



UC San Diego

Policy & Procedure Manual

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POLICE, SECURITY

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REPORTING AND INVESTIGATING IMPROPER GOVERNMENTAL ACTIVITIES, MISUSE OF UNIVERSITY RESOURCES, FRAUD, AND OTHER FINANCIAL IRREGULARITIES

I. REFERENCES

- A. University of California Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (Whistleblower Policy)
<https://policy.ucop.edu/doc/1100171/Whistleblower>
- B. University of California Whistleblower Protection Policy
<https://policy.ucop.edu/doc/1100563/WPP>
- C. UC San Diego Policy and Procedure Manual (PPM) 200-14 Protection of Whistleblowers from Retaliation UC San Diego Implementing Procedure

Contact: UC San Diego Hotline at 877-319-0265, or the UCOP Whistleblower Hotline at 800-403-4744 or via the internet at www.universityofcalifornia.edu/hotline.

II. INTRODUCTION

This policy governs the reporting and investigation of allegations of suspected improper governmental activities and represents the University of California San Diego's (UC San Diego) implementing procedure for the *UC Policy for Reporting and Investigating Allegations of Suspected Improper Governmental Activities* (UC Whistleblower Policy). UC San Diego's responsibilities and procedures for reporting and investigating known or suspected improper governmental activities are presented in this policy.

The overriding objective of the UC Whistleblower Policy is to assure an appropriate University response to any known or suspected impropriety and to create an environment that encourages candor while protecting the rights of all involved parties.

The rights and protections of University employees and applicants for employment when making protected disclosures are addressed in the *UC Whistleblower Protection Policy*. UC San Diego Human Resources/Labor Relations has established a Whistleblower Retaliation Complaint Resolution Procedure at PPM 200-14.

The information or procedures described in this document provide local guidance for implementing the University's Whistleblower Policy on this campus. This document is intended to supplement the University's systemwide Whistleblower Policy. If any provision contradicts the University's systemwide Whistleblower Policy, the systemwide policy controls.

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III. DEFINITIONS

- A.** *Improper Governmental Activity* According to California Government Code Section 8547.2 (c), *improper governmental activity* means:

an activity by a state agency or by an employee that is undertaken in the performance of the employee's duties, undertaken inside a state office, or, if undertaken outside a state office by the employee, directly relates to state government, whether or not that activity is within the scope of his or her employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (2) is in violation of an Executive order of the Governor, a California Rule of Court, or any policy or procedure mandated by the State Administrative Manual or State Contracting Manual, or (3) is economically wasteful, involves gross misconduct, incompetency, or inefficiency.

- B.** *Illegal Order*: According to California Government Code Section 8547.2(b), *an illegal order* means:

a directive to violate or assist in violating a federal, state, or local law, rule, or regulation, or an order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

- C.** *Protected Disclosure*: According to California Government Code Section 8547.2(e), *a protected disclosure* means:

a good faith communication, including a communication based on, or when carrying out, job duties, that discloses or demonstrates an intention to disclose information that may evidence (1) an improper governmental activity or, (2) a condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

- D.** *University Resources*: The term University Resources is defined to include, but not be limited to the following, whether owned by or under the management of the University:

1. Cash and other assets, whether tangible or intangible; real or personal property;
2. Receivables and other rights or claims against third parties;
3. Intellectual property rights;
4. Effort of University personnel and of any non-University entity billing the University for its effort;
5. Facilities and the rights to use University facilities;
6. The University's name; and,
7. University records, including student and patient records.

- E.** *Whistleblower*: A person or entity making a protected disclosure is commonly referred to as a whistleblower. Whistleblowers may be University employees (academic or staff), students, patients, applicants for employment, vendors, contractors, or the general public. The whistleblower's role is as a reporting party. They are not, investigators or finders of fact, nor do they determine the appropriate corrective or remedial action that may be warranted.

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- F. *Locally Designated Official (LDO)*: The UC San Diego executive designated by the Chancellor, with primary responsibility to receive reports of allegations of suspected improper governmental activities. The LDO is the Chief Ethics and Compliance Officer.

