

# TSA MD 1100.73-3 Handbook

## Anti-Harassment Program

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### APPROVAL

*Signed*

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Karen Shelton Waters  
Assistant Administrator for Human Capital



**NOTE:** *This Handbook and all related Attachments and/or Appendices implement the provisions of [TSA MD 1100.73-3, Anti-Harassment Program](#). Until such time as TSA MD 1100.73-3 is rescinded, the Management Directive, Handbook, and any Attachments or Appendices are considered TSA policy, and must be applied accordingly.*

Summary of Changes:

This handbook sets forth procedures for addressing allegations of harassment in the workplace in support of TSA’s anti-harassment program. All sections have been updated accordingly.

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**A. Definitions:**

1. Affected Person: Any individual who has allegedly been subjected to harassment. The affected person may or may not be the same person to whom the conduct was directed. An affected person is anyone who is impacted by the offensive and inappropriate behavior, including TSA employees, contractors, vendors, and TSA customers.
2. Alleged Harasser: Any individual who has allegedly engaged in inappropriate conduct or behavior that could be considered harassment as defined in this handbook. This may include TSA employees, contractors, vendors, and TSA customers.
3. Anti-Harassment Coordinator (AHC): An individual assigned by the Office of Human Capital (OHC) to manage TSA's Anti-Harassment Program. The AHC will coordinate and assist management in investigating and addressing incidents of harassment. The AHC serves as the point of contact and lead advisor on anti-harassment processes.
4. Anti-Harassment Program (AHP): A TSA program that ensures allegations of harassment are promptly investigated and addressed.
5. Appointing Authority: For the purpose of this directive, the management official within the organization in which the alleged harassment occurred, or designee, authorized to appoint a fact-finder to conduct an informal inquiry or investigation; e.g., Division Director, Federal Security Director.
6. Day: Calendar day.
7. Employee Assistance Program (EAP): A non-TSA entity that provides Employee Assistance Program services to TSA employees. EAP offers confidential counseling, information, and other assistance to help employees with difficult personal situations, including crisis management, stress, and workplace issues.
8. Fact-Finder: An appointed official conducting a fact-finding inquiry into allegations of harassment. The fact-finder appointed should be at the I Band level or above, have prior experience conducting administrative inquiries and/or completed TSA administrative inquiries training, and be of equal or senior status to the affected person and alleged harasser, except when the appointing authority determines that it is impracticable because of operational needs.
9. Fact-Finding Inquiry: Any review conducted into allegations of harassment that documents what occurred and the identity of the individuals involved.

10. Harassment: Any unwelcome comments or conduct (verbal, non-verbal, or physical) that has the purpose or effect of unreasonably interfering with an individual's work performance or otherwise creates a work environment that a reasonable person, under similar circumstances, would find intimidating, hostile, offensive, or abusive. Unlawful harassment is based on the affected person's protected bases.
11. Management Official: Any TSA employee in an employee's chain of supervision such as a supervisor or manager (e.g., Transportation Security Manager (TSM), Assistant Federal Security Director (FSD), FSD, Supervisory Air Marshal In-Charge (SAC), Assistant Administrator).
12. Protected Bases: An individual's race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age, disability, genetic information, and participation in protected activity. Additionally, protections are extended for any other basis protected by law.

## **B. General Principles:**

1. All TSA employees have the responsibility for creating and maintaining an environment free of harassment. TSA policy prohibits harassment by or of any employee, supervisor, manager, contractor, vendor, applicant, or other individual with whom TSA employees come into contact by virtue of their work for TSA.
  - a. Prohibited harassment includes, but is not limited to, unwelcome conduct, whether verbal, nonverbal, or physical, that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, offensive, or hostile environment as a result of the individual's protected bases.
  - b. TSA prohibits harassment even if it does not rise to the level of actionable harassment under the law. Although a single utterance or act may not rise to a level of harassment that may be actionable under the law, it may still violate TSA policy.
2. An affected person may be any individual who is subjected to offensive and inappropriate harassment behavior by TSA employees, both on or off duty, or in the context of employment with TSA. The affected person need not be the individual to whom the harassment was directed, but may be any individual who is affected by the inappropriate, harassing behavior.
3. Complaints may be raised by internal (TSA employees) and external individuals who may have been subjected to harassment (e.g., TSA contractors, vendors, applicants, or other individuals with whom TSA employees come into contact by

virtue of their work for TSA). External complaints may be handled by and/or referred to the Office of Civil Rights and Liberties, Ombudsman, and Traveler Engagement (CRL-OTE) or the Office of Inspection (OOI). Internal complaints will be handled in accordance with this policy and accompanying handbook. Refer to Section E of this handbook for additional information.

4. The alleged harasser may be a TSA employee or an external individual (e.g., TSA contractor, vendor, applicant, or other individual with whom TSA employees come into contact by virtue of their work for TSA).

**NOTE:** The intent of the alleged harasser is irrelevant; the impact of the conduct determines whether harassment or prohibited behavior has occurred.

5. While the conduct at issue may occur outside the workplace, it may have a negative impact on the work environment.
6. Harassment may occur without a negative material impact, such as financial injury or the loss of employment, to the affected person.
7. If the conduct is unwelcome or unwanted, it may be harassment even if the affected person submits or participates against his or her will.
8. The determination as to whether unlawful harassment has occurred includes a consideration of the frequency and/or severity of the inappropriate conduct. Generally, a single, non-egregious incident is not in itself sufficient grounds for a finding of harassment. Certain behavior, however, is so severe that a single incident may constitute harassment, and may result in corrective, disciplinary, or adverse action up to and including removal from federal employment.
9. Behavior that does not rise to the level of unlawful harassment may still be considered misconduct and may result in corrective, disciplinary, or adverse action.
10. Affected persons should immediately notify a member of their supervisory chain or any supervisor or manager if they believe that they have been subject to harassment in the workplace. Alternatively, the affected person may report alleged harassment to TSA's Anti-Harassment Coordinator (AHC) or the local Human Resources Specialist (HRS). Additional resources available to the affected person include TSA's Office of Inspection (OOI), the Ombudsman Division (OMB) in CRL-OTE, and Department of Homeland Security's (DHS) Office of Inspector General (OIG).
11. The affected person may also initiate a complaint of discrimination by contacting the Civil Rights Division (CRD) in CRL-OTE.

**NOTE:** Reporting an incident of harassment via the procedures outlined in this handbook does not replace, substitute, or satisfy the separate requirements and timelines for filing an Equal Employment Opportunity (EEO) complaint with CRD, grievance under TSA's Unitary Dispute Resolution System (UDRS), or an appeal to the Merit Systems Protection Board (MSPB).

