



# UC San Diego

## Policy & Procedure Manual

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### PERSONNEL – GENERAL

#### Section: 200-14

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### PROTECTION OF WHISTLEBLOWERS FROM RETALIATION UC SAN DIEGO IMPLEMENTING PROCEDURES

#### I. PROCEDURES

##### A. SCOPE

1. These local whistleblower retaliation complaint resolution procedures have been established pursuant to Section III. B.1 of the University of California Whistleblower Protection Policy.
2. These procedures apply to complaints of retaliation or interference filed by employees or applicants for employment who have made or attempted to make a protected disclosure ("whistleblowers") or refused to obey an illegal order, as defined below.

##### B. DEFINITIONS

###### 1. **Interference Complaint**

Any written complaint filed under this policy that includes a Sworn Statement and alleges that a University employee interfered or attempted to interfere with the Complainant's attempt to make a Protected Disclosure.

###### 2. **Respondent**

An employee, including an officer or faculty member, who is alleged in a Retaliation or Interference Complaint to have engaged in prohibited retaliation or Interference.

For all other definitions, please refer to the University of California Policy for Protection of Whistleblowers from Retaliation and Guidelines for Reviewing Retaliation Complaints (Whistleblower Protection Policy).

##### C. AUTHORITY AND RESPONSIBILITIES

###### 1. **Locally Designated Official (LDO)**

The UC San Diego Chief Ethics and Compliance Officer shall act as the Locally Designated Official (LDO) for the San Diego campus. The LDO shall be responsible for administering these procedures. The LDO or his or her designee will determine whether a complaint is eligible for processing under this Policy, ensure that complaints are processed in a timely manner, and issue final decisions.

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2. Retaliation Complaint Officer (RCO)

The LDO may appoint one or more individuals to serve as Retaliation Complaint Officer(s) (RCO). The RCO will be responsible for overseeing the investigation of a complaint under this Policy. The RCO may personally conduct the investigation or may delegate the fact-finding, in whole or in part, to another investigator.

**D. WHERE TO FILE A RETALIATION OR INTERFERENCE COMPLAINT**

1. A retaliation or interference complaint may be filed:

- a. By delivering the complaint in person to the Office of Ethics and Compliance;
- b. By mailing the complaint to the following address:

Judith Bruner  
Chief Ethics & Compliance Officer  
9500 Gilman Drive, MC 0059  
La Jolla, California 92093 - 0059

- c. Or by emailing the complaint to the following email address:  
LDO@UCSD.EDU.

2. A retaliation or interference complaint may instead be filed pursuant to the employee's existing grievance and complaint resolution policies and their respective implementing procedures.

3. At the time of filing, the employee must elect whether the retaliation or interference complaint will be resolved through the procedures set forth in this policy or, instead, pursuant to another available grievance and complaint resolution policy. A single complaint may not be pursued in multiple venues.

**E. FILING REQUIREMENTS FOR RETALIATION AND INTERFERENCE COMPLAINTS**

1. All retaliation and interference complaints must be in writing and include a Sworn Statement.

2. All retaliation and interference complaints must be filed within 12 months of the alleged retaliation or interference. If the complaint alleges a pattern of retaliation or interference, the complaint must be filed within 12 months of the most recent act of retaliation or interference.

3. All retaliation complaints alleging retaliation for having made a Protected Disclosure must:

- a. Allege that the Complainant made a Protected Disclosure and identify (i) what was the Protected Disclosure, (ii) the person(s) to whom each Protected Disclosure was made, and (iii) the approximate date of each Protected Disclosure;
- b. Allege that the Protected Disclosure was made in good faith;
- c. Identify one or more Adverse Personnel Actions that were taken against the Complainant by describing (i) the Adverse Personnel Action(s), (ii) the University employee(s) responsible for each Adverse Personnel Action and (iii) the approximate date on which each Adverse Personnel Action occurred;

