

The Fact-Finding Mission

Once suspected fraud is detected, please follow the steps below to complete the fact-finding mission.

- I. Reporting** – Complete an OPI-32 Incident Report Form within 5 days of discovery, and mail it to the Office of Investigations at:

**Texas Workforce Commission
Office of Investigations
101 East 15th Street, Room 210
Austin, Texas 78778-0001**

Or, you can **fax** the OPI-32 to **512-936-3280**.

- II. Fact-Finding** – When the OPI-32 is received by the Office of Investigations, the Board will receive a confirmation letter indicating the case number that has been assigned with general instructions/guidance on conducting the fact-finding. The instructions given for fact-finding will be in accordance with Anti-Fraud Training sessions 101, 102, and Identity Theft Awareness. (These training sessions can be provided to your Board and contractor staff by e-mailing bill.mccrea@twc.state.tx.us. Simply tell him you are requesting Anti-Fraud Training. Your assigned TWC Investigator will then contact you to make arrangements for the time and place of the training.)

- A. Some Preliminary Questions** – The fact finder (investigator) should consider these questions during the OPI-32 process and prior to beginning the fact-finding.

What are valid fact-finding issues?

Fraud/program abuse
Violation of policies/procedures

What's the nature of the issue?

Administrative/management issue involving policy/procedure
Violation of law
Single incident or repeated pattern of behavior
How many people involved?

What's the source? Is it credible?

Predication – is there a valid reason to fact find?
Anonymous tips – discuss with your ED or legal counsel before pursuing
Audit results – referrals from your auditing/monitoring staff
Employee complaints – are they personal feuds?

Informant/witness request for confidentiality

Never promise complete confidentiality/anonymity – only what the law allows
(*see*: THE FREEDOM OF INFORMATION ACT, 5 U.S.C. §552)

Litigation discovery and open records requests are possible

B. Planning for the fact-finding – These questions steer the direction of the fact-finding mission:

What is the focus of the fact-finding?

What law/policy/procedure has allegedly been violated?

Who should fact-find?

Who has the experience/expertise to conduct the fact-finding?

Who will be perceived as objective?

What expert assistance may be needed?

Legal counsel

Auditor

Program specialist

Professional investigator

HR specialist

Who should be interviewed? And, in what order should the witnesses be interviewed?

Informant/complainant

All potential witnesses

The accused

What questions should be asked?

Who, what, when, where, why, and how?

What were the complainant's feelings?

What remedy is the complainant seeking?

Should interim actions be taken?

With allegations of criminal misconduct

With allegations of sexual harassment/violence involving touching, battery, rape

Suspension with pay

Suspension notice to the employee(s) being suspended

What should coworkers be told?

C. Conducting the fact-finding – These are common elements of a fact-finding mission:

Review relevant documents

- Identification – birth certificates, Social Security cards, driver licenses
- Eligibility applications
- Wage verifications
- School or training documents
- Child care attendance records
- SACC delivery reports
- Written statements and reports of interview
- E-mail and computer files
- Other pertinent documents

Interview all witnesses

- Interview all witnesses named by both the complainant and the accused
- Interview anyone else found to have relevant information
- Stress the need for confidentiality by all, but make no promises
- Advise of retaliation policy – foster feelings of security

Interview the subject of the allegation(s)

- Explain the issue(s)
- Advise about confidentiality
- Warn against retaliation
- Ask open-ended questions first
- Don't begin with hostile or "tough" questions
- Don't forget to ask, "Did you do it?"
- If the accused makes a claim of being "framed," ask for details

Note significant discrepancies

- Review any new evidence
- Conduct follow-up interviews for corroboration, if necessary

Analyze facts and determine findings

- Evaluate documentary and physical evidence
- Evaluate any circumstantial evidence
- Evaluate credibility, motives, histories, and relationships
- It's OK to conclude that there is insufficient evidence to support the allegation(s)

Write the final Report of Findings

- Avoid using legal terms (guilty, negligent, fraud, theft, discrimination, sexual harassment)
- Just state the facts – avoid opinions
- Limit report distribution to those with a "need to know"
- Never keep draft copies

III. The final Report of Findings — The final Report of Findings details the evidence collected during the course of the fact-finding mission and conveys the investigator's findings. The "Findings" portion of the report provides a factual conclusion concerning the original issues being reviewed, as well as any additional issues detected during the course of the fact-finding. The report serves as the basis upon which Texas Workforce Commission executive staff, departmental management, and/or Board management may initiate any necessary administrative and/or prosecutorial action concerning issues revealed by the fact-finding process.

The report also details any actions already taken, as well as any procedural modifications needed to strengthen program integrity. Furthermore, based on the results of the fact-finding, the Office of Investigations may cite program provisions for the imposition of sanctions against a Board, contractor, or service provider, or a determination of monies owed to the Commission.

If there is sufficient evidence that criminal activity has occurred, the Office of Investigations will provide written information to the Regulatory Enforcement Division or to the law enforcement agency having jurisdiction, together with all evidence obtained during the fact-finding mission. A report of the suspected criminal activity is also forwarded to the appropriate federal agency. No opinion will be expressed by the Office of Investigations regarding the criminal guilt or innocence of any person.

IV. Supporting documentation – Supporting documentation is anything that can support or disprove the allegation(s). All documents used in the fact-finding process should be preserved in the case file as some documentation may not be determined relevant until the fact-finding is complete. Regardless of when a document is determined relevant, ALL supporting documents must be submitted with the final Report of Findings. Any relevant documentation available at the time the OPI-32 is submitted should be attached with the form. The following are *some* examples of supporting documentation:

- Parent Responsibility Agreement (TWC Form 2040)
- Application and Eligibility for Services (TWC Form 2050)
- Parent Enrollment Agreement (TWC Form 2446)
- Rights and Responsibilities for People Applying for Child Care Services (TWC Form 2448)
- Child Care Fee Agreement (TWC Form 2449)
- Signed statements, or statements of interview
- Wage verification forms
- Counselor notes or chronology of client visits
- Client or provider correspondence
- Copies of government-issued photo identification, Social Security cards, birth certificates, or other identifying documents
- Payment/billing records
- Attendance sheets

- Parent sign-in sheets
- Any other document that either supports or negates the allegations

Prepare each case as though it will eventually be pursued as a criminal prosecution. The decision as to which cases will be prosecuted ultimately lies with the prosecutor. Political climate, staff and financial resources, and media attention to an issue are just a few of the factors that could affect which cases a prosecutor will pursue. While the merits of the case are what may convince a prosecutor to accept a case, other factors beyond your control could impact the final decision of the prosecuting entity. So, while a prosecutor may or may not accept your case, the Boards are still expected to perform “due diligence.”

V. Due Diligence

What constitutes due diligence?

- **According to *Black’s Law Dictionary*:** *Such measure of prudence, activity or diligence, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent person under the particular circumstances. It is not measured by an absolute standard but depends on the relative facts of the special case.*

That is to say, it is what a reasonable and prudent Board would do under the same or similar circumstances with regard to fact-finding to determine the truth or falsity of suspected fraudulent activity.