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DISCUSSION OBJECTIVES

- Assessing the reported privacy incident.
- Identifying information you will need to review prior to interviewing complainants, witnesses, and parties involved in the privacy incident.
- How to effectively conduct privacy intake and investigative interviews.
- Building your Privacy Interview Toolkit

ASSESSING THE PRIVACY INCIDENT

- Evaluate severity of the privacy issues.
- Identify parties.
- Mitigate the potential damages that may result from the privacy incident.
- Prepare to conduct your investigation.
WHO SHOULD INVESTIGATE?

Consider the following:

- Consistency
- Communication skills and “fit”
- Credibility
- Conflicts
- Counsel (in-house or external)

INVESTIGATIVE INTERVIEW PLAN

- Narrow scope of investigation
  - Identify relevant laws and policies
  - Assess gravity and urgency of the situation
- Set time frame for investigation and interviews
- Identify individuals involved and notify key stakeholders (i.e. employee managers, HR, etc.)
- Review relevant documents and information, and prepare a timeline of events
- Determine communications to complainant and interviewees
INTERVIEW PREPARATION PROCESS

- Determine order of interviewees
- Prepare interview outline
- Investigation documentation
- Interview individuals separately
- Consider having a witness present
- Determine method of interview (i.e. phone, in person, or via email)
- Determine who will lead interview

INTERVIEW - OPENING

- Introduction
- Introduce others
- Discuss confidentiality
- Make the purpose clear
THE DIFFICULT INTERVIEWEE

- Request for third party present
  - No one but counsel and counsel cannot interfere with investigation
  - If the accused employee asks whether they need an attorney, do not attempt to answer the question
- Request to record interview
  - Do not allow. Patient information may be discussed
  - Refer to your policies and alert in-house counsel

INTERVIEW

- Ask open ended questions
- Take concise notes
- Keep opinions to yourself
- Listen actively
- Do not interrupt
- Keep interview on topic
- Be flexible
THE DIFFICULT INTERVIEWEE SITUATION

- **Refusal to cooperate**
  - Remind them of the company policies and obligation to cooperate during an investigation
  - Assure them of confidentiality (to extent possible) and non-retaliation
  - Confirm that the company can take action based only on the available information

- **Use of foul language**
  - Remind them of Code of Ethics
  - Not appropriate nor productive

- **Becomes overly emotional**
  - Ask them to take a moment to pull themselves together
  - Determine if interview can continue
  - Call security, if needed

INTERVIEW PROCESS - CLOSING

- Allow HR to ask questions
- Allow interviewee to ask questions
- When possible, get signed interviewee statement(s)
- Invite interviewee to contact you if they recall or discover additional information.
THE DIFFICULT INTERVIEWEE – STRIKES AGAIN

- **Refuses to sign statement**
  - Remind them signature is not required
  - It is their way to state their side in their own words

- **Wants to know results**
  - Let them know it is still an ongoing investigation

ANALYZE INTERVIEW

- Verify interviewee’s statements
- Interview notes should contain the facts gathered from the interviewee.
- Document why a potential witness was not interviewed
- Assume all documents gathered and written during the investigation will be discoverable
- Documents should be signed and dated.
- Avoid legal conclusions and irrelevant background.
- Draft Findings Report
- Re-interview individuals as needed
COMMON MISTAKES TO AVOID

- Dismissing a complaint as trivial
- Beginning an investigation without having all the information from the reporter
- Interviewing witnesses together
- Interviewing witnesses without a third party present (i.e. Human Resources)
- Showing bias and taking sides
- Not keeping complaints on a need-to-know basis
- Promising confidentiality or talking “off the record”
- Failing to document or get written acknowledgement from witness

PRACTICE

Patient, John called because he believes his soon to be ex-wife, Karen, an employee, accessed his medical record. John is currently in a relationship with Karen’s ex-best friend, Bonnie who is also an employee. The patient access manager, Jessica stated that Karen and Bonnie were best friends since high school. Apparently, Bonnie and John were having an affair for several years when Karen found out. During an outburst at work between Karen and Bonnie, Karen accused Bonnie of passing herpes to her through John. Security was called to break the two of them up before the argument became physical. Jessica is in the process of moving work stations and shifting schedules so they do not have to work with or near each other. An audit of access to John’s electronic medical record (EMR) shows that both Karen and Bonnie accessed John’s EMR.
POTENTIAL INTERVIEWEES

- John
- Jessica
- Karen
- Bonnie

POTENTIAL PARTICIPANTS

- Human Resources

THANK YOU!

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