IV. ROLES, RIGHTS, AND RESPONSIBILITIES OF WHISTLEBLOWERS, INVESTIGATION PARTICIPANTS, INVESTIGATION SUBJECTS, AND INVESTIGATORS

A. Whistleblowers

1. Whistleblowers frequently make their reports in confidence. Confidentiality of whistleblowers will be maintained to the extent possible within the legitimate needs of law and the investigation. Whistleblowers should be cautioned that their identities might become known for reasons outside the control of the investigators or University/campus administrators. Should the whistleblower self-disclose his/her identity, the University/Campus will no longer be obligated to maintain such confidence.
2. Whistleblowers provide initial complaint information related to a reasonable belief that an improper governmental activity has occurred.
3. While the motivation of a whistleblower is irrelevant to the consideration of the allegations, the intentional filing of a false report is itself an improper governmental act that the Campus has the right upon which to act.
4. Whistleblowers shall refrain from obtaining evidence for which they do not have a right of access. Such improper access may itself be an improper act.
5. Whistleblowers have a responsibility to be candid with the LDO and/or others to whom they make a report of alleged improper governmental activities and shall set forth all known information regarding reported allegations to investigators.
6. Non-anonymous whistleblowers should be prepared to be interviewed by authorized campus investigative units.
7. Anonymous whistleblowers must provide sufficient corroborating evidence to justify the commencement of an investigation. Because of the general inability of investigators to interview anonymous whistleblowers, it may be more difficult to evaluate the credibility of the allegations and, therefore, less likely to cause an investigation to be initiated.
8. Reports of unspecified wrongdoing or broad allegations without evidentiary support may not result in an investigation being undertaken.
9. Whistleblowers are “reporting parties”, not investigators. They are not to act on their own in conducting any investigative activities, nor do they have a right to participate in any investigative activities other than as requested by investigators.
10. A whistleblower’s right to protection from retaliation does not extend immunity for any complicity in the matters that are the subject of the allegations or an ensuing investigation.
11. Whistleblowers have a right to be informed of the outcome of their complaint absent overriding legal or public interest reasons.

B. Investigation Participants

1. Campus employees who are interviewed, asked to provide information or otherwise participate in an investigation have a duty to fully cooperate with authorized investigators.

2. Participants shall refrain from discussing or disclosing the investigation or their testimony with anyone unless agreed to by the investigator. In no case shall the participant discuss with the investigation subject the nature of evidence requested or provided or testimony given to investigators unless agreed to by the investigator.
3. Requests for confidentiality by participants will be honored to the extent possible within the legitimate needs of law and the investigation.
4. Participants are entitled to protection from retaliation for having participated in an investigation.

C. Investigation Subjects

1. Investigation subjects are the focus of investigative fact-finding.
2. The decision to conduct an investigation is not an accusation and is to be treated as a neutral fact-finding process.
3. The outcome of the investigation may or may not support a conclusion that an improper governmental act was committed and, if so, by whom.
4. The identity of a subject should be maintained in confidence to the extent possible.
5. Subjects should normally be informed at the onset of a formal investigation and have opportunities for input during the investigation; however, there are instances when such disclosures are appropriately withheld until a later date. In the event an investigation does not progress from a preliminary status, the subject may never be informed.
6. Unless there are compelling reasons to the contrary, subjects should have the opportunity to respond to material points of evidence to be used in an investigative report.
7. Subjects have a duty to cooperate with investigators to the extent that their cooperation will not compromise self-incrimination protections under state or federal law.
8. Subjects have a responsibility not to interfere with the investigation. Evidence, shall not be withheld, tampered with, or destroyed; and witnesses, shall not be influenced, coached, or intimidated.
9. Subjects have a right to consult with a person or persons of their choice. This may involve representation, including legal representation.
10. Subjects may consult with the University's Office of the General Counsel concerning the investigation. The Office of the General Counsel will provide legal advice to the subject regarding issues in the investigation unless a divergence of interest prevents it from doing so, it being understood that at all times the Office of the General Counsel represents the interests of the University. If legal services are provided to the subject by the Office of the General Counsel, the attorney-client privilege may not be invoked by the subject to prevent disclosure to the campus or University of information obtained by the attorney providing the services. The subject will be advised whenever it appears that a divergence of interest may require the attorney to withdraw from providing such legal services to the subject.