12. Management officials have the obligation to take immediate, appropriate, effective, and corrective action, regardless of the affected person's willingness or unwillingness to pursue the matter. The management official will contact the AHC at [Anti-HarassmentCoordinator@tsa.dhs.gov](mailto:Anti-HarassmentCoordinator@tsa.dhs.gov) to initially report and subsequently to provide updates regarding reported harassment cases. When the alleged harassment is reported directly to the AHC, the AHC will designate an appointing authority at the site (see Section F of this handbook). The appointing authority will initiate a fact-finding inquiry in accordance with [TSA MD 700.2, Informal Management Inquiries](#). In addition, a *General Guide for Conducting a Fact-Finding* is included for guidance. See Appendix B of this handbook. The AHC may refer a case to OOI or OIG for action and investigation when deemed necessary and in accordance with agency policy. Refer to [TSA MD 100.0-2, Office of Inspection Roles and Responsibilities](#), for additional information.

**NOTE:** Minor incidents may not warrant an inquiry. In these instances, management officials shall take prompt action to correct the conduct and notify the AHC of the resolution and outcome.

13. Management officials shall not promise the affected person that his or her identity and/or the substance of the allegation(s) will be kept confidential. Managers and supervisors, however, should only discuss the matter with those with a need-to-know. Such discussions should be of a confidential nature.

### **C. Harassment:**

1. Harassment is prohibited in the workplace. Harassment includes, but is not limited to, unwelcome conduct - whether verbal, nonverbal, or physical - that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, offensive, hostile or abusive environment as a result of the individual's race, color, religion, sex, (including pregnancy, sexual orientation, and gender identity), national origin, age, disability, genetic information, marital status, parental status, political affiliation, participation in protected activity, or any other basis protected by law. Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. Acts of physical violence and actual, implied, or veiled threats of violence are forms of prohibited harassment. Any form or manner of threatening or provoking remarks or

threatening gestures in the workplace is prohibited. TSA, in accordance with DHS Directive 256-01, prohibits harassment, even if it does not rise to the level of actionable harassment under the law. Although a single utterance or act may not rise to a level that may be actionable under the law, it still has no place at TSA.

2. TSA does not tolerate retaliation against any individual for reporting harassment or assisting another individual in reporting harassment, for providing information related to such a report, for filing an EEO complaint, or for opposing conduct that he/she believes is unlawfully discriminatory or harassing. Any person who believes he or she has been subject to retaliation should report the conduct using the same reporting procedures as complaints of harassment. See [Appendix A: Overview of Unlawful Harassment](#), attached to this handbook.

#### **D. Addressing Harassment:**

1. Managers and supervisors must take steps upon awareness and/or notification of an incident of alleged harassment. In order to foster a workplace environment free from harassment, and to ensure the offensive behavior is addressed as quickly as possible, it is critical that managers or supervisors who know or should have known about harassment take prompt and appropriate corrective action. Supervisors and managers who were aware of alleged behavior and failed to address the behavior in accordance with this policy may be subject to corrective, disciplinary, or adverse action.

**NOTE:** Appropriate corrective action may include issuing the alleged harasser a Cease and Desist Order, No Contact Order, or separating the alleged harasser from the affected person.

2. When an affected person notifies the AHC directly (refer to Section M.1 of this handbook) of an alleged harassment event, the AHC, or designee, will complete [TSA Form 1173-1, Anti-Harassment Program Incident Report](#), on behalf of the affected person. As soon as possible, but no later than three days following the affected person's notification of the alleged harassment activity, the AHC will forward the completed TSA Form 1173-1 to the appointing authority or management official within the affected person's chain of supervision for their review, fact-finding, and corrective action, as appropriate.
3. Managers, supervisors, and HRS are required to take the following steps upon notification of an incident of alleged harassment:
  - a. Contact the AHC when an allegation of harassment is raised. The AHC serves as the intake center for all harassment allegations and provides consultative advice as to the next steps, such as ensuring the safety of the affected person;

- b. When a supervisor, management official, or HRS is notified by the affected person, or has become aware of the alleged harassment activity, he or she must notify the AHC immediately, but no later than three days following his or her notification or awareness to the prohibited harassment.
- c. In addition to notifying the AHC, the supervisor, management official, or HRS must complete [TSA Form 1173-1, \*Anti-Harassment Program Incident Report\*](#), and forward to the AHC within three days following his or her notification or awareness of the alleged harassment activity, as required in Section E.5 of this handbook;
- d. After consulting with the AHC, management may be required to appoint a fact-finder to conduct an inquiry into the allegation and ensure the inquiry is completed timely, appropriately, and effectively in accordance with this handbook. A fact-finder may be appointed and will conduct the fact-finding inquiry as directed by the appointing authority. Refer to Section F of this handbook. Additional information and resources to conduct an effective fact-finding or inquiry process can be found in [Appendix B: \*General Guide for Conducting a Fact-Finding\*](#).
- e. Inform the alleged harasser that an allegation has been made regarding his or her conduct and the nature of the conduct;
- f. Inform the alleged harasser that he or she must immediately discontinue the alleged offending conduct;
- g. If the alleged harasser is a decision-maker or has any supervisory relationship with the affected person, ensure that future interactions will not result in retaliation or any act of unlawful discrimination;
- h. Take necessary actions to ensure that any individual who informs management of alleged harassment or files a complaint with CRD is not retaliated against, coerced, or intimidated in any way. Refer to Section K of this handbook for additional information;
- i. As applicable, appoint a manager or fact-finder to investigate the alleged harassment; direct the fact-finder to properly address the allegation(s) by conducting effective interviews and utilizing proper investigative measures; ensure the inquiry is conducted timely; and ensure a summary report of the fact-finder's findings is accurately compiled with supporting documents and interview summaries;
- j. Assist the fact-finder or other TSA management official, as needed, in obtaining information, making necessary inquiries, and working to resolve complaints regarding harassment;



- k. Inform the AHC as soon as the fact-finding investigation is complete and provide the fact-finding report to the appointing authority and the AHC in accordance with Section H this handbook;
  - l. Upon completion of the inquiry, inform the affected person (in writing) that the allegation has been investigated and that management officials will take appropriate action(s), if any, based on the findings;
  - m. Annually inform employees that harassment is a prohibited conduct that will not be tolerated, and that corrective, disciplinary, or adverse action, up to and including removal, will be taken against any person found to have engaged in harassment. If corrective, disciplinary, or adverse action is warranted, refer to [TSA MD 1100.75-3, \*Addressing Unacceptable Performance and Conduct\*](#), for additional information;
  - n. Any corrective, disciplinary, or adverse actions that fall within the jurisdiction of the Office of Professional Responsibility (OPR) will be managed in accordance with [TSA MD 1100.75-7, \*Office of Professional Responsibility\*](#); and
  - o. Provide employees with a copy of this directive and handbook to ensure they are aware of appropriate reporting procedures if they consider themselves or others to have been subjected to harassment.
4. Alleged Harasser: After the alleged harasser is advised that his or her conduct or actions are unwelcome and perceived as being hostile, offensive, intimidating or abusive, the alleged harasser has an obligation and responsibility to:
- a. Discontinue the offensive conduct immediately and ensure that his or her future conduct or actions do not constitute, and would not reasonably be perceived as, harassment;
  - b. Refrain from engaging in any retaliatory conduct; and
  - c. Cooperate fully with any fact-finding inquiry into the alleged harassment.

