Timing of the Notice to Respondent
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What are your thoughts on when in the process notice to the respondent is required? Specifically, if a party has reported an incident but is not sure yet whether they want to pursue an investigation would it be permissible to speak to witnesses of the event in order to get a timely account of what they may have seen? Is this simple preservation of evidence, or is this opening an investigation such that it requires full notice to the respondent? Similarly, in cases where a reporting party has decided they want to move forward with an investigation is it permissible to interview the reporting party and their witnesses first, before providing notice to the respondent and subsequently interviewing them?

OCR is of the opinion that once you know an investigation is going to move forward, then notice is required at that time. However, I don’t see that as a default, as strategically optimal, or required by due process. If you are conducting a preliminary inquiry (little ‘i’) and not sure if an investigation will ensue because of lack of evidence to support a possible violation, then it is not required. However, once you have a cooperating reporting party and evidence to indicate a potential violation, then notice is required to the responding party, in my opinion at some point.

If the preliminary inquiry is being used to assess the good faith validity of the allegations, or to assess whether to proceed despite a reporting party’s request not to, some vetting of witnesses can be appropriate. Just because you are interviewing witnesses does not trigger an immediate need to provide notice to the responding party.