

CAPP 10-1

2 March 2020

Commander Directed Investigation Guide



NATIONAL HEADQUARTERS CIVIL AIR PATROL
Maxwell Air Force Base, Alabama

Table of Contents

INTRODUCTION.....	3
GENERAL CONSIDERATIONS.....	3
CDI TEAM OVERVIEW.....	5
INITIATING THE CDI – THE COMMANDER’S JOB.....	7
CONDUCTING THE CDI (CDIO’S JOB).....	8
CDI REPORT WRITING DETAILS.....	10
POST-REPORT ACTIONS.....	12
CDI HELP LINE.....	13
ATTACHMENT – SUGGESTED FORM OF APPOINTMENT LETTER.....	14

INTRODUCTION

Guide Overview. This guide is intended to provide commanders and their investigative team members with tools that are useful in conducting commander directed investigations (CDIs) and best practices. ***This is a guide only and should not be cited as authority for conducting a CDI. Except where specified herein, use of this guide is not mandatory.*** CDI Investigative Officers appointed in connection with a CDI (CDIOs) should seek specific guidance from the commander directing the investigation as well as from the relevant legal officer (LO).

Authority to Conduct CDIs. Commanders appointed in accordance with (IAW) CAPR 112-10, *Indemnification*, have authority to conduct a CDI to investigate matters under their command, unless preempted by higher authority. Members' responsibility to cooperate with CDIs springs from their oaths to obey higher authority, and from CAPR 1-1.

CDI Purpose. CDIs are internal, administrative investigations used to gather, analyze and record relevant information of interest to the commander. They are extensions of the commander's authority to investigate and to correct problems within his or her command. There are two principal reasons a commander may want to conduct a CDI: (1) to investigate perceived or reported systemic or procedural problems or (2) to review matters regarding perceived or reported matters of individual conduct or responsibility.

Standard of Proof. The standard of proof for a CDI is preponderance of the evidence. Preponderance of the evidence is defined as "the greater weight and quality of the credible evidence", meaning the evidence indicates that one position is more probable than the opposing position.

GENERAL CONSIDERATIONS

Matters Appropriate for CDI. Commanders may initiate an investigation into matters within their command and should notify the Civil Air Patrol Inspector General (CAP/IG) with intent to perform a CDI in order to prevent concurrent investigations. Command matters include all issues and circumstances involving people, processes, and materials under their command. However, the subjects covered in a CDI should be limited to what is described in CAPR112-10(2)(a)(7) (the indemnification regulation).

Standards of Conduct. CDIs may be used to investigate whether an individual or individuals has/have violated a standard defined by regulation or policy.

Matters Not Appropriate for CDI. Not every issue lends itself to a CDI. Below is non-exhaustive list of example issues that are typically considered inappropriate for a CDI and that should or must be handled by other means.

Issues covered by other channels. Commanders are *not* permitted to take a complaint submitted to an Inspector General (IG) and resolve it through a CDI. However, an IG may refer an issue to a commander that ultimately results in a CDI. Issue dealing with Personally Identifiable Information (PII) are reported to the commander per CAPR 1-2(I), *Personally Identifiable Information*, para 5. As a rule, commanders should not use a CDI to investigate matters such as privacy violations as the General Counsel is the authority empowered by Civil Air Patrol to consider Privacy violations.

Reprisal, Retaliation, and Restriction Allegations. CAP has specifically designated the IG as the appropriate authority to investigate allegations involving reprisal, retaliation and restriction. As a result, only IGs can investigate reprisal, retaliation and restriction allegations. *A CDI is never appropriate for such allegations.*

- Reprisal, a violation of CAPR 20-2, *Complaint Resolution*, occurs when a responsible management official (RMO) takes (or threatens to take) an unfavorable personnel action, or withholds (or threatens to withhold) a favorable personnel action, with respect to a CAP member for making or preparing to make a protected communication. For example, a squadron commander who proposes or commences an adverse action on a member for reporting fraud, waste or abuse to the Wing Commander has committed reprisal.
- Retaliation, a violation of CAPR 35-8, *Membership Action Review Panel*, means taking or threatening to take an unfavorable membership action or withholding (or threatening to withhold) a favorable membership action from a member because of an action taken or not taken by the member, where such action or inaction did not violate any CAP regulation.
- Restriction, a violation of CAPR 20-2, means preventing or attempting to prevent members of Civil Air Patrol from making (or preparing to make) a protected communication.

