

## **PROCEDURES FOR THE HANDLING OF AN ALLEGATION OF RETALIATION**

### **Designation of Retaliation Complaint Officer**

The Chief Administrative Officer shall designate the individual who will serve as the Retaliation Complaint Officer (RCO).

### **Submission of Retaliation Complaint**

A complaint alleging retaliation must be submitted in writing by the Complainant to the [Office of Institutional Compliance and Risk Services](#) (OICRS), addressed to the RCO. The complaint must contain the following information (mandatory information):

- Name of Complainant;
- Contact information, including address, telephone, and e-mail address, if applicable;
- Detailed description of the protected activity the Complainant engaged in and alleged to be the basis for the retaliation;
- Name of the person(s) directly responsible for the alleged retaliation (Respondent);
- Date and place of the alleged retaliation;
- Nature of the alleged retaliation;
- Detailed description of the specific conduct that is alleged to constitute retaliation;
- Copies of documents pertaining to the alleged retaliation;
- Names of any witnesses and what information they can provide related to the alleged retaliation;
- Corrective action requested by the Complainant;
- Complainant's signature and date of filing; and
- Any other relevant information.

A complete written complaint must be filed with OICRS within thirty (30) calendar days of the occurrence of the alleged retaliation.

The following communications are examples of what does not constitute a retaliation complaint and will not be investigated or resolved pursuant to the retaliation complaint resolution process:

- Oral allegations;
- Anonymous communications;
- Courtesy copies of correspondence or a complaint filed with others;
- Inquiries that seek advice or information only; and
- Pre-complaint consultations and informal resolution activities.

### **Acknowledgement and Notification of Receipt of Complaint**

Within five (5) business days after receipt of a written retaliation complaint, OICRS will send the Complainant a brief acknowledgment of receipt of the complaint. The acknowledgment letter will include a copy of these procedures.

Also within five (5) business days after receipt of a written retaliation complaint, OICRS shall inform the Appropriate Administrative Official (AAO) of the applicable operational area, in writing, of the allegation to an extent in which the investigation is not compromised. If there is a conflict with the initial AAO, or the initial AAO is the subject of the investigation, an alternate AAO will be assigned.

### **Complaint Evaluation**

All written and signed complaints will be evaluated by the RCO to determine if an investigation will be conducted as outlined in the **Investigation Process and Findings** section of these procedures. The RCO may determine not to proceed with a complaint investigation for any of the following reasons:

- The complaint was not submitted within thirty (30) calendar days of the occurrence of the alleged retaliation;
- The complaint fails to identify activity, that if true, demonstrates unlawful retaliation against the Complainant by the Respondent;
- All mandatory information, as listed in the **Submission of Retaliation Complaint** section of these procedures, is not included;
- The Complainant withdraws the complaint;
- Another complaint resolution process is more appropriate; or
- Litigation or another complaint process is pending.

If the RCO determines not to proceed with an investigation, he or she will send a notification letter to the Complainant stating the reason for that determination; within sixty (60) business days from the receipt of the complaint. The notification letter will also include a statement informing the Complainant that they may appeal the determination not to proceed. The appeal must be delivered to the AAO whom was noted in the letter at: One UTSA Circle, San Antonio, TX 78249, within seven (7) business days after the Complainant's receipt of the notification letter. The appeal must be in writing and signed by the Complainant and must state why the decision not to proceed with an investigation of the retaliation complaint was in error.

The AAO will make a decision and respond within twenty (20) business days of receipt of the appeal. If the decision to dismiss is upheld, that decision is final. If the decision to dismiss is overturned, the AAO will designate an alternate RCO. The alternate RCO will conduct the investigation in accordance with the procedures outlined in **Investigative Process and Findings** section of these procedures.

### **Investigative Process and Findings**

If it is determined that the institution will proceed with a retaliation complaint investigation, the RCO or their designee (Investigator), should interview the Complainant, the Respondent, and any other persons whom the Investigator determines may have pertinent factual information related to the retaliation complaint. The Investigator should also gather and examine relevant documents. Facts will be considered on the basis of what is reasonable to persons of ordinary sensitivity and not on the basis of a particular sensitivity or reaction of an individual. Findings will be based on the totality of circumstances surrounding the alleged retaliation.

During the retaliation complaint investigation process, the Respondent will be given an opportunity to provide a statement regarding the issues raised in the complaint. In addition, the Complainant and the Respondent will provide the Investigator with all documents and/or statements relied upon regarding the issues raised in the complaint.

Upon request, the RCO or Investigator, shall inform the Complainant, Respondent and/or the AAO, the status of the investigation. However, specific details of the investigation will not be released to the involved parties until the investigation is complete and the report (statement of findings) is issued.

### **Special note regarding burden of proof:**

While the scope of UTS 131 and UTSA HOP 3.04 are not identical to Texas Government Code Chapter 554 **Protection for Reporting Violations of Law**, the Texas Government Code provision does provide a useful framework for the analysis of retaliation claims. Under Section 554.004 – *Burden of Proof; Presumption; Affirmative Defense*, “a public employee who sues under this chapter has the burden of proof, except that if the suspension or termination of... a public employee occurs not later than the 90<sup>th</sup> (calendar) day after the date on which the employee reports a violation of law, the suspension, termination... is presumed, subject to rebuttal, to be because the employee made the report.” As such, UTSA will utilize this framework during retaliation investigations, provided that one of the following, concerning the violation of a law, rule, policy or procedure, occurred:

- The complainant made a good faith allegation;
- The complainant made an allegation of inadequate institutional response; or,
- The complainant cooperated in good faith with an investigation.

### **Report of Findings and Recommendation: Final Determination**

The investigator will provide the statement of findings (statement), along with copies of relevant documents, and relevant physical evidence to the AAO within sixty (60) business days of receipt of the Complainant’s written and signed complaint, unless unusual

circumstances require more time. A copy of the statement will also be provided to the Complainant and the Respondent whom will have seven (7) business days from the date of the statement to submit comments, in writing, regarding the findings in the statement to the AAO for review and consideration. Comments must be delivered to the AAO whom was noted in the report at: One UTSA Circle, San Antonio, TX 78249.

Within fifteen (15) business days after the end of the comment period, the AAO shall take one of the following actions:

- a) Return the complaint to the RCO and request further investigation into the complaint;
- b) Dismiss the complaint due to no findings of retaliation; or
- c) Find that the non-retaliation provisions of this policy were violated, in which event the AAO, following consultation with the RCO or other knowledgeable person(s) as appropriate, shall determine disciplinary or corrective actions to be taken.

The AAO shall notify in writing the Complainant and the Respondent of their final decision. In matters where a final determination has been made, the AAO shall attach a copy of the statement to the notification. The RCO shall retain copies of the letter, the statement, and relevant documents in accordance with the institution's records retention schedule.

All determinations made by the AAO will be considered final.

### **Substitution of Officers**

If a retaliation complaint is directed against an official who would otherwise act on the complaint, the function assigned to that official in these procedures will be delegated by the President of the University, the Chancellor, or the Chairman of the Board of Regents, as appropriate, to another person.