HOW TO FORMULATE FINDINGS AND RECOMMENDATIONS

PIDA section 9(2)(i) authorizes the DO to report the outcomes of investigations. This includes any findings made, with reasons to support the findings and any recommendations to address the findings.

In order to make a finding, the following must be considered:

- the relevant rules that apply – legislation, regulation, bylaw, policy, procedure, or other internal guidance
- the application of those rules to the facts and evidence collected

A finding of wrongdoing is only one of several findings that may be made during an investigation.

If it is concluded that wrongdoing did not occur, the DO may still make recommendations to address deficiencies noted while investigating. More on this below.

Formulating findings

Findings are factual statements based on careful consideration and analysis of the facts and evidence relevant to the wrongdoing assessment.

Findings can be positive or negative statements. For example:

> *"I find that staff were well-informed about our organization's policies, protocols and practices respecting use of vehicles for personal use."*
>
> Or…
>
> *"I find that staff held differing interpretations of our organization's policies, protocols and practices respecting use of vehicles for personal use which led to differing practices respecting personal use."*

Best practice tip: Include "What is Wrongdoing?" section in the reports

For added clarity, best practice is to dedicate a separate section in the investigation report to address the question: did wrongdoing occur?

Based on evidence gathered and the analysis, clearly state the conclusion(s) about the alleged wrongdoing – did it meet the threshold of wrongdoing or not?

This can be a very succinct finding statement such as,

> *"Based on the evidence, I conclude that on a balance of probabilities, wrongdoing did/did not occur."*
>
> In more complex investigations and decisions the DO may opt to include a brief summary of their analysis.
> For example,
>
> *"Based on the evidence, and in particular the following key evidence:*
>
> - *(Name, key evidence)*
> - *(Name, key evidence)*
> - *(Name, key evidence)*
>
> I conclude that on a balance of probabilities, wrongdoing occurred."

Additional findings

Remember, the DO may make recommendations based on concerns noted during the wrongdoing assessment but which do not rise to the level of wrongdoing. For example, imagine the DO observed that employees have different interpretations of the policy about the use of company vehicles for personal use, which was a factor in the disclosure. The DO may wish to provide analysis of such an observed deficiency, even when making a finding that the threshold

of wrongdoing was not met. This supports the organization's efforts towards continuous improvement.

Formulating recommendations

Recommendations are intended to remedy wrongdoings found, and other findings related to the wrongdoing assessment, and/or prevent future wrongdoing. Without recommendations, the report has less chance of achieving positive change.

- Recommendations should be specific, solution-focused and targeted:
  - Specify the actions and state which part of the organization should be accountable for implementing them.
  - Focus on one issue per recommendation.
  - For clarity, list all required actions for each recommendation in bullet or list format.
  - Include a level of detail in the recommendation that helps the intended audience interpret and implement the actions correctly.
- Recommendations should be measurable and root-cause responsive:
  - Ensure recommendations are sufficiently focused so that implementation can be measured.
  - Recommendations should be based on a careful analysis of the source of the problem identified in the report.
  - Avoid recommendations that address only the symptoms of a problem, rather than the underlying structural factors.
  - Identify any gaps in the rules that allowed the problem to occur, and draft a recommendation that is aimed at addressing those gaps.
- Recommendations should be achievable:
  - Ensure recommendations are realistic and therefore operationally achievable.
  - It may be necessary to make recommendations that require additional resources.
- Recommendations should clearly flow from the analysis and logic in the report.
- Recommendations should be time-bound, and if making multiple recommendations, prioritized.
- Consider whether interim recommendations may be necessary, to address the wrongdoing while full implementation of recommendations is underway.

What kinds of recommendations can a DO make?

Under PIDA, the DO has discretion to recommend:

- Changes to existing rules or programs and services
- New rules or programs and services
- Apology
- Change in practice
- Monetary remedy – refund, other
- Training
- Mediation
- Any other reasonable action to address the wrongdoing, for example "Initiate an investigation into employee X's conduct in this matter".

Recommendation drafting checklist

General considerations:

- Decide what type of recommendation the DO is making. Have all relevant considerations been addressed?
- Use plain, easy to understand language

Here is a handy checklist to help formulate recommendations that are more likely to achieve the desired change:

- ☐ Does the recommendation clearly state which part of the organization is responsible to act?
- ☐ Does each recommendation address only one issue?
  - Are separate actions related to that issue set out in bullet points?
- ☐ Does the recommendation contain enough detail to understand and implement it?
- ☐ Can implementation of the recommendation be measured?
  - Does the recommendation use any vague or subjective language?
- ☐ Does the recommendation address the root cause of the problem?
- ☐ Is the recommendation responsive to the applicable rules and procedural framework?
- ☐ Are interim recommendations necessary?
- ☐ Are the recommendations clearly connected to key facts and conclusions in the report?
- ☐ Do the recommendations clearly emerge from the analysis in the report?
- ☐ Is it necessary to establish a time frame for implementation in the recommendation?
  - If establishing a time-frame:
    - Has the sequence of implementation of related recommendations been considered?
    - What is the relative importance of the recommendations? Should some recommendations be implemented immediately?
    - Are any recommendations interdependent and if so, do time frames reflect this?
- ☐ Have the potential consequences of implementing recommendations been considered, addressed or acknowledged? For example, there may be a time or budget impact to recommendations.

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