Senior Level Official (SLO) Misconduct. Only the Office of the IG is authorized to investigate complaints against SLOs (grade of Colonel and above). If there is an allegation against an SLO, a commander will not conduct a CDI into the matter, but rather will promptly report that allegation to the CAP/IG.

Self-Investigation. Commanders should not investigate or direct a CDI into allegations pertaining to their *own* alleged misconduct. Self-investigation, or even the appearance of

such, can create negative perceptions and adversely impact the effectiveness of command. The next higher echelon of command is typically the best venue for addressing issues involving one's own command.

Sexual Abuse. All allegations of sexual abuse trigger CAP General Counsel and law enforcement sexual abuse response procedures. Upon receiving a report of sexual abuse, commanders must notify the General Counsel.

Fraud, Waste and Abuse (FWA). Once aware of FWA allegations, commanders should coordinate with the IG.

Equal Opportunity (EO). Commanders must inform the CAP Equal Opportunity Officer (EEO) office upon receipt of any allegations of discrimination or harassment based on race, color, sex, age, religion (creed), national origin (ancestry), sexual orientation, gender identity or expression, disability (formerly handicap), marital status, or military or veteran status. See CAPR 36-1, *Civil Air Patrol Nondiscrimination Program*.

Completion Timelines. The commander should establish a deadline by which the CDI should be completed and should include that deadline in the case summary given to the CDI Investigative Officer (CDIO). Many CDIs are not complex and can be completed in as few as two weeks. The appointing authority has the sole authority to grant or deny extensions.

CDI TEAM OVERVIEW

CDI Team Overview. A successful CDI typically involves the following key players: the commander, the CDIO, the LO, and technical advisors (if needed). Note that members currently serving as IGs or Assistant IGs are prohibited from being assigned to a CDI by CAPR 20-2.

The commander initiates a CDI by appointing (or, if a squadron or group commander, asking a wing commander to appoint) a CDIO in writing. The CDIO should be a member who has completed the Basic Investigator Course and the IG Senior Course.

A Unit/Squadron or Group Commander must inform his/her wing commander of the issue and request that a CDI be initiated. Only a wing or higher commander can issue an appointment letter. The commander issuing an appointment letter is herein sometimes called the "appointing commander".

The commander provides the CDIO with:

- An appointment letter. The letter should not contain personal information such

as the name of the subject or complainant. A suggested example form of appointment letter is attached to this pamphlet as Attachment 1.

- Copies of any materials related to the investigation.
- Access to witnesses and documents within the commander's authority.
- Oversight, by (among other things) keeping open lines of communication with the CDIO.

The CDIO. If the investigation has named subjects, the CDIO should ideally be equal or senior in grade to the most senior subject and should not be in their chain of command. In all cases, the CDIO should be mature and experienced with good writing and critical thinking skills. With commander concurrence, the CDIO could be selected from a different unit, particularly if that may be prudent or necessary to ensure a fair and impartial investigation. The CDIO should be available to conduct the CDI unhampered by vacation, retirement or other commitments that might detract from the investigation. In complex cases, the commander might consider appointing an assistant to the CDIO. All CDIOs should be directed by commanders to conduct thorough, fair and objective investigations. The CDIO has the following specific responsibilities before, during and after the investigation:

Pre-Investigative Duties. Before beginning an investigation, the CDIO should:

- Review this CDI Guide.
- The use of the CDIO guide as a "Best Practice" is highly suggested but not mandatory.
- Review all materials provided by the appointing authority and all the regulations that relate to the allegations.
- Meet with the LO prior to beginning the investigation and formulate an investigation plan in conjunction with the LO.
- Coordinate with the commanders of any known necessary witnesses to arrange for witness availability, emphasizing the confidentiality of the investigation.

During Investigation Duties. Throughout the course of the investigation, the CDIO should keep consulting with the LO, should treat all information gathered as part of the CDI process as CAP Confidential, and:

- Thoroughly gather all necessary facts, through witnesses, documents, or other items of evidence, to help the commander make an informed decision.

- Stay on task by investigating only the items that the commander outlined in the case summary. If new or different issues come to light during the investigation, the CDIO should address those issues with the commander. The commander then can decide whether and how the additional issues will be treated.
- Be professional, objective, neutral, and fair. CDIOs should not disclose witness identities or opinions; deceive, browbeat, threaten, coerce, or make promises; shout or argue.

