steps to quickly obtain the information?

**3. Conducting the Inquiry.**

- Is the chronology being maintained in sufficient detail to identify causes for unusual delays?
- Is the information collected (witness statements, memorandums for the record of phone conversations, photographs, etc.) being retained and organized?
- Is appropriate coordination with agency legal counsel being accomplished?

**4. Preparing Findings, Conclusions and Recommendations.**

- Is the evidence assembled in a logical and coherent fashion?
- Is SSI identified and protected?
- Are the findings (including findings of no fault, no loss, or no wrongdoing) supported by the evidence? Does each finding cite the exhibits that support it?
- Are the conclusions and recommendations supported by the findings? Does each recommendation cite the findings that support it?
- Are the findings, conclusions and recommendations responsive to the tasking in the appointment memorandum?
- Did the inquiry address all the issues (including systemic breakdowns; failures in supervision, oversight, or leadership; program weaknesses; accountability for errors; and other relevant areas of inquiry) raised directly or indirectly by the appointment?
- Was an appropriate legal review conducted?

**SAMPLE REPORT OF INQUIRY**

**DATE:** \_\_\_\_\_

**FROM:** Peter Colombo,  
Inquiry Officer

**TO:** Appointing Authority

**SUBJECT:** Administrative Inquiry into Fight in the Workplace.

On \_\_\_\_ [date] \_\_\_\_, you appointed me to conduct an administrative inquiry regarding a reported fight between Mr. Smith and Mr. Jones.

Findings:

1. On December 12, 2003, at the North Checkpoint break room, there was a report of a physical confrontation between Security Screeners Smith and Jones.
2. Screeners Gray and Gold were in the break room when the incident occurred.
3. Screener Gray indicated he heard Mr. Smith yell and use profanity but did not see how Mr. Jones ended up on the floor. He said he did not see Mr. Smith kick Mr. Jones. (Statement attached).
4. Screener Gold indicated he heard Mr. Jones say something to Mr. Smith but could not hear what he said. He next saw Mr. Smith get very agitated, use profanity and push Mr. Jones down to the floor. Mr. Gold additionally indicated that while Mr. Jones was still in the ground, Mr. Smith kicked him twice and walked out of the break room. (Statement attached).
5. Mr. Smith was interviewed and he indicated that Mr. Jones insulted him by telling him that he had seen his girlfriend with another man. Mr. Smith said he did not like the comment and lightly pushed Mr. Jones away, but that Mr. Jones tripped and fell. Mr. Smith denied kicking Mr. Jones. (Statement attached).
6. Mr. Jones was interviewed and he indicated that after he made a statement to Mr. Smith, meant as a joke, Mr. Smith "went crazy," started yelling, used profanity and pushed him hard to the floor. Mr. Jones stated that while he was still in the floor, Mr. Smith kicked him three or four times. (Statement attached).

Conclusions:

The evidence suggests that Mr. Jones made a comment to Mr. Smith that caused Mr. Smith to become agitated. Mr. Smith then pushed Mr. Jones with enough force that he fell to the ground. The evidence further indicates that Mr. Smith kicked Mr. Jones when he was on the ground.

Recommendations:

None. A recommendation is not appropriate, as disciplinary action could result of this inquiry.

**SAMPLE REPORT OF INQUIRY**

**DATE:** \_\_\_\_\_

**FROM:** Peter Colombo,  
Inquiry Officer

**TO:** Appointing Authority

**SUBJECT:** Administrative Inquiry into the Significant Number of Claims  
Regarding Property Damage Associated with the X-ray Machines.

On \_\_\_\_ [date] \_\_\_\_, you appointed me to conduct an administrative inquiry regarding the apparent problem with passenger property falling off the X-ray machine tables.

Findings:

1. Between January 1 and November 30, 2003, there were 22 passenger complaints of property damage at this airport, claiming items fell off the X-Ray machine tables. The monetary amounts claimed surpass \$10,000.00.
2. During my observations at three different checkpoints at Airport X, for a total period of six hours in three days, I witnessed two items fall off the X-ray machine tables. One of the items was damaged.
3. I interviewed 12 Security Screeners, four Supervisory Screeners and two Screening Managers. They all indicated they have frequently witnessed passenger items falling off the X-ray machine tables. (Names attached).
4. One of the Security Screeners interviewed, Mr. Smart, indicated he has seen many instances of items falling off the X-Ray machine tables. He suggested we install a metal lip around the X-ray machine tables to prevent items from rolling out. Mr. Smart specifically thought that angle irons would be an economical way to make a two inch lip on the tables and provided a diagram of his idea. (Diagram attached).

Conclusions:

1. Passenger property falls off the X-ray machine tables frequently.
2. The property damage claims related to property falling off the X-ray machine tables each year surpass \$10,000.00 at this airport.
3. Screener Smart's idea appears to be economical – about \$15.00 per table.

Recommendations:

1. We should test Mr. Smart's suggestion on several of the X-ray machine tables. The installation of a two inch metal lip around the end tables is inexpensive and easily modified if necessary.
2. Screener Smart should be recognized for his proposal if it works after the test period.