#### **E. Reporting Harassment:**

- 1. The responsibilities and procedures for reporting allegations of harassment are as follows:
  - a. The affected person may inform the alleged harasser that the conduct is unwelcome. In many cases, this is enough to stop the offending conduct. While informing the alleged harasser that the conduct is unwelcome is recommended, it is not a prerequisite to contacting the AHC;

- b. Affected persons, or witnesses to the alleged harassment, should immediately notify a member of their supervisory chain, or any manager or supervisor, if they believe that they have been subject to harassment in the workplace. Alternatively, the affected person may report alleged harassment to TSA's AHC or the local HRS. Additional resources available to the affected person include TSA's Office of Inspection (OOI), the Ombudsman Division (OMB), and DHS' Office of Inspector General (OIG). The affected person may also initiate a complaint of discrimination by contacting the Civil Rights Division (CRD) in the Office of Civil Rights & Liberties, Ombudsman and Traveler Engagement (CRL-OTE);

**NOTE:** If the affected person contacts a TSA office other than the AHC, OMB or CRD, that office must report the matter to the AHC within three days following their awareness of the alleged harassment.

- c. Affected persons should report the matter as soon as possible to have the alleged harassment addressed;
  - d. Affected persons should document the circumstances related to the alleged harassment, including the substance of any conversations with the alleged harasser and/or anyone else regarding the matter; and
  - e. In addition, and when reporting the matter, affected persons should be prepared to provide such documentation to the circumstances related to the alleged harassment, including the substance of any conversations with the alleged harasser and/or anyone else regarding the matter.
2. Affected persons may file a complaint of discrimination in addition to reporting the matter to management or the AHC. If affected persons elect to file a complaint of discrimination, they must do so by contacting CRD within 45 days of the alleged harassment. Reporting the matter to TSA management does not satisfy the requirement to contact an EEO counselor within 45 days of the alleged harassment.
  3. If an affected person fails to notify their chain of supervision or other alternative resource of the alleged harassment, the agency may not be aware and unable to assist in stopping the prohibited behavior.
  4. If the affected person elects to notify the AHC directly of the alleged harassment event, the AHC, or designee, will complete [TSA Form 1173-1, Anti-Harassment Program Incident Report](#), on behalf of the affected employee, and notify the appropriate management official at the site of the complaint for immediate action, in accordance with Section D of this handbook. The AHC will then coordinate and assist management while monitoring progress of the case through completion.

**NOTE:** Where the allegations are of a very serious nature, the AHC will contact the TSA OOI and include the affected person's management official in this contact. Examples of matters where OOI shall be notified include an allegation of sexual assault, physical contact, threatening or seriously offensive comments of a racial or sexual nature, etc.

5. In accordance with Section E.1.b, the affected person may elect to notify a member of their supervisory chain, another manager or supervisor, TSA's AHC, or their local HRS to the alleged harassment. The local contact (e.g., supervisor, management official, HRS) will notify the AHC within three days of becoming aware of any occurrences or allegation(s) of harassment and will provide the details of the allegation. In addition, [TSA Form 1173-1, \*Anti-Harassment Program Incident Report\*](#), will be completed by local management in accordance with Section D of this handbook.

**NOTE:** This form must be completed regardless of whether any other notification has been made and even if the affected person does not wish to have the matter reported.

#### **F. Appointing Fact-Finders:**

1. TSA policy requires supervisors and managers to take immediate, appropriate, effective, and corrective action upon becoming aware of an allegation of workplace harassment. Given this requirement, appointing authorities must ensure that a fact-finding is initiated within five days of management becoming aware of any such allegation. Fact-finders should make every effort to complete the fact finding process as soon as possible, generally within 30 days following designation as the fact-finder for the case.
2. The primary function of the fact-finder is to collect statements and evidence, and provide such information to the appointing authority or management official making the assignment. The fact-finder's duty is to thoroughly and impartially ascertain and consider the evidence on all sides of each issue under inquiry pursuant to the instructions of the appointing authority (see Appendix B).
3. Authority to Appoint a Fact Finder: Except as provided in Sections G.1 and G.2 of this handbook, authority to appoint a fact-finder rests with the appropriate officials within the organization in which the alleged harassment occurred, as follows:
  - a. Office of Security Operations: Regional Directors (RDs), Federal Security Directors (FSDs), Deputy Federal Security Directors (DFSDs), Assistant Federal Security Directors (AFSDs), Deputy Assistant Federal Security Directors (DAFSDs), their designees, or the AHC;

- b. Headquarters: Management officials at or above the Division Director level, or their designee, or the AHC; and
    - c. Federal Air Marshal Service: Field Operations Division, Incident Activity Coordination and Trends (IACT) Section, or their designee, or the AHC.
4. Method of Appointment: The appointment of a fact-finder must be in writing and clearly specify the purpose and scope of the inquiry. The appointment must include a reasonable timeframe, generally within 30 days following designation as the fact-finder, to complete the fact-finding and in accordance with Sections F.1 and F.2 of this handbook.
5. Who May Be Appointed: The fact-finder must be impartial and must not have been involved, in any manner, in the situation under inquiry. The fact-finder appointed should be at the I Band level or above, have prior experience conducting administrative inquiries and/or completed TSA administrative inquiries training, and be of equal or senior status to the affected person and alleged harasser, except when the appointing authority determines that it is impracticable because of operational needs. In most cases, a management official or appointing authority at the applicable work site (e.g., airport) will call upon a fact-finder(s) to perform this collateral responsibility. There may be times when a fact-finder will be requested from another site to assure impartiality and non-involvement in the allegation. All fact-finders will receive TSA administrative inquiry training; however, TSA administrative inquiry training is not a prerequisite for conducting a fact-finding inquiry.
6. Conflict of Interest: The fact-finder should notify the appointing authority or the AHC if he or she believes that he or she has been, or may be perceived as having a personal bias towards an individual substantially involved in the alleged harassment because of a previous friendship, marriage, or family relationship. A fact-finder should disqualify himself or herself if he or she has a conflict of interest because he or she currently works with, or previously worked for, the affected person, the alleged harasser involved in the allegation, or if either party reported to the fact-finder in a supervisory chain capacity. A fact-finder should also disqualify himself or herself if he or she has raised a previous allegation of misconduct or harassment concerning the affected person or alleged harasser.
7. Generally, upon appointment, the duties of a fact-finder will take priority over the individual's regular daily duties.