Post-Investigative Duties. Once the information is gathered the CDIO should:

- Write a fair and balanced Investigation Summary (IS) that considers both sides of the issue, supports the “right” answer based upon the preponderance of the evidence, and documents the CDIO’s deliberative process.
- Organize the IS case file.
- Obtain a legal review of the IS from the LO.
- Forward the IS case file to the commander who directed the investigation.

Legal Officer Role. The LO plays a critical role in the CDI process.

Initial Review. Prior to the CDIOs appointment, the LO can assist the commander in reviewing the case file. The LO can also meet with the CDIO and assist in formulating interview questions. The LO then advises the CDIO during the investigation as issues may arise.

Legal Review. Commanders should receive a legal officer review of the draft IS before taking action. At the moment, there are no specific standards for “legal sufficiency” for an IS arising from a CDI, but an LO should be asked to review the draft at least for usage, tone and objectivity.

INITIATING THE CDI – THE COMMANDER’S JOB

Case Summary. Before initiating a CDI, the commander should review all the case documents with the LO. The commander and the LO should clearly and concisely identify the specific processes to be reviewed and/or any rules or policies that an individual may have violated.

Appoint the CDIO. Once the commander decides an investigation is needed, he/she should appoint (or, if a squadron or group commander, ask a wing commander to appoint) a CDIO in writing. The appointment letter should generally outline the scope of the investigation, authorize

the CDIO to collect evidence, and establish completion deadlines. A suggested example appointment letter is attached to this CDI Guide as Attachment 1. The appointment letter is the CDIO's authority to investigate, interview witnesses, and examine and copy documents, files, and other data relevant to the investigation. For purposes of the CDI, the CDIO is an extension of the appointing commander.

Arrange the Logistics. The commander initiating a CDI is responsible for providing the necessary manpower, supplies and funding support to the CDIO.

CONDUCTING THE CDI (CDIO'S JOB)

Preparation. The CDIO should meet with the LO for assistance in forming an investigation plan, proof analysis and interview questions before starting the investigation.

Question Formulation. The CDIO should work closely with the LO when preparing interview questions for relevance, organization and form.

Relevance. The key to relevance is *whether the information sought might have an effect on the outcome of the case*. The interview questions should focus on the facts and circumstances surrounding each allegation.

Organization. The best interviews typically start with background and build up to the pivotal question or issue. Ask pertinent background questions first. Work the witness toward the more difficult topics. While there is no standardized method to ensure effective interviews, it is often best to review events chronologically. Using a chronology can be helpful in keeping questions in a logical sequence.

Form. Let the witness tell what happened and refrain from asking questions that suggest answers. Avoid compound questions that contain several questions in one. Compound questions can confuse the witness and often result in one answer, making it impossible later to determine which question the witness answered.

Information Collection.

Precision. The CDIO should seek information that is accurate and, where possible, from individuals with direct knowledge. Information can be testimonial, physical, or circumstantial. Information collection often has a ripple effect: the disclosure of one piece often drives the need to confirm it or refute it.

Active Duty Military, National Guard, or Reserve Personnel. Prior to interviewing active duty military, national guard or reserve personnel, the CDIO must obtain permission from CAP-USAF/CC or his/her designee. Requests will be staffed through the CAP/IG or the Wing/CC and

the CAP-USAF/IG. A list of questions to be asked must be submitted to the CAP-USAF/IG to move the process forward.

A memorandum of CAP-USAF policy is included in the CDIO Guide and should be used by the CDIO to ensure compliance.

CAP Employees. Prior to interviewing CAP employees, the CDIO must coordinate with CAP/HR

Order of Witnesses. If at all possible, each witness should be interviewed individually. The recommended sequence is: (1) the complainant(s), if any; (2) subject matter experts; (3) regular witnesses; and (4) subjects. Interviewing the subject last ensures the CDIO has learned the necessary information to ask the right questions. This process can also enhance truth telling, as people are more likely to be truthful if they have reason to know the CDIO has information from others. If the subject's interview is last, the CDIO can also probe any statements that are inconsistent with other evidence.

Testimony Management. The CDIO can obtain testimony in a variety of formats. Regardless of format, testimony should always include the full name, office designation and unit for each witness. Each witness should be reminded that a CDI is a serious matter and that there could be adverse personnel actions taken if the witness fails to tell the truth.