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- d. Identify the basis for the Complainant's belief that the Complainant's Protected Disclosure was a contributing factor in the decision to impose the Adverse Personnel Action(s) on the Complainant; and,
  - e. State the remedy or remedies requested.
4. All retaliation complaints alleging retaliation for having refused to obey an Illegal Order must:
- a. Allege that the Complainant refused to obey an illegal order and identify (i) what the alleged Illegal Order was, (ii) the person(s) who gave the order, (iii) the approximate date of the Illegal Order, (iv) what the Complainant did to refuse to obey the Illegal Order and (v) the approximate date when the refusal occurred.
  - b. Identify one or more Adverse Personnel Actions that were taken against the Complainant by describing (i) the Adverse Personnel Action(s), (ii) the University employee(s) responsible for each Adverse Personnel Action and (iii) the approximate date on which each Adverse Personnel Action occurred;
  - c. Identify the basis for the Complainant's belief that the Complainant's refusal to obey the allegedly Illegal Order was a contributing factor in the decision to impose the Adverse Personnel Action(s) on the Complainant; and,
  - d. State the remedy or remedies requested.
5. All Interference Complaints must:
- a. Allege that the Complainant attempted to make a Protected Disclosure and identify (i) what the Complainant intended to disclose, (ii) the efforts the Complainant made to make the disclosure and (iii) the approximate date on which the Complainant intended to make the Protected Disclosure;
  - b. Allege that a University employee engaged in Interference to prevent Complainant from making the Protected Disclosure and identify (i) the University employee who engaged in the Interference, (ii) how the University employee interfered with Complainant's ability to make the Protected Disclosure and (iii) the approximate date the Interference occurred; and,
  - c. State the remedy or remedies requested.

If a Complainant has a representative, the complaint should identify the name, business address, telephone number and email address of the representative.

**F. INITIAL COMPLAINT REVIEW**

- 1. Before being accepted, all retaliation and interference complaints shall be reviewed for compliance with the filing requirements stated in this Policy. Complaints that do not comply with the filing requirements will not be accepted for processing.
- 2. If a complaint is filed without a Sworn Statement, the LDO will ask the Complainant to provide a Sworn Statement within 15 calendar days. If the Complainant fails to timely provide a Sworn Statement, the complaint shall be dismissed. Allegations of retaliation or interference that are dismissed for lack of a Sworn Statement may be reviewed by the LDO (or designee) to determine whether they should be reviewed under the University's Whistleblower Policy.
- 3. If on its face the complaint is untimely, the complaint will be dismissed. If the complaint fails to provide information sufficient to make an initial determination of its

timeliness, the complaint will be returned to the Complainant and the Complainant will have 15 calendar days to amend the complaint to provide this information. If the Complainant fails to timely provide the required information, the complaint will be dismissed.

4. If the complaint meets the filing requirements of this Policy, the Complainant shall be notified in writing that the complaint has been accepted for processing. If only parts of the complaint are accepted, the Complainant shall be notified of which parts have been accepted and which have been dismissed, as well as the reason(s) for the dismissal.
5. If a complaint is dismissed, in whole or in part, for failure to comply with the filing requirements of this Policy, the Complainant may appeal the decision to dismiss by sending a written appeal to the Systemwide LDO within 30 calendar days of the date of the notice of dismissal. The appeal must include all evidence and argument that the Complainant believes supports reversal of the dismissal decision.

#### **G. COMPLAINT PROCESSING**

1. Retaliation and interference complaints filed under applicable grievance or complaint resolution policies as authorized by this Policy and accepted for processing as provided herein shall be handled in accordance with the regular procedures established for such grievance or complaint resolution policies.
2. Retaliation and interference complaints filed with the LDO and accepted for processing as provided herein shall be investigated. The LDO shall assign an RCO to be responsible for the conduct of the investigation. The Complainant and the Respondent shall be informed in writing that the complaint has been accepted for processing, the name of the RCO, and the date on which the complaint is assigned to the RCO for investigation.

#### **H. THE INVESTIGATION BY THE RETALIATION COMPLAINT OFFICER**

1. The investigation of retaliation or interference complaints filed with the LDO shall be conducted in accordance with the Whistleblower Protection Policy.
2. The investigator will review the complaint and other relevant materials submitted by the Complainant. In addition, the investigator may request and review other documents and materials relevant to the allegations. The investigator will, whenever possible, interview the Complainant and the Respondent(s), and conduct such other investigation and inquiry as the investigator deems appropriate to find the facts relevant to the complaint.
3. Before making findings, the investigator will provide the Respondent(s) with an opportunity to respond to the complaint in a written statement, making sure that the Respondent(s) has a reasonable amount of time to prepare this statement. Any written statement submitted by the Respondent(s) shall be included in the final report submitted to the LDO.
4. Witnesses
  - a. The Complainant, the Respondent, and other witnesses reasonably needed for the investigation shall be provided a reasonable amount of paid-time off to participate in interviews conducted by the investigator.
  - b. The Complainant, the Respondent, and other witnesses reasonably needed for the investigation have a duty to cooperate with the investigator. This includes a duty to participate in interviews requested by the investigator, to provide truthful and honest information, and to provide documents and other