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11. Subjects are free at any time to retain their own counsel to represent them with regard to the investigation and may request the University to pay or reimburse the attorney's fees. Such requests should be directed to the Executive Vice Chancellor for faculty and to the Vice Chancellor and Chief Financial Officer for staff. Requests will be considered consistent with statutory law, case law, and campus and University practice, but UC Policy creates no entitlement to such payments or reimbursements.
12. No allegation of wrongdoing against a subject shall be considered sustained, unless at a minimum, a preponderance of the evidence supports the allegation.
13. Subjects have a right to be informed of the outcome of an investigation. If allegations are not sustained, the subject should be consulted as to whether public disclosure of the investigation results would be in the best interest of the University and the subject.
14. Any disciplinary or corrective action initiated against the subject as a result of an investigation shall be in accordance with the applicable academic or staff or student conduct and disciplinary procedures.

D. Investigators

1. Investigators are those authorized by the University to conduct fact-finding and analysis related to cases of alleged improper governmental activities.
2. Investigators derive their authority and access rights from University policy or The Regents authority when acting within the course and scope of their responsibilities.
3. Investigators are expected to have competency in the area under investigation and technical resources may be drawn upon to augment the skills of the investigators as necessary.
4. All investigators shall be independent and unbiased both in fact and appearance.
5. Investigators have a duty of fairness, objectivity, thoroughness, ethical behavior, and observance of legal and professional standards.
6. Investigations should commence only after preliminary consideration establishes that the allegation, if true, constitutes an improper governmental activity and either:
 - The allegation is accompanied by information specific enough to be investigated; or,
 - The allegation has or directly points to corroborating evidence that can be pursued. Such evidence may be testimonial or documentary.

V. REPORTING ALLEGATIONS OF SUSPECTED IMPROPER GOVERNMENTAL ACTIVITIES

Any person may directly or anonymously report allegations of suspected improper governmental activities. Reports of allegations of suspected improper governmental activities are encouraged to be made in writing so as to assure a clear understanding of the issues raised. However, reports of allegations may also be made orally. Such reports should be factual rather than speculative or conclusive, and contain as much specific information as possible to allow for proper assessment of the nature, extent and urgency of preliminary investigative procedures.

Allegations reported anonymously, without adequate and specific information, could result in the inability to investigate unless the anonymous person makes subsequent contact and provides adequate information.

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Oral or written reports may be directed to the following:

- Reporting employee's immediate supervisor or other appropriate administrator within the operating unit
- UC San Diego, UCOP or State Auditor Hotlines
- LDO or other appropriate campus administrators (e.g. Vice Chancellors and Deans)
- Campus investigative units (e.g. Audit & Management Advisory Services, Labor Relations and Campus Police)

In the interest of confidentiality or when there is a potential conflict of interest or for other reasons, such reports may be made to the LDO or another appropriate campus administrator or investigative unit who may reasonably be expected to review the alleged improper governmental activity. When the alleged improper governmental activity involves the Chancellor or the LDO, such reports should be made to the Systemwide LDO in the UC Office of the President. Reports by persons who are not campus employees should be made to the LDO. Such reports may also be made to another campus official whom the reporting person may reasonably expect to have either responsibility over the affected area or the authority to review the alleged improper governmental activity on behalf of the campus.

The whistleblower may make a direct or anonymous report of suspected improper governmental activity by means of the UC San Diego Hotline at 877-319-0265, or to the UCOP Whistleblower Hotline at 800-403-4744 or via the internet at: www.universityofcalifornia.edu/hotline.

This service, operated independently of the University and the campus, assures anonymity, assigns a case number to each caller, and acts as a contractual intermediary for the institution. Anonymous callers may receive information about the disposition of their reported matters by making subsequent hotline inquiries using the assigned case number. Reports of suspected improper governmental activities can also be made through the California Bureau of State Audits Hotline at 800-952-5665.