In Person. Ideally, testimony is taken on site at a predetermined location that is safe and convenient for the witness.

Telephonic. If the witness is unavailable for face-to-face interviews, but is useful to the CDI, the CDIO may arrange a telephonic interview.

Interviewing Cadets. Cadets being interviewed are allowed to have their parent(s) or legal guardian present. The parent(s) or legal guardian should sit in the back of the room and not interfere with the interview. To the extent that a parent requests a materially different arrangement, the CDIO should consider consulting with the LO before reaching an agreement with the parent.

Hand-Off. If a member becomes distraught during an interview, the CDIO should terminate the interview and contact the commander or the commander's designated representative or Chaplain. Such a hand-off should be noted in the IS.

Physical Evidence. Physical evidence consists of documents, computer records, photographs and objects, to name a few. CDIOs should work with the LO and the

commander to determine how to secure and store evidence.

New Allegations. Sometimes a CDI may raise additional allegations. This typically occurs during the investigation when a witness's testimony reveals potential additional misconduct or information.

During the Investigation. If a witness' testimony, or other evidence, raises the possibility of additional misconduct of the subject or another person, the CDIO should coordinate with the commander to determine whether the additional issues will be investigated separately (via a CDI or by telling the member to fill out an online CAPF 20), or as part of the on-going investigation. If, after consultation with the LO, the commander expands the scope of the CDI, the appointment letter should be amended. Subjects must be advised of their alleged wrongdoing when they are interviewed. If a subject has already been interviewed but has not been given adequate opportunity to respond to the substance of all alleged misconduct under investigation, the subject must be informed of the new allegations and re-interviewed.

CDI REPORT WRITING DETAILS

Suggested CDI Investigative File Format. The Investigation Summary ideally should be a stand-alone document. All essential facts, documents, portions of regulations, interviews, etc., should be included in the report so that a reviewer can arrive at a determination without reference to information outside the report. The CDIO should write as if the reader had no prior knowledge of the case. The following is a suggested format:

Background. The CDIO provides the factual background leading up to the alleged events. The CDIO needs to be careful to present both sides of the case, not merely those facts that support his/her conclusion. The most helpful way to present facts is typically in chronological order. Those who read the IS typically will be relying on the IS for all the background facts, so CDIOs need to be thorough. In this section, the CDIO would also discuss any other issues that arose during the investigation (e.g., documenting why a requested witness was not interviewed).

Findings. CDIOs invest significant time and effort gathering facts. Much of this effort can go unnoticed if the facts are hidden somewhere in a poorly organized IS. To ensure the IS is thorough, fair, and balanced, the CDIO should keep in mind the "Three C's" of analytical thinking and writing: *credibility, corroboration, and clarity*. If the evidence is in conflict and cannot be reconciled, that may mean that the facts did not satisfy the proof by a preponderance of the evidence standard.

The conclusion is based on the preponderance of evidence which is used to determine whether allegations of wrongful conduct and/or a violation of CAP regulations took place. The CDIO does *not* make recommendations relative to disciplinary action(s).

Technical Review. A check for spelling, grammar and operational correctness. If none is done, make a note in the IS.

Legal Review. Prior to providing the final IS to the commander the CDIO should obtain a review, preferably written, from the LO. Ideally, a legal review should include a discussion and assessment of whether the:

- (1) CDIO applied the preponderance of the evidence standard for each alleged issue;
- (2) Findings of fact are supported by the evidence included in the IS;
- (3) Conclusions are consistent with the findings of fact and supported by the preponderance of the evidence;
- (4) Errors or irregularities (if any) noted by the LO could render the investigation insufficient.

Commander (Appointing Authority) Approval and Actions. Upon receipt and review of the entire CDI case file, including the legal review, the initiating commander either “approves” or “disapproves” the Investigation Summary (IS) and takes appropriate corrective action (if any is required). If the CDI was initiated by a unit or group commander, such commander should discuss with the wing commander and the wing LO the outcome prior to taking appropriate corrective action. If the initiating commander disagrees with one or more of the CDIO’s findings and conclusions, he/she should document the rationale for the disagreement and final determination on the matter (substantiated or not substantiated), in writing. An “addendum” to the IS typically is the best method of documenting disagreement, rationale, and final determination for the case file.