## **G. Conducting Fact-Finding Inquiries:**

1. The AHC will inform OOI of any allegation(s) of harassment involving employees at the K band or above, and allegations involving any employee in the position of

FSD, Deputy FSD, Assistant FSD, Deputy Assistant FSD, or Federal Air Marshal, regardless of pay band.

2. Where the allegations are of a very serious nature, the AHC will contact OOI and include the appropriate management official in this contact. Examples of matters where OOI shall be notified include an allegation of sexual assault, physical contact, threatening or seriously offensive comments of a racial or sexual nature, etc. OOI retains the authority to complete the report of investigation or to delegate the fact-finding process, or portions of the fact-finding process, to management on their behalf. OOI conducts investigations under the authority of [TSA MD 100.0-2, \*OOI Roles and Responsibilities\*](#), and manages investigations according to OOI's internal program requirements.
3. The fact-finder must immediately conduct an inquiry into the allegation. Inquiries will vary depending on the nature and severity of the allegations. At a minimum, the fact-finder shall:
  - a. Interview all parties involved, and any other individuals relevant to the matter;
  - b. Ensure that individuals who need a reasonable accommodation to participate in the inquiry are provided that accommodation, e.g., sign language;
  - c. Collect any documents or other materials that are relevant to the matter; and
  - d. Thoroughly and impartially ascertain facts and report them to the appointing authority, such that the appropriate authority can make findings, conclusions, and recommendations (as appropriate) that are warranted by the facts.
4. Inquiries are to be conducted with high priority and should generally be completed no later than 30 days following assignment as fact-finder. If additional time is necessary to complete the fact-finding inquiry, the appointing authority or designee must request an extension, in writing, to the AHC and provide the reason necessary for the extension.
5. Allegations involving TSA contractors: In addition to notifying the AHC, management officials shall contact the Contracting Officer's Representative (COR) who is responsible for appropriate notifications based on the type of allegation, as outlined below:
  - a. Allegations against a TSA employee by a contractor: The COR shall inform the contractor that immediate, appropriate action will be taken.
  - b. Allegations against a contractor by a TSA employee: The COR shall inform the contractor's immediate supervisor of the allegations. The contractor should be

separated from the employee, in coordination with the Office of Acquisitions and the Office of Chief Counsel.

- c. Allegations against a contractor by another contractor: The COR shall inform the supervisors of the respective contractors.
  - d. The AHC should be apprised of all allegations, as noted in Section D.3.a above.
6. Inquiries conducted under this policy do not constitute initiation of the EEO complaint process, pursuant to Title 29 Code of Federal Regulations Part 1614. The employee must file a timely complaint with CRD to initiate the EEO complaint process.

**NOTE:** The fact-finding described herein does not, and is not intended to supplant the investigation that will occur if the affected person initiates an EEO complaint with CRD. Management officials must investigate harassment allegations regardless of whether an employee initiates an EEO complaint with CRD.

7. Scope of fact-finding: Fact-finders are appointed to gather information on all matters of suspected harassment. If it is known by management officials that a formal complaint related to the matter has been filed with CRD, the following will occur:
- a. The management official will advise CRD and the AHC of the duplicate filing; and
  - b. Upon CRD request, the management official and/or AHC will share their final report with CRD.

**H. Fact-Finding Report:** After the completion of the fact-finding, a report must be prepared.

1. Format: The report must be in writing and must include findings.
2. Exhibits: Every item of evidence offered to, or received by, the fact-finder shall be marked as a separate exhibit.
3. If the report is not sufficient, and/or further information is required, the appointing authority or his/her designee will notify the fact-finder that further action is required. Such additional proceedings will be conducted under the provisions of the original appointing memorandum, including any modifications to the scope of the inquiry.

4. The complete fact-finding report shall be submitted to the appointing authority for review and corrective action, as appropriate, within 30 days following the appointment of the fact-finder. Fact-finding reports must be reviewed by the appointing authority and by the AHC for completeness.
5. The appointing authority must take appropriate disciplinary, adverse, or other corrective action to address any inappropriate conduct that has occurred. Disciplinary, adverse, or other corrective actions may include removal of the harassing employee(s), administrative leave, suspension, demotion, and/or training. Depending on the nature of the discipline, a member of OHC's Employee Relations Division may need to be consulted.

**NOTE:** Any corrective, disciplinary, or adverse actions that were taken by or fall within the jurisdiction of the Office of Professional Responsibility (OPR) will be managed in accordance with TSA MD 1100.75-7.

6. Generally, the appointing authority will submit a final memo to the AHC no later than 45 days from the date the fact-finder was appointed. This memo will contain: (a) a description of the allegation of harassment; (b) the findings of the investigation/inquiry; and (c) corrective action, if any, taken as a result of the inquiry.
7. The complete fact-finding report and final memo will generally be submitted to the AHC at [Anti-HarassmentCoordinator@tsa.dhs.gov](mailto:Anti-HarassmentCoordinator@tsa.dhs.gov) no later than 15 days following receipt of the completed fact-finding report by the appointing authority. The fact-finding report should also include the appointing official's final memo as outlined in Section H.6.
8. When the AHC receives and reviews the fact-finding report and final memo, and they have been found to be complete, the AHC will close and retain the case file in accordance with TSA records disposition requirements.
9. Should the AHC find the report and/or the inquiry to be incomplete, the AHC will contact the appointing authority to communicate his/her concerns with the report. The AHC will request further review by the fact-finder and require resubmission of the report.

## **I. Actions After Fact-Finding Report Is Accepted:**

1. The management official will inform the affected person(s), in writing, that the allegation has been investigated and that management will take appropriate action(s), if any, to address the harassment based on the findings of the inquiry.

2. The management official will advise the affected person(s) and alleged harasser of the fact-finding report's completion.
3. Upon acceptance of the fact-finding report, the receipt of the appointing authority's final memo, and confirmation of the management official's written notification to the parties of the completion of the investigation, the AHC will close the case.

#### **J. Relationships In The Workplace:**

TSA is committed to avoiding the adverse effects on the morale, operations, and mission of the agency that may result from romantic and/or intimate personal relationships in the workplace. A romantic or intimate relationship between individuals who have a direct or indirect supervisory relationship is inappropriate and may violate the [\*Standards of Ethical Conduct for Employees of the Executive Branch\*](#). Although TSA has no desire to interfere with the private lives of its workforce, such conduct may impact workplace effectiveness and the best interests of TSA must come first. Therefore, if such a situation develops, the employee in the supervisory position (the more senior position if both employees are supervisors) must inform his/her manager to enable TSA to take appropriate measures to eliminate any potential or actual adverse effects.

