

San Diego Fire-Rescue Department

Supervisor's Investigatory Meeting – Process Summary

Fire-Rescue's intent is to ensure that all rights under the Firefighters Procedural Bill of Rights Act (FBOR) are provided to the Subject(s) of a Supervisor's investigation before and during a Supervisor's Investigatory Meeting (SIM).

1. Supervisor(s) to Conduct the Interview

- a. **Best Practice:** Fire-Rescue may utilize a single supervisor or two supervisors (2 BCs or a BC and Captain) at Department's discretion, to conduct the interview(s). If utilizing two supervisors, one person to ask the questions and the other to serve as a witness to the conversation.
 - i. Standard practice will be for a single Supervisor to conduct the interview line of questioning.
 - ii. **Note:** Under FBOR, no more than two individuals can ask questions during the interview.

2. Full FBOR Rights

- a. Notification Rights
 - i. **Standard Practice:** Supervisor should provide notice of the interview to a Subject employee a minimum of **36 consecutive hours** beforehand, no sooner than next scheduled shift, to allow a reasonable amount of time for the Subject to obtain and consult with a representative.
 - ii. Subject must be advised of the "nature of the investigation".
 - iii. Subject must be advised of the name, rank, and command of the individual in charge of the interview and all individuals who will be present.
- b. Right to Representation
 - i. A Subject has the right to be represented by someone of their choice, with some limitations. The representative must be reasonably available to represent the Subject at a reasonably scheduled time. If representative of choice is not available, plan to delay interview for another shift or two.
 - ii. **From DiD:** "You must give the employee a 'reasonable' amount of time to secure representation. However, obtaining representation is the right and responsibility of the employee. You are not compelled to unreasonably delay the progress of the investigation until the employee obtains such representation."

San Diego Fire-Rescue Department

Supervisor's Investigatory Meeting – Process Summary

- c. Supervisor prepares and issues the following:
 - i. Notice of Supervisor's Investigatory Meeting
 - ii. Admonishment
 - iii. Waiver (if representation rights are waived by Subject)

3. No In-Essence Notes Required

4. Supervisor's discretion regarding recording the Interview

- a. Best Practice: If interview is being conducted by a single supervisor, the interview should be recorded. If requested, be prepared to share the recording with the employee within a reasonable amount of time.
- b. Per FBOR, if the Subject requests to record the interview, they are entitled to record.
 - i. Best Practice: If EE requests to record the interview, best practice is for the Department to also record the interview.

5. Conducting the Interview

- a. FBOR Requirements:
 - i. Interview must be conducted at a reasonable hour, while Subject employee is on duty.
 - ii. No use of abusive techniques:
 - 1. Length of interview must be reasonable;
 - 2. Subject must be allowed to attend to physical necessities;
 - 3. No abusive language, promises, or threats.

6. Report of Investigatory Findings & Recommendation

- a. Created by Supervisor and passed up the Chain of Command to the appropriate Division Head.
- b. Eliminates the need for a full Fact-Finding Investigation Report, but still **addresses the findings** of the case and offers **a recommendation** of appropriate department action through the proper Chain of Command.

San Diego Fire-Rescue Department

Supervisor's Investigatory Meeting – Process Summary

A Supervisor's Investigation may be appropriate when:

1. Initial information leads a Supervisor to believe the incident and gathering of facts will not be overly complex, or
2. It is determined that it is necessary or beneficial to engage those involved at a time more proximal to when the actual event occurred, or prior to an employee going on days off, or
3. The Subject comes forward on their own or is prepared to be forthcoming with information related to the incident, or
4. The number of Subjects and/or Witnesses is determined to be manageable for the Supervisor(s) conducting the interview(s).

A Supervisor's Investigation may not be appropriate if:

1. Criminal conduct is suspected, or
2. Sexual harassment or any other significant misconduct is suspected, or
3. An EEO Policy violation is suspected, or
4. Multiple Subjects and/or Witnesses are involved, such that conducting interviews is not reasonably manageable for the Supervisor(s) conducting the interviews.

Important Notes:

- Self-Incrimination and Grant of Immunity (Criminal Prosecution):
 - o During an interview, if previously unknown and unsuspected possible criminal conduct of the employee is discovered, stop the interview and reach out to PSU for consultation to ensure compliance with FBOR.
 - o Per FBOR: When a Subject employee is being interviewed, and before the Subject may be compelled to respond to incriminating questions, he or she must be provided a formal grant of immunity from criminal prosecution, in writing. Subject to the grant of immunity, if the Subject refuses to respond to the questions, the Subject must be informed that the failure to answer questions may result in punitive action. (Cal. Gov't Code §3253(e)(1).)