Factsheet

Recordkeeping requirements

Records relating to misconduct action need to be kept separate