#### **K. Retaliation:**

TSA does not tolerate retaliation against any individual for reporting harassment or assisting another individual in reporting harassment, for providing information related to such a report, for filing an EEO complaint, or for opposing conduct that they believe is unlawfully discriminatory or harassing. Any person who believes he or she has been subject to retaliation should report the conduct using the same reporting procedures for complaints of harassment. Refer to Section E of this handbook for additional information. See also Appendix A: *Overview of Unlawful Harassment* attached to this handbook.

#### **L. Other Procedures:**

Reporting an allegation of harassment to the AHC or OOI does not replace, substitute, or satisfy the separate requirements and timelines for filing an EEO complaint, a grievance under the UDRS, or an appeal to the Merit Systems Protection Board. Employees may report an incident of harassment to their manager or supervisor and participate in a complaint process simultaneously. Managers and supervisors are required to follow the procedures set forth in this policy regardless of an employee's status in another complaint process.



**M. Contact Information:**

1. TSA Anti-Harassment Coordinator (AHC): (571) 227-1336; or toll-free at (833) 219-9022; [Anti-HarassmentCoordinator@tsa.dhs.gov](mailto:Anti-HarassmentCoordinator@tsa.dhs.gov);
2. CRL-OTE, Civil Rights Division: (877) EEO-4TSA (336-4872); people with hearing impairments, please call CRD's TTY number at (866) 536-9679
3. CRL-OTE, Ombudsman Division: (571) 227-2383;
4. Office of Inspection: (571) 227-1800; [tsainspectionhotline@tsa.dhs.gov](mailto:tsainspectionhotline@tsa.dhs.gov);
5. DHS Office of Inspector General (OIG): 1-800-323-8603; and
6. Federal Occupational Health (Employee Assistance Program): (800) 222-0364 or TTY: (888) 262-7848; or [www.FOH4you.com](http://www.FOH4you.com).

## APPENDIX A: OVERVIEW OF UNLAWFUL HARASSMENT

**Age:** It is unlawful to harass a person because of his or her age if he or she is over 40 years old. This may include offensive remarks about aging or repeated questions about when the person is planning to retire.

**Disability:** It is unlawful to harass a person based on his/her disability, his/her perceived disability, or his/her history of a disability. Harassment can include, for example, offensive remarks about a person's disability.

**Genetic Information:** Under the Genetic Information Nondiscrimination Act of 2008 (GINA), it is illegal to harass a person because of his or her genetic information. Harassment can include making offensive or derogatory remarks about an employee's genetic information, or about the genetic information of a relative of the employee.

**Military Status:** The Uniformed Services Employment and Reemployment Act of 1994 (USERRA) prohibits harassment based on military service or obligation. Harassment on the basis of military status involves the denial of any benefit of employment because of a person's past, current, or future membership in a uniformed service.

**National Origin:** It is unlawful to harass a person because of his or her national origin. Harassment can include, for example, offensive or derogatory remarks about a person's national origin, accent, or ethnicity or their association with a person of a particular national origin. Harassment can occur when the victim and the person who inflicted the harassment are the same national origin.

**Political Affiliation:** It is unlawful to harass a person because of his/her political affiliation. The Civil Service Reform Act of 1978 (CSRA) protects employees from harassment on the basis of political association.

**Pregnancy:** It is unlawful to harass a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

**Race/Color:** It is unlawful to harass a person because of that person's race or color. Harassment can include, for example, racial slurs, offensive or derogatory remarks about a person's race or color, or the display of racially-offensive symbols or their association with a person of a particular race/color.

**Religion:** It is unlawful to harass a person because of his or her religion, or lack of belief in a religion, or association with an individual of a particular religion. Harassment can include, for example, offensive remarks regarding a person's religious beliefs or practices or taking actions to ostracize an individual because of their religion.

**Retaliation:** It is unlawful to harass a person in retaliation for that person's participation in protected activity. Protected activity may include filing a discrimination charge, testifying, or

participating in any way in an investigation, proceeding, or lawsuit under applicable laws, or opposing employment practices that the person reasonably believes unlawfully discriminate against individuals. Protected activity also includes filing a whistleblower complaint with the Office of Special Counsel.

**Sex/Gender Identity:** It is unlawful to harass a person because of that person's sex. This includes sexual orientation and gender identity. Harassment can include “sexual harassment” or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general. See the [\*TSA's Frequently Asked Questions About Transgender Issues\*](#) for more information.

## APPENDIX B: GENERAL GUIDE FOR CONDUCTING A FACT-FINDING

### A. GENERAL:

1. This appendix is intended to guide appointing officials, management officials, and assist fact-finders, who have been appointed under the provisions of TSA MD 1100.73-3, *Anti-Harassment Program*, and accompanying handbook, in conducting timely, thorough, and legally sufficient inquiries. It is designed specifically for informal administrative fact-finding inquiries related to workplace harassment. A brief checklist is included at the end of this appendix and is designed to serve as a quick reference for each stage of the fact-finding process (see Attachment 1, *Checklist for Fact-Finders*). The questions in the checklist will ensure that the fact-finder has covered all the basic elements necessary for a sound gathering of facts.
2. The AHC, assigned by OHC, manages the Agency's Anti-Harassment Program (AHP) and coordinates and assists management in investigating and addressing incidents of harassment. The AHC serves as the point of contact and lead advisor on anti-harassment processes and investigations.

### B. DUTIES OF A FACT-FINDER:

1. The primary duties of a fact-finder are:
  - a. To identify, gather, and consider relevant information and evidence from interviews and records concerning the allegation and on all sides of an issue;
  - b. To be thorough, unbiased, impartial, and objective, and compile thorough, impartial, and appropriate factual records;
  - c. To comply with the instructions of the appointing authority or designee providing the direction, and;
  - d. To report the findings to the appointing authority in writing and in a timely, efficient manner in compliance with TSA MD 1100.73-3 and its accompanying handbook.
2. TSA MD 1100.73-3 requires the assignment of a fact-finder who conducts interviews and collects evidence when an allegation of harassment is presented. A fact-finder is appointed by an appointing authority to conduct the inquiry and report his or her findings back to the appointing authority. As directed by the appointing authority, a fact-finder will be appointed to: investigate the alleged harassment; properly address the allegation(s) by conducting effective interviews and utilizing proper investigative measures; ensure the inquiry is conducted timely; and ensure a summary report of the fact-finder's findings is accurately compiled with supporting documents and interview summaries in accordance with

TSA MD 1100.73-3.