VI. REPORTING ALLEGATIONS OF SUSPECTED IMPROPER GOVERNMENTAL ACTIVITIES TO THE LDO

Managers, administrators and employees in supervisory roles who receive a report alleging suspected improper governmental activities shall ensure that the matter is promptly reported to their supervisor, an appropriate University manager and/or the LDO. Such employees are charged with exercising appropriate judgment in determining which matters can be reviewed under their authority and which matters must be referred to a higher level of management or the LDO. Consulting with supervisors, the LDO or other appropriate University management is encouraged and the exercise of judgment should err on the side of upward reporting.

Managers, administrators, and employees in supervisory roles shall report to the LDO any allegations of suspected improper governmental activities – whether received as a protected disclosure, reported by their subordinates in the ordinary course of performing their duties, or discovered in the course of performing their own duties – when any of the following conditions are met:

1. The matter is a significant internal control or policy deficiency that is likely to exist at other units or across the University system.
2. The matter is likely to receive media or other public attention.
3. The matter involves the misuse of campus resources or creates an exposure to a significant liability.
4. The matter has a significant possibility of being the result of a *criminal* act.

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5. The matter involves a significant threat to the health or safety of employees, students or the public.
6. The matter is significant or sensitive for other reasons.

VII. INVESTIGATING ALLEGATIONS OF IMPROPER GOVERNMENTAL ACTIVITIES

A. LDO

While the Chancellor is responsible for implementing The UC Whistleblower Policy at the campus level and for appointing the LDO, overall coordination and implementation of the policy for the campus is delegated to the LDO. The LDO manages all implementing procedures and ensures that UC San Diego effectively responds to the whistleblower complaints. The UC San Diego LDO is primarily responsible for ensuring adequate communication and coordination of allegations of suspected improper governmental activities as follows:

1. Establishes and maintains local implementing procedures and administrative guidelines.
2. Receives reports of allegations of suspected improper governmental activities.
3. Establishes reporting processes and Workgroup records on investigative activities. This includes maintaining a case log.
4. Convenes the Investigations Workgroup on a scheduled and/or ad hoc basis as necessary to address allegations and coordinate investigative activities.
5. Appoints ad hoc members as necessary to the Investigations Workgroup to address particular issues.
6. Convenes and coordinates members of the Investigations Workgroup when allegations are being investigated in the same area by multiple campus investigative units.
7. Receives and reports on the progress and status of investigations.
8. Decides when to consult with selected Investigations Workgroup members rather than convening the entire Investigations Workgroup.
9. Ensures the reporting requirements of the UC Office of the President and campus senior management are met.
10. Chairs UC San Diego Compliance Audit Risk and Ethics (CARE) Committee meetings.
11. Prepares periodic reports of campus investigative activities for the UC San Diego CARE Committee.

In order to promote consistency of management actions, the LDO and the Vice Chancellor of the area or subject being investigated will confer to determine an appropriate course of action, in particular for investigations involving possible criminal activities.

B. Investigations Workgroup

A UC San Diego Investigations Workgroup will be established to ensure coordination and proper reporting of investigations. The LDO will chair the Investigations Workgroup and members will include the Vice Chancellor and Chief Financial Officer; and representatives from the following: Academic Affairs; Academic Senate; Audit &

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Management Advisory Services; Campus Police; Human Resources; Labor Relations; Office for the Prevention of Harassment and Discrimination; Research Affairs and, Health Sciences. Because of the importance, as well as sensitivity/confidentiality of investigative matters, and the need for consistent monitoring of investigative activity the Workgroup members shall generally not re-delegate this responsibility nor send representatives to Workgroup meetings. In addition, specialized expertise may be required and obtained by the LDO on an ad hoc basis for investigation of certain matters.

The purpose and authority of the Investigations Workgroup shall not be construed as to limit or halt investigations undertaken with proper authority granted by law or policy to any campus investigative authority.

The Investigations Workgroup's responsibilities shall include:

1. Assuring proper investigative channels are used according to appropriate expertise and jurisdiction and that the plan to address all reported improper governmental activities is appropriate to the circumstances.
2. Assuring all appropriate UC San Diego officials are apprised of the allegations as necessary.
3. Assuring appropriate reporting occurs to the Office of the President, funding and regulatory agencies, whistleblowers and others as necessary or provided by the Whistleblower policy.
4. Ensuring appropriate resources and expertise are engaged to cause the timely and thorough review of whistleblower reports.
5. Ensuring there are no conflicts of interest on the part of any individual involved in investigating a whistleblower complaint.
6. Coordinating and facilitating communications across investigative channels, as necessary, to ensure coordinated and comprehensive attention to all facets of the matter.
7. Monitoring significant elements and progress of investigations to ensure that allegations are timely and thoroughly addressed.
8. Coordinating and facilitating timely advice on corrective and remedial actions that may be needed to consistently address investigative findings.

