

General Principles for Physical and Documentary Evidence

PREAMBLE

The Conference of International Investigators (CII) has endorsed the Uniform Principles and Guidelines for Investigations (“Investigation Guidelines”).¹ These General Principles for Physical and Documentary Evidence supplement the Investigation Guidelines and were endorsed by the CII at its 21st Conference in May 2021.

The purpose of these General Principles is to provide non-binding reference and guidance for obtaining and handling physical and documentary evidence by an Organisation’s Investigative Office.² This document may also guide external service providers or other functions within the Organisation that are involved in investigations or obtaining and handling of physical and documentary evidence on behalf of, or in collaboration with, its Investigative Office.

Obtaining and handling of physical and documentary evidence should be undertaken in line with the principles of objectivity, impartiality and fairness as outlined in the Investigation Guidelines.³ The present text aims to contribute to efficiency, consistency, accuracy, transparency and accountability during this stage of the Investigative Office’s activities.

The scope and detail of obtaining and handling physical and documentary evidence remains within the discretion of each Organisation. It should be conducted by personnel of the Investigative Office applying their judgment and expertise within the framework of each Organisation’s own requirements, policies, and procedures.

These General Principles do not, and are not intended to, bind any Organisation, its Investigative Office, or its personnel; confer, impose, or imply any duties, obligations, or rights on them or on any third parties; or affect their rights and obligations under applicable rules, policies, and procedures (their “Policies”), including any privileges and immunities afforded to them by international treaty, customary international law, or the laws of any respective member state. These General Principles are to be utilized within the framework of each Organisation’s Policies and the exercise of an Investigative Office’s professional judgment and expertise.

PURPOSE AND DEFINITIONS

1. Evidence is information which tends to establish a fact material to an investigation, and which may assist in substantiating or disproving an allegation. Physical and documentary evidence, together with other forms of evidence, is therefore central to an investigation.
2. Principles of ‘relevance’, ‘chain of custody’ (maintaining the integrity of evidence), and the use of ‘best evidence’, (originals versus copies), as described below, may be relevant to the process of obtaining and handling physical and documentary evidence, in accordance with the Investigative Office’s Policies.

¹ The Investigation Guidelines were endorsed by the Fourth CII in 2003. The second edition was endorsed by the Tenth CII in 2009.

² Consistent with the Investigation Guidelines, "Organisation" includes all institutions participating in the CII, and "Investigative Office" refers to the units or functions of an Organisation mandated to investigate allegations of wrongdoing—as defined by the Organisation—within the Organisation or associated with its projects and activities.

³ See: Investigation Guidelines, General Principles, para 3

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3. For the purpose of these General Principles, physical evidence is any object that is not in the form of a document or considered as digital forensic evidence.⁴ Items of clothing or samples collected as part of SEA⁵ investigations are examples of physical evidence.
4. Documentary evidence is any original hard-copy documents, as well as photocopies and digital documents, such as emails and digital communication, that have not been collected via digital forensic methods.

PRINCIPLES THAT APPLY TO ALL PHYSICAL AND DOCUMENTARY EVIDENCE

Obtaining Physical and Documentary Evidence

5. Physical and documentary evidence may be obtained directly by personnel of an Investigative Office or those designated by an Investigative Office, through requests for information to anyone who is identified to be in possession of such evidence, including staff of the Organisation, or provided by witnesses and/or subjects of an investigation, during the course of an investigation.
6. Investigators should ensure that they comply with the authority and rights of the Investigative Office when accessing and obtaining physical and documentary evidence held by their Organisation, its employees, and other parties. This is particularly important with respect to obtaining evidence from subjects of an investigation and conducting searches of locations where employees' personal effects are stored. This helps to ensure that evidence is properly obtained and can be used in any subsequent disciplinary or other proceedings.
7. Appropriate arrangements should be made to secure and obtain physical and documentary evidence throughout an investigation. When requesting evidence to be secured or delivered by persons who are not personnel of the Investigative Office, the confidentiality of the process and chain of custody, as applicable and appropriate, (see below) should be considered. Similarly, if the investigators consider evidence may be at risk of loss, within the authority of the Investigative Office, the investigators should assess whether measures to physically move the evidence to a more secure environment or limit the access to or control over the evidence is required.
8. Where physical or documentary evidence is obtained through searches of premises or property, in addition to confirming the Investigative Office's authority and access rights, the search should be performed in a methodical way with at least two investigators present, so there is corroboration in the discovery of any evidence. Key information, such as the location, date, time, and persons present should be recorded, and all evidence obtained recorded and secured in accordance with the principles described below and the Investigative Office's Policies.

Relevance

9. It is good practice to obtain and review any and all evidence that may appear relevant to an investigation. Only after reviewing all of the possible evidence, may any of it be considered not relevant to an investigation. As its relevance may not be known until after it has been obtained, all physical and documentary evidence obtained by an Investigative Office should be recorded and handled in accordance with chain of custody principle.

⁴ To provide a further example, if a witness provided a USB drive containing digital documents to an investigator, the USB drive is physical evidence, whereas its contents are documentary evidence.

⁵ Sexual Exploitation and Abuse.