**C. PRELIMINARY MATTERS:**

1. Appointing Authority. Fact-finders are appointed by an appointing authority. The appointing authority may designate a local fact-finder; however, he or she may also designate a fact-finder from another geographical location when deemed appropriate, following consultation with and approval of the AHC.
2. Appointment Procedures. Fact-finder appointments must be in accordance with Section F of the handbook. The appointment orders are usually issued as a memorandum or letter signed by the appointing authority or a designee, however, an email is sufficient provided the direction to the fact-finder is clear. The fact-finder's supervisor will be notified of the appointment. The appointment should specify the purpose and scope of the inquiry, along with expected timeframe to complete. If the orders are unclear, the fact-finder should seek further clarification. A template of an appointment letter is attached to this Guide (see Attachment 2, *Sample Appointment Letter*).
3. Obtaining Assistance. The AHC, an OHC Employee Relations Specialist (ERS), or an attorney with the Office of Chief Counsel (OCC) can provide guidance and assistance to the fact-finder at the beginning of and at any time during the inquiry. Fact-finders should always seek advice as soon as possible after they are informed of this duty and as needed while conducting the inquiry. The AHC is available to answer questions and will monitor the inquiry periodically to provide support and assure the case is on track, as appropriate.
4. Legal Assistance. In complex or sensitive inquiries for which a legal review may be required, engage legal counsel at the beginning of the inquiry. Legal counsel can assist the fact-finder in framing the issues, identifying the information required, planning the inquiry, and interpreting and analyzing the information obtained. The legal counsel's role, however, is to provide legal advice and assistance, not to conduct the inquiry or substitute his or her judgment for that of the fact-finder.
5. Cooperation of the Parties During Fact-Finding. TSA employees have a duty to cooperate with agency investigations, fact-finding, or administrative inquiries by responding fully, in a timely fashion, to fact-finders' requests. [TSA Management Directive 1100.73-5, \*Employee Responsibilities and Code of Conduct\*](#), requires employees to testify, provide information, or submit to interviews concerning matters of official interest. Fact-finders should notify the appointing authority when instances of non-cooperation arise.
6. Administrative Matters. As soon as the fact-finder receives an appointment, he or she should begin a chronology showing the date, time, and a short description of

everything done in connection with the inquiry. The chronology should begin with the date the appointment is received. Fact-finders should also record the reason for any unusual delays in processing the case, such as the absence of witnesses. The chronology should be part of the final case file.

**D. CONDUCTING THE FACT-FINDING:**

1. General Requirements. Fact findings should be initiated within five (5) days of management becoming aware of an allegation of harassment and in accordance with TSA MD 1100.73-3 and the accompanying handbook. Fact-finders should make every effort to complete the fact-finding process as soon as possible, generally within 30 days from assignment. If additional time is necessary to complete the fact-finding process, the appointing authority or designee must request an extension, in writing, to the AHC at [Anti-HarassmentCoordinator@tsa.dhs.gov](mailto:Anti-HarassmentCoordinator@tsa.dhs.gov), and provide the reason necessary for the extension. Generally, upon appointment, the duties of a fact-finder will take priority over the individual's regular daily duties.
2. Developing a Fact-Finding Plan. Fact-finders should thoroughly review the completed TSA Form 1173-1 and the initial statement received from the affected person (if applicable), the appointment letter and scope of review, and any other documentation received regarding the allegation, as a vital first step to preparing for the fact-finding. The fact-finder should identify and log the information already available, and determine what additional information will be required before findings are provided to the appointing authority. An important part of this effort is identifying the appropriate standards, rules, or procedures that govern the circumstances under inquiry. The AHC, ERS, OCC, or other functional expert can assist the fact-finder in determining the information that will be required. Fact-finding plans should include:
  - a. Affected person's identifying information, e.g., name, position, supervisory chain;
  - b. Description of alleged incidents of harassment;
  - c. Interviewees, including information expected to be obtained, potentially relevant documents to be secured from the local HRS; and
  - d. Anticipated timeline and order of interviews, anticipated completion of the fact-finding process, preparation of the case file, and preparation and submittal of the final report.
3. Identify Witnesses. The fact-finder's objective is to gather evidence and to provide findings of fact to the appointing authority. Before obtaining information, the fact-finder should develop a list of potential witnesses and a plan for when each witness will be interviewed. The order in which witnesses are interviewed may be important

(see Section D.6 of this appendix). As the inquiry proceeds, it may be necessary to review and modify the fact-finding plan.

4. Obtain Documentation and Physical Evidence:

- a. The fact-finder may need to collect documentary and physical evidence such as existing witness statements and incident reports, etc. In some cases, the information will not be readily available, so the request should be made early so that the fact-finder may continue to work on other aspects of the inquiry while the request is being processed.
- b. The fact-finder should, if possible and appropriate, personally inspect the location of the events being investigated and take photographs if they will assist the appointing authority.
- c. It is just as important to support findings of no fault or no wrongdoing with documentary evidence as it is to document adverse findings. The report must include sufficient documentation to satisfy the appointing authority and others who may review the inquiry that the finding of no fault or no wrongdoing is supported by the evidence.

5. Obtain Witness Testimony:

- a. Clearly, the best interviews occur face-to-face; but, if necessary, interviews may be conducted by telephone, video-conference, or email, but only in unusual circumstances, such as absence due to extended leave. Information obtained telephonically should be documented in a memorandum for record.
- b. If a witness is on his or her regular day off (RDO), he or she may be scheduled to be interviewed upon return to duty. If a witness is on leave (typically for seven (7) or less days), he or she may be scheduled to be interviewed upon return to duty. If a witness is on extended leave (greater than seven (7) days), the fact-finder may wish to conduct the interview by telephone or by video-conference.

**NOTE:** A witness' testimony will take precedence over his or her normal duties.

- c. Legible handwritten witness statements and/or questions and answers are acceptable; however, the fact-finder's individual interview summary, reviewed by the interviewee, may suffice. If the witness testimony involves technical terms that are not generally known outside the witness's field of expertise, the witness should be asked to define the terms the first time they

are used.

- d. Fact-finders do not have the authority to compel witnesses. However, all TSA employees must fully cooperate with agency inquiries. Fact-finders shall notify the appointing authority when instances of non-cooperation arise.
6. Scheduling Witness Interviews. The fact-finder will need to determine which witnesses should be interviewed and in what order. Often, information provided by one witness can raise issues that should be discussed with another. Organizing the witness interviews will save time and effort that would otherwise be spent "backtracking" to re-interview prior witnesses concerning information provided by subsequent witnesses. While re-interviewing may be unavoidable in some circumstances, it should be kept to a minimum. The following suggests an approach to organizing witness interviews; it is not mandatory.
- a. When planning who to interview, work from the center of the issue outward, identifying the people who are likely to provide the best information. When conducting the interviews, start with witnesses who will provide all relevant background information and frame the issues. This will allow the interviews of key witnesses to be as complete as possible, avoiding the "backtracking" described above.
  - b. Concentrate on those witnesses who would have the most direct knowledge about the events in question. Without unnecessarily disclosing the evidence obtained, attempt to seek information that would support or refute information already obtained from others. In closing an interview, it is appropriate to ask if the witness knows of any other persons who might have useful information or any other information the witness believes may be relevant to the inquiry.
  - c. Any information that is relevant should be collected regardless of the source; however, fact-finders should collect the best information available from the most direct source and always identify the source of the exhibits.
  - d. At some point, there will be no more witnesses available with relevant and useful information. It is not necessary to interview every member of an office (e.g., only a few people in the office have information relevant to the inquiry). Also, all relevant witnesses do not need to be interviewed if the facts are clearly established and are not in dispute. However, the fact-finder must be careful not to prematurely terminate the process just because a few witnesses give consistent testimony.