C. Campus Review Units

A number of functional units on campus have responsibility for routinely conducting investigations of certain types of allegations of improper governmental activities, and have dedicated resources and expertise for such purposes.

Each unit with investigative authority shall carry out investigative activities in accordance with appropriate laws and established procedures within its discipline and regulatory policies and guidelines.

Campus review units and their specific responsibilities include the following:

Academic Affairs:

- Responsible for investigation of academic personnel matters and complaints of possible violations of the Faculty Code of Conduct.

Academic Senate, Privilege and Tenure Committee:

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- Responsible for hearing cases of disciplinary action commenced by the administration against a member of the Academic Senate for violations of the Faculty Code of Conduct.

Audit & Management Advisory Services:

- Responsible for investigations involving allegations of known or suspected misuse of University resources, including fraud, financial irregularities, significant weaknesses in internal controls, and the financial consequences of other matters under investigation.

Campus Police:

- Responsible for investigations of known or suspected criminal acts within its jurisdiction.
- Responsible for being the conduit of communications with law enforcement agencies and for reporting results of investigations where a crime has probably been committed to the District Attorney or other appropriate law enforcement agencies.

Campus Labor Relations:

- Responsible for investigations of staff personnel matters.

Health Sciences Labor Relations:

- Responsible for investigations of staff personnel matters.

Vice Chancellor Research:

- Responsible for investigating allegations of scientific misconduct.

Corporate Compliance Officer:

- Responsible for investigating clinical billing issues and allegations.

Office for Prevention of Harassment & Discrimination:

- Responsible for investigating allegations of discrimination and/or harassment.

VIII. CAMPUS REPORTING TO THE OFFICE OF THE PRESIDENT AND OTHERS

The LDO will report to the Systemwide LDO with a copy to the General Counsel of The Regents and Vice President-Legal Affairs, any reported allegations of suspected improper activities when any of the following conditions are met:

1. The matter is the result of a significant internal control or policy deficiency that is likely to exist elsewhere at UC San Diego or across the University system.
2. The matter is likely to receive Regental, media or other public attention.
3. The matter involves misuse of University Resources or creates exposure to a liability of at least \$25,000.
4. The matter involves a significant threat to the health and safety of employees, students or the public.
5. The matter alleges an improper activity by the Chancellor, the LDO, or Audit & Management Advisory Services' Director.
6. The matter is judged to be significant or sensitive for other reasons.

Other reporting requirements:

1. If an investigation leads University officials to conclude that a crime has probably been committed, the results of the investigation shall be reported to the District Attorney or

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other appropriate law enforcement agency. The Campus Police should be the conduit for communication with law enforcement agencies unless the Investigations Workgroup in a particular situation determines a different communications strategy.

2. If an investigation leads campus officials to conclude that a faculty member has engaged in conduct that may be a violation of the Faculty Code of Conduct, the results of the investigation shall be reported to appropriate academic personnel governing bodies in accordance with the applicable procedures for faculty conduct and the administration of discipline. Any charges of faculty misconduct brought as a result of an investigation under this policy shall comply with established faculty conduct procedures.
3. Campus Police will receive a copy of communications sent to the Systemwide LDO if the allegation is that a crime may have been committed.
4. The Systemwide LDO will be notified of any matter being reported to external agencies.
5. Campus Risk Management will be notified if the allegations include suspected losses of money, securities or other property. The Director-Risk Management of the University will be notified of such matters when the criteria for reporting to the Senior Vice President – Business and Finance is met.
6. Communicating with the Regents' UC Office of the General Counsel is required before negotiating or entering into any restitution agreement resulting from the findings of an investigation.

IX. REVISION HISTORY

2019-08-14 Title and reference updates.