Document Markings. Mark ***CAP Confidential*** at the top and bottom of each page. Mark all documents provided by the complainant during the course of the investigation as ***“COMPLAINANT PROVIDED”*** in the lower right-hand corner of each page. Control the number and distribution of copies. ***CDIOs should not provide draft or final copies of the IS, or disclose the CDIO’s opinion, to complainants, subjects, suspects or witnesses for any purpose absent consent of the General Counsel.***

POST-REPORT ACTIONS

Closure with Subjects, and Complainants. The commander makes final notification of the CDI results to the complainant (if any) and subject, in writing.

Use of Results in Adverse Administrative Actions. The information obtained in a CDI, including an CDIO's findings, may be used in any administrative action against an individual. The administrative action (suspension, "2b", etc.) should be drawn from the facts stated in the IS and be a "Stand Alone document." The IS does not accompany the administrative action. Commanders should consult their LO prior to notifying any member of contemplated adverse action.

CDI "Appeals." An appeal of the decision may be made by the subject and must include additional information that justifies a review. The appeal is made to the initiating commander and the next higher echelon of command. Simply disagreeing with the results does not ordinarily constitute sufficient justification for further review or additional investigation.

Any appeal alleging reprisal as defined in CAPR 20-2 or retaliation as defined in CAPR 35-8 must be referred to the Inspector General.

CDI Records Release. The appointing commander is the release authority for CDIs. Commanders should limit access to CDIs to CAP personnel with an official need to know. Typically, CDIs are released outside CAP only as required under applicable law and only with permission of the General Counsel. CDIs may not be released, reproduced or disseminated in whole or in part, or incorporated into another system of records, without the appointing commander's express permission. CDIOs should consult with the LO prior to incorporating information from another system of records (such as hospital records or civilian police reports) into the CDI. Commanders should coordinate any information release with their LO and with GC.

Personal Identifiable Information(PII). The PII in CAPR 1-2(I), para 5, applies to CDIs. In all correspondence relating to CDIs, including notification letters, commanders need to refrain from using an individual's name, but may use the individual's duty title. This is to protect the privacy of individuals involved. Additionally, complainants, witnesses and others are *not* entitled to know what command action was taken against *subjects*. Commanders should consult their LO with any questions relating to PII before authorizing release of a CDI to any person.

Retention of Records. Files should be kept for two years. In the meantime, commanders must determine a safe and secure location for the CDI case files. The CAP/GCO will load into a system of record the five documents of the case file: the appointment letter, investigation plan, investigation summary, evidence log and closure letter which includes action taken from the CDI.

CDI HELP LINE

Questions about CDI Procedures? The General Counsel and the Chief of the CAP Legal Officer Corps are now appointing legal officers on a rotating basis to staff a “CDI hotline” for commanders, CDIOs and LOs to ask questions and otherwise seek suggestions. CAP wants this resource to be helpful and timely, but it is not intended to relieve local personnel from their duty in good faith to try to staff matters and determine appropriate procedures on their own before using the “hotline”. To get the contact details for the currently appointed “CDI hotline” legal officer, contact CAP/GCO at 334-953-9221 or the National Operations Center at 888-211-1812 x300 or 334-953-5000.

ATTACHMENT 1
SUGGESTED FORM OF APPOINTMENT LETTER



Office of the Commander
[REGION][WING]
HEADQUARTERS CIVIL AIR
PATROL
Address
City, State Zip Code
United States Air Force Auxiliary

DATE: Click here to enter a date.

TO: Click here to enter text. Click here to enter text.

FROM: Click here to enter text.
Click here to enter text.

SUBJECT: Appointment to Conduct a Commander Directed Investigation

1. Click here to enter text., is hereby appointed as CDI Officer (CDIO) authorized to inquire into all aspects and circumstances surrounding an allegation of Click or tap here to enter text.
2. This appointment requires the CDIO to collect evidence and take statements for documentation in an **investigative summary (IS)**. The investigator may review records, collect evidence and conduct interviews of witnesses and subjects.
3. The scope of the investigation shall include any and all members of Click or tap here to enter text.
4. Since the purpose of a Commander Directed Investigation is to establish the facts, subjects, and witnesses who are CAP members are required to fully cooperate. Failure to respond with truthful and complete information or any action to impede the process of the investigation in any way will be documented and provided to the appointing authority for disciplinary action up to and including membership termination.

Click or tap here to enter text.
Click or tap here to enter text.