7. Conducting Witness Interviews:

- a. Prepare for the interview. While there is no need to develop scripts for the witness interviews, fact-finders may wish to review the information required and prepare a list of questions or key issues to be covered. This will prevent the fact-finder from missing issues, will maximize the use of the fact-finder's and witness' time, and ensure consistency when there are multiple witnesses. Generally, it is helpful to begin with open-ended questions such as "Can you tell me what happened?" After a general outline of events is developed, follow up with narrow, probing questions, such as "Did you see Ms. X leave the office before or after Mr. Y?" Weaknesses or inconsistencies can generally be better explored once the general sequence of events has been provided.
- b. Ensure the witness's privacy. Fact-finders should conduct the interview in a place that will be free from interruptions and will permit the witness to speak candidly without fear of being overheard. Witnesses should not be subjected to improper questions, harsh and insulting treatment, or unnecessary inquiry into private affairs.
- c. Focus on relevant information. Unless precluded for some reason, the fact-finder should begin the interview by telling the witness about the subject matter of the inquiry. Generally, any evidence that is relevant and useful to the inquiry is permissible. The fact-finder should not permit the witness to get off track on other issues, no matter how important the subject may be to the witness. Information should be material and relevant to the matter under inquiry. Relevancy depends on the circumstances in each case. Compare the following examples:

Example 1: In an inquiry of an alleged inappropriate argument between subordinate peers in the view of the public, the witness's opinions concerning the manager's leadership style may not be relevant.

Example 2: In an inquiry of alleged harassment in the office, information on the manager's leadership style might be relevant.

Example 3: In an inquiry of allegations that a manager has abused his or her authority or the treatment of a subordinate staff, the witness's observation of the manager's leadership style would be highly relevant.

- d. Let the witness testify in his or her own words. Fact-finders must avoid coaching the witness or suggesting the existence or non-existence of material facts. After the interview is completed, the fact-finder will complete a summary statement that includes all relevant information from the interview in a

clear and logical fashion. The fact-finder will allow the witness to review the summary statement for accuracy and include the summary statement as evidence in the case file. Any written statements should reflect the witness's own words. Fact-finders should not provide statements for the witness(es) to sign.

- e. Protect the interview process. A fact-finder shall direct witnesses not to discuss their statement or testimony with other witnesses or with persons who have no official interest in the proceedings until the inquiry is complete. Witnesses, however, are not precluded from discussing matters with counsel.
  - f. Protect and safeguard information. The fact-finder must appropriately handle all Sensitive Security Information (SSI) and Personally Identifiable Information (PII) to prevent unauthorized disclosure or mishandling of information to persons not having a need-to-know the information consistent with applicable law and policy. (See [TSA MD 3700.4, Handling Sensitive Personally Identifiable Information](#), DHS MD 11056.1, *Sensitive Security Information*, DHS MD 11042.1, *Safeguarding Sensitive but Unclassified (For Official Use Only) Information*, and [TSA MD 2810.1, SSI Program](#), for additional information).
8. Standard of Proof. [TSA MD 1100.75-3, Addressing Unacceptable Performance and Conduct](#), states that disciplinary and adverse actions must be proven by a preponderance of the evidence. Preponderance of the evidence is the degree of relevant evidence that a reasonable person, considering the records as a whole, would accept as sufficient to find that a purported fact is more likely to be true than untrue.

## **E. CONCLUDING THE FACT-FINDING:**

1. Preparing Findings. After all the evidence is collected, the fact-finder must review it and submit a complete fact-finding report to the appointing authority. The fact-finder must sign the report and ensure all evidence is attached. The fact-finder should consider the evidence thoroughly and impartially, and make findings of fact that are supported by the evidence and comply with the instructions of the appointing authority.
  - a. Facts: To the extent possible, the fact-finder should affix dates, places, persons, and events, definitely and accurately. The fact-finder should be able to answer questions such as: What occurred? When did it occur? How did it occur? Who was involved and to what extent? Exact descriptions, behaviors, and actions should be provided.
  - b. Findings: A finding is a clear and concise statement that can be construed from the evidence in the record. In developing findings, fact-finders are

permitted to rely on the facts and any reasonable inferences that may be drawn from those facts. In stating findings, fact-finders should refer to the exhibit(s) relied upon in making each finding. Findings (including findings of no fault, no loss, or no wrongdoing) must be supported by the documented evidence that is part of the report. Fact-finders must weigh the evidence and determine by the preponderance of the evidence whether the incident did or did not occur. Exhibits should be numbered in the order they are discussed in the findings.

2. Legal Review:

- a. TSA MD 1100.73-3 does not require that all fact-finding inquiries receive legal review. The appointing authority must seek legal review in cases where findings and recommendations may result in disciplinary or adverse action. Nonetheless, appointing authorities are encouraged to obtain legal review of all inquiries. Other specific directives may also require a legal review.
- b. If a legal review is requested or required, it is required before the appointing authority approves the fact-finding report.

**F. FACT-FINDING REPORT SUBMISSION AND FINAL ACTION:**

1. Appointing Authority Submission. The fact-finder will submit the final fact-finding report and the complete case file to the appointing authority, generally within 30 days of receiving the appointment letter or case assignment. The final fact-finding report should include: the allegation investigated with dates; individuals involved; summary of the investigation process; and findings. The case file should include: the appointment letter; all relevant documentation and evidence; applicable policies or guidelines; interview summary statements/witness statements; facts and findings that support what is stated within the final fact-finding report. See Attachment 3: Sample Report of Fact-Finding.
2. AHC Submission. The appointing authority or designee will forward the case file and final fact-finding report to the AHC for final review and acceptance. In addition, the appointing authority will submit a final memo to the AHC. The final memo must contain: (a) a description of the allegation of harassment; (b) the findings of the investigation/inquiry; and (c) the outcome, to include any disciplinary, adverse, or other corrective action taken (or to be taken) as a result of the inquiry and in accordance with TSA MD 1100.75-3. Should the AHC find the final fact-finding report and/or the inquiry to be incomplete, the AHC will contact the appointing authority to communicate his/her concerns. The AHC will request further review by the fact-finder and require resubmission of the report.
3. Case Closure. Upon acceptance of the final fact-finding report and case file, the appointing authority's final memo (including outcome), and the management

official's notification to the parties of the completion of the investigation, the AHC will close the case.