Chain of Custody

10. The chain of custody is the process through which the integrity of evidence is safeguarded during an investigation, including how it is obtained, stored, reviewed, and disposed/returned. The process is chronological and provides an audit trail of the evidence while in the possession of the Investigative Office. This is to maintain the security and continuity of the evidence.
11. Each Investigative Office is responsible for devising an appropriate process for receipt and securing of physical and documentary evidence that comes into its possession. The Investigative Office may record the item's description, source (receiver, if being returned), location, date, and time when the evidence is collected or returned, reference the item in the case file, and keep it secure while in its possession.
12. The Investigative Office should have policies and procedures that address the retention and return or disposal of evidence that it has obtained. The Physical and Documentary evidence obtained may be subject to an Organisation's Policies concerning how long information (including evidence) can be retained by the Organisation before being disposed or returned, which may be different if the information is relevant to disciplinary or legal proceedings.

OTHER PRINCIPLES THAT MAY APPLY TO DOCUMENTARY EVIDENCE

Best Evidence

13. 'Best evidence' is a principle that relates to obtaining the best possible evidence available in the circumstances of an investigation. In the case of documentary evidence, it usually refers to obtaining original hard-copy documents rather than copies. If originals are not available, copies can be considered to be the best evidence.
14. The 'best evidence' standard is not usually required for administrative investigations where a copy, or an electronic format, of a document is usually considered sufficient. However, in certain circumstances, such as when the evidence may be used for proceedings other than under the Organisation's disciplinary or sanctioning processes (formal legal proceedings in a national court, for example), obtaining original documents should be considered.
15. If original documents are to be obtained and used as evidence, they should be handled appropriately with consideration to maintaining the chain of custody and performing any forensic or other expert examinations that may be required, as described below.
16. If copies of documents are considered acceptable, and may be used for proceedings other than under the Organisation's disciplinary or sanctions processes, the Investigative Office may need to ensure that a copy is a true reproduction of the original and store it in secure conditions as if it were the original document to preserve the chain of custody.

Other Documentary Evidence Considerations

17. Some types of documentary evidence are subject to certain restrictions and rules. This includes legally privileged and sensitive personal information.
18. Legally privileged information is any communication in any form between an attorney, or a person acting at the direction of an attorney, and a client, for the purpose of requesting or providing legal advice as determined by the Investigative Office in its discretion. If such information comes into the possession of the Investigative Office, it should obtain appropriate advice before using it as evidence in an investigation.

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19. Sensitive personal information, such as an employee's medical records, may be obtained and used as evidence in certain circumstances, in accordance with applicable rules and local laws. Again, The Investigative Office should obtain appropriate advice before using this information as evidence in an investigation.

PRINCIPLES THAT MAY APPLY IF OTHER FORMAL PROCEEDINGS OR EXPERT ANALYSIS IS ANTICIPATED

20. If it is anticipated that physical and documentary evidence obtained by the Investigative Office may be used in proceedings other than under the Organisation's disciplinary or sanctions processes (such as in formal legal proceedings), or that it may be subject to forensic or other expert analysis, it should be recorded and secured in a manner that can verify its authenticity (that there is no reasonable possibility that it has been interfered with or changed since its acquisition) and attribution throughout the time it is in the Investigative Office's possession.

21. In these circumstances, it may also be appropriate to record additional information and perform additional procedures when obtaining and handling physical and documentary evidence. In addition to key information such as description, source, location, date and time, it may also be appropriate to record additional the signatures of the investigator who collected the evidence and, if relevant, the signature of the person it was collected from, as well as preparing a detailed inventory of all physical and documentary evidence collected.

22. It may also be appropriate to secure and handle the evidence in a way that minimizes the risk that the evidence can be tampered with or corrupted, and that preserves it for forensic or other expert analysis.⁶

GENERAL CONSIDERATIONS

23. The same general principles as outlined in the Investigation Guidelines, as related to maintaining independence, objectivity, impartiality, fairness and integrity; maintaining the confidentiality of sensitive and non-public information; and disclosing potential conflicts of interest of the staff conducting the work, shall apply to the General Principles of Physical and Documentary Evidence.

24. The General Principles provided in this document may not be formulated to suit all possible circumstances. Due to the unique nature of many activities conducted by Investigative Offices within their mandates and an Organisation's specific Policies, professional judgment should be exercised when applying these General Principles.

PUBLICATION AND IMPLEMENTING GUIDELINES

25. These General Principles have been endorsed by the CII. Any Organisation may refer to these General Principles in its own Policies or may publish them itself in accordance with its Policies. In addition to these General Principles, the CII may develop and publish detailed *Implementing Guidelines for Physical and Documentary Evidence* to be used for reference as needed, as further non-binding guidance for Investigative Offices in their Physical and Documentary Evidence activities.

⁶ This usually involves placing the evidence into a tamper-proof evidence bag, labelling it with a description of the item and other key information, such as who from the Investigative Office has handled the item, and securing it with a single use seal. If the seal has to be broken for any reason, such as to take a copy or perform analysis, this should be noted on the label and the original seal placed back in the evidence bag before resealing.