


**OFFICE OF INSPECTOR GENERAL**

**MEMORANDUM**

TO: Nicola Goren  
Acting Chief Executive Officer

CC: Frank Trinity  
General Counsel

FROM: Gerald Walpin  
Inspector General 

DATE: January 29, 2009

SUBJECT: EEOC Procedures

I write to reply to your Memorandum of January 26, 2009, in which you responded to concerns that I have expressed regarding the Corporation's processing of EEO complaints. I appreciate your following up with OCRI regarding the concerns that I expressed with respect to the handling of an ongoing investigation. Even so, I am afraid that treating my concerns as relating solely to the ongoing investigation gives them short shrift; the concerns that I expressed have systemic implications that I hope that you and the Corporation will address. While, of necessity, my comments about the EEO complaint procedure were based on my Office's experience in the outstanding complaint against my Office, some of my staff, and me – I had no prior experience and therefore no knowledge of the procedure – I made it clear that my comments were aimed at future EEO complaints, whether against the Corporation or my Office, and were not intended to affect the currently outstanding complaint against my Office.

Because some of the confusion may stem from the fact that I am generalizing from a single experience with a process that has had its problems and is not complete, I will attempt to clarify the systemic aspects of my concerns.

In my Memorandum of January 6, 2009, I pointed out that the agency head has ultimate responsibility for the agency's processing of EEO complaints. I do not question the Corporation's decision to retain investigators with appropriate qualifications to do the investigation and make recommendations to OCRI. It is, rather, the instructions (or lack thereof) to the investigators, the apparent absence of enunciated procedures ensuring due process and efficient investigative methods, and the role (or lack thereof) of management in the process that concern me.



Before addressing those concerns, I am certain that you would agree that the goal of the process should be to get to the bottom of the facts, not to vindicate management nor pave the way for an employee's lawsuit. As I wrote in my Memorandum of January 6, 2009, management has an undeniable interest in fair, impartial, and thorough investigations, no matter how they turn out. If corrective action is warranted, management has an undeniable interest in taking that action as soon as appropriately possible. Conversely, if management's decision was justified, that decision should be vigorously defended.

Indeed, given the training and experience of managers and the availability of advice from counsel and the Office of Human Capital, management might well presume that its decisions are defensible and not discriminatory. That does not mean that there may not be exceptions. Nor should the process be weighted against the complainant; neither should the process be weighted for the complainant. Rather, it means that the process should be fair and complete to allow for the defense of defensible decisions and for a complainant with a meritorious claim to be able to sustain it.

In that regard,

1. Defensible decisions can be defended by giving management the right to state its position just as the employee does. That can be done by having the investigator present a list of questions to both parties and ask for a response in writing to those questions. The investigator should also allow both sides to suggest questions each believes to be relevant to a determination for the investigator to ask if he/she believes them warranted. That could remedy the concern that I expressed that a key fact relating to the allegations against me was not elicited by the investigator or addressed in the investigator's questioning of the complainant.

Then, after review of both parties' submissions, the investigator might choose to interview key persons, ask additional questions, or ask for the production of documents.

You state that OCRI will review the entire record for fairness and completeness, and, if it concludes that the record is deficient, it will order a supplemental investigation. It is far more efficient to make a complete record from the start, and the process should be changed to accomplish that. That can be accomplished by setting forth required "fairness" procedures for an investigator to follow.

2. I expressed concern about the fact that, while the respondent received the assistance of counsel in drafting her affidavit, the investigator limited OIG to the draft that she prepared, which was flawed. I believe that the process should be balanced and that, if one side gets the assistance of counsel, so should the other. That can be accomplished if the process outlined in paragraph 1 above is followed. In any event, though, the procedures should be modified to require equal treatment by the investigator.

3. I expressed concern about the investigator's destruction of the tapes of interviews of OIG personnel, and, presumably, although we do not know for certain, of interviews of the complainant. The procedures should be modified to require that the investigator preserve all physical evidence, including any and all audio tapes.

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The bottom line of OIG's interest in the Corporation's EEO procedures is (1) the clear reticence of the CEO to perform his/her supervisory role over the process, and (2) the absence of fair due process procedural instructions to investigators – not the outcome of any specific EEO complaint.