## **ATTACHMENT 1: CHECKLIST FOR FACT-FINDERS**

### **Section 1. Preliminary Matters**

- Has the appointing authority appointed an appropriate fact-finder based on the criteria required and outlined in Section F.5 of this handbook?
- Does the appointment memorandum clearly state the purpose and scope of the inquiry, the points of contact for assistance (if appropriate), and the nature of the findings and recommendations required?
- Has a need for legal counsel been identified, if necessary? If so, has an initial meeting with legal counsel been accomplished?

### **Section 2. Conducting the Fact-Finding**

- Does the fact-finding plan outline the background information that must be gathered, identify the witnesses who must be interviewed, and the order of the interviews in the most effective manner?
- Does the fact-finding plan identify witnesses no longer in the agency and address alternative ways of interviewing them?
- Does the fact-finding plan identify information not immediately available and outline steps to quickly obtain the information?
- Is the chronology being maintained in sufficient detail to identify causes for unusual delays?
- Is the information collected (witness statements, memoranda for the record of phone conversations, photographs, etc.) being retained and organized?
- Is appropriate coordination with agency legal counsel being accomplished, if applicable?

### **Section 3. Preparing Findings**

- Is the evidence assembled in a logical and coherent fashion?
- Is SSI and/or PII identified and protected?
- Are the findings (including findings of no fault, no loss, or no wrongdoing) supported by the evidence? Does each finding cite the exhibits that support it?



**ATTACHMENT 2: SAMPLE APPOINTMENT LETTER**

U.S. Department of Homeland Security  
ARLINGTON, VA 20598



**Transportation  
Security  
Administration**

Date:

To: \_\_\_\_\_, Designated Fact-Finder

From: \_\_\_\_\_, Title (e.g. AA, FSD), Appointing Authority

Subject: Fact-Finding Appointment

Ref: TSA MD 1100.73-3, *Anti-Harassment Program*

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In accordance with the TSA policy referenced above, I hereby appoint you as Fact-Finder to conduct an informal administrative inquiry in the matter raised by     Title/Name    , hereinafter referred to as the affected person. Attached are emails and statements identifying the issue as reported by the affected person. The issue involves a statement made by     Title/Name    , stating that \_\_\_\_\_ (explain the issue/complaint and what is alleged). The affected person further states that \_\_\_\_\_ because \_\_\_\_\_. He/She has requested \_\_\_\_\_.

You are directed to conduct a full inquiry into the circumstances of the allegation by interviewing all relevant persons who may have been witnesses to any events that would substantiate the alleged incident, obtain signed statements, and review any additional evidence, as necessary. **(ADD ANY OTHER DIRECTION REQUIRED, SPECIFIC TO CASE, AND HOW THE REPORT SHOULD BE SUBMITTED TO THE APPOINTING AUTHORITY.)**

Your approach to this inquiry should follow the guidelines set forth in TSA MD 1100.73-3, *Anti-Harassment Program* and its accompanying handbook, which includes a *General Guide for Conducting a Fact Finding*. You are responsible for ascertaining and considering the evidence in a thorough and impartial manner. Your report must cite supporting evidence and provide documentation that supports your findings, as appropriate.

Generally, upon appointment as fact-finder, these duties will take priority over your regularly assigned duties. Please complete this inquiry as soon as reasonable but no later than     [day and date]    . If you require an extension, please request one in writing, prior to the deadline, and advise me of the extenuating circumstances that necessitate the extension.

*(Optional paragraph used only for sensitive matters.) Once you review the documents I have provided, and you have developed your witness list and questions, contact XXXXXXXXXXXX, TSA Field Counsel, and review your plans. Agency legal counsel is available to assist you throughout the process.*

Once you have completed the fact-finding report, please forward it directly to me. Due to the serious nature of the matter, please safeguard all materials and password protect the report. Should you have questions or need additional guidance or clarification regarding the fact-finding process, please feel free to contact the Anti-Harassment Coordinator (AHC) by calling 571-227-1336 or by emailing [Anti-HarassmentCoordinator@tsa.dhs.gov](mailto:Anti-HarassmentCoordinator@tsa.dhs.gov). I am also available and can be reached at XXX-XXX-XXXX or by email at [XXX.XXXXXXXXXX@tsa.dhs.gov](mailto:XXX.XXXXXXXXXX@tsa.dhs.gov).

cc: [Anti-HarassmentCoordinator@tsa.gov](mailto:Anti-HarassmentCoordinator@tsa.gov)



**ATTACHMENT 3: SAMPLE REPORT OF FACT-FINDING**

DATE: \_\_\_\_\_

FROM: Peter Colombo, Fact-Finder

TO: Appointing Authority

SUBJECT: Fact-finder's report into alleged harassment of TSO Jones

On \_\_\_\_\_ [date] \_\_\_\_\_, you appointed me to conduct an administrative inquiry regarding an allegation of harassment toward TSO Jones by TSM Smith.

Findings:

1. On December 12, 2016, at the North Checkpoint break room, there was a report of a verbal confrontation between TSM Smith and TSO Jones.
2. TSOs Gray and Gold were in the break room when the incident occurred.
3. TSO Gray indicated he heard TSM Smith yell, but could not recall the use of profanity toward TSO Jones. TSO Gray wondered if they were joking. (Statement attached).
4. TSO Gold stated that he heard TSO Jones say something to TSM Smith but could not hear it clearly. He next saw TSM Smith get very agitated, and loudly threaten to discipline Jones for speaking to him in such a manner. (Statement attached).
5. TSM Smith was interviewed and he indicated that TSO Jones insulted him by telling him that he was a terrible manager “[w]ho couldn’t run a hot dog stand, let alone a checkpoint.” TSM Smith claims that he did get angry and mentioned discipline as he considered the TSO’s comment as disrespectful behavior. He denies using profanity and says that was the conclusion of the interaction. He claims there was no harassment. (Statement attached).
6. TSO Jones was interviewed and he indicated that the “hot dog stand” statement to TSM Smith was meant as a joke, but TSM Smith “went crazy,” started yelling and called him profane names while threatening to fire him. (Statement attached).

Summary: The evidence indicates that TSO Jones made a “joke” that caused TSM Smith to become agitated. TSM Smith admits to being angry and loudly responding to TSO Jones. The witness statements support those points, but do not support that profanity was used, or whether there was any behavior that could be considered harassment under the agency definition.