

Confidentiality, retaliation, and interim measures in investigations

It is important for all parties involved in a sexual violence investigation or process to understand the obligations regarding confidentiality (privacy) and retaliation. Please review this information and contact the HRDO if you have any questions about these obligations.

Key Policy/Procedure Sections about Confidentiality

Confidentiality means the duty to not share information created or received in private without the explicit permission of the individual the information is about (Definitions section of the Policy)

Confidentiality is essential to fostering a safe environment and will be safeguarded to the greatest extent possible. Respecting confidentiality is also an obligation under FIPPA (Freedom of Information and Protection of Personal Privacy Act), subject to certain exceptions. (section 17.1 of the Policy)

Everyone participating in an investigation, including Complainants, Respondents, witnesses, and others, must keep any information they learn through the investigation Confidential, both during and after the investigation (section 7.1 of the Procedures)

Complainants, Respondents, and witnesses are free to speak about their own experiences. However, individuals are not permitted to divulge information that they learned solely as a result of the investigation process, which they did not know beforehand unless the other parties give permission to do so, and by doing so, they would be in breach of this Policy (section 7.4 of the Policy)

Privacy may be limited in instances where an employee has the right to grieve or take other legal action. Individuals may be required to testify and evidence can be subpoenaed in a legal proceeding (section 7.2 of the Procedures)

A person may also be sanctioned if that person breaches the Confidentiality of a Disclosure or Report (section 6.3 of the Policy)

What does this mean?

- You cannot share or discuss the Summary of Allegations (summary of Complainant's report) if you are the Respondent, and you cannot share or discuss the Respondent's reply if you are the Complainant, as this is information you learned from the investigation and/or related process, except that you may seek confidential advice and/or direction from your support person or legal counsel

- You are not allowed to talk about the fact that there is an investigation, or anything you learn through the investigation or related processes, except that you may seek confidential advice and/or direction from your support person or legal counsel
- Your support person is also required to maintain confidentiality and should agree to maintain confidentiality
- Do not ask individuals if they have participated in this process, nor speak to any individuals who may participate in this process about the contents of their discussions with the HRDO or investigator
- If you break confidentiality, you may be in breach of this policy and can be sanctioned (disciplined)
- If you tell other people about the investigation or anything you learn through the investigation, and they tell anyone else, they may be in breach of this policy and can be sanctioned
- If you speak to potential witnesses about the investigation, this can result in their evidence being given less weight, or deemed unreliable
- If you post anything about the investigation or related processes online, or make any statements in person or in writing, it may also be a breach of confidentiality
- A breach of confidentiality could also be viewed as retaliation, if done as punishment for making the complaint or participating in an investigation

Remember, confidentiality is required of all parties, witnesses, and people involved in the investigation process. It protects both parties from damage to reputation, ensures the integrity of the investigation, and is required by legislation such as The Freedom of Information and Protection of Personal Privacy Act.

Key Policy/Procedure Sections about Retaliation and Interim Measures

Retaliation of any kind is prohibited. This includes retaliation against any member of the UW Community who reports or is witness to an incident of Sexual Violence. Any member of the UW Community found to have engaged in retaliation may be sanctioned under this policy, other University policies, or a collective agreement as maybe appropriate (section 6.2 of the Policy)

The HRDO shall determine whether interim measures are required, based on their preliminary assessment of factors such as risk of safety, *retaliation*, and accommodation needs of either the Respondent or Complainant. Consequences for violating interim measures will be clearly communicated to the Respondent and Complainant at the time they are applied (section 4.1 of Appendix A to the Procedures)

No contact

Unless you have an ongoing relationship that requires contact, like a working relationship, you will usually be told not to contact the other party while the investigation and/or related processes are ongoing. Why?

- If you attempt to contact the other party, it can be intimidating to them and could be viewed as an attempt to interfere with the process, or to get them to change their mind about proceeding. Intimidation could be considered retaliation for this reason.
- If interim measures are in place that prohibit contact or if your attempt to contact a party is seen as intimidation, you could be sanctioned for retaliation or breach of the interim measures.

Please note that this does not mean that you are presumed or “found guilty” of the allegations. Ensuring there is no contact helps to protect both parties and to preserve the integrity of the investigation or other process.

What does contact mean?

- Calling, texting, emailing, messaging, speaking, writing, gesturing, sending images, or social media messages or posts are all forms of prohibited contact
- Asking someone else to contact the other party – by calling, texting, emailing, messaging, speaking, writing, gesturing, sending images, or social media messages or posts – is also prohibited contact
- If you see the other party on or off campus, you are advised to maintain your distance as much as is reasonably possible and not attempt to contact them

What does retaliation mean?

- Any negative actions or repercussions for having filed a report, or participating in an investigation or related process
- Examples include attempting to intimidate someone, decreasing pay or terminating employment (in workplace), or physically harming someone, due to the above
- Sanctions or discipline following a finding by the investigator that the policy was breached, or interim measures, are not retaliation