materials requested by the investigator. If a dispute arises whether a witness is reasonably needed for the investigation or whether any areas of inquiry posed by the investigator exceed the proper scope of the investigation or may otherwise be improper, the witness may object to the investigator's inquiry by writing to the LDO, who shall promptly resolve the matter in a manner that he or she, in his or her judgment, deems reasonable.

- c. If the Complainant or any Respondent fails or refuses to be interviewed, the investigator will complete the investigation based upon the information available, but the investigator may draw an adverse inference from a Complainant's or Respondent's failure to reasonably cooperate with the investigation.
5. Based on the evidence provided by the Complainant and the Respondent, and such additional evidence gathered by the RCO, the RCO shall create a written report with findings of fact identifying the evidence relied upon in reaching those findings. The RCO shall present the report to the LDO in a time frame to be determined by the LDO, but no later than 6 months from the date the complaint was accepted for processing as a Retaliation Complaint, unless the RCO requests, and the LDO grants, an extension of time, which generally shall not exceed 12 months from the date the complaint was accepted for processing as a complaint. The LDO may return the report to the RCO to answer questions, provide additional details or clarification, or to conduct additional fact-finding as deemed appropriate by the LDO in a time frame to be determined by the LDO. A report shall not be deemed complete until it is finally accepted by the LDO.

#### **I. THE DECISION**

1. After accepting the completed report from the RCO, the LDO shall render a final decision on the complaint in accordance with the Whistleblower Protection Policy, applying the evidentiary standards stated therein.
2. The final decision on all retaliation and interference complaints shall be in writing and shall be sent to the Complainant and to the Respondent(s) no later than 18 months after the complaint was initially accepted for processing.
3. The decision of the LDO on the merits of a complaint is final and may not be further appealed.

#### **J. REMEDIES**

1. If the LDO determines that the Respondent(s) engaged in prohibited retaliation or interference and the Complainant was harmed as a result of such prohibited conduct, then the LDO will forward the final written decision to the appropriate campus authority and request a recommendation on the appropriate remedy or remedies.
2. The appropriate campus authority will consult as necessary and provide the LDO with a written recommendation on remedies within 10 business days, unless the LDO grants an extension of time.
3. After receipt of the written recommendation, the LDO will determine the final remedy or remedies and provide the Complainant a written description of the remedy or remedies to be provided. The LDO will not describe any corrective action that may be taken against the Respondent.

**K. CORRECTIVE ACTION**

1. If the LDO determines that a University employee is responsible for prohibited retaliation or interference, the LDO will forward the final written decision to the appropriate campus authority for determination of appropriate corrective action.
2. The appropriate campus authority will report to the LDO the corrective action imposed.

**L. REFERRAL OF COMPLAINTS TO THE OFFICE OF THE PRESIDENT**

1. When a retaliation or interference complaint filed under this policy alleges that the Chancellor or the LDO engaged in the retaliation or interference that is the subject of the complaint, the LDO (or designee) will request that the Systemwide LDO accept responsibility for handling the complaint.
2. The LDO may request that the Systemwide LDO accept responsibility for handling any complaint filed under this Policy. The request must state the reason(s) why the LDO believes that the complaint should be handled by the Office of the President. The LDO may also request that that Chancellor designate another person to serve as LDO for a particular matter. If the Chancellor agrees, the person designated by the Chancellor shall serve as LDO as provided in this policy.
3. If the Systemwide LDO accepts responsibility for handling any complaint filed under this Policy, it shall proceed under its own processes.

**II. REFERENCES**

- A. [University of California Policy for Protection of Whistleblowers from Retaliation and Guidelines for Reviewing Retaliation Complaints \(Whistleblower Protection Policy\)](#)
- B. [UC San Diego Policy and Procedure Manual \(PPM\) 460-5 Misuse of University Resources](#)

**III. REVISION HISTORY**

08/16/2016 The procedures were reviewed and technical changes made to ensure consistency with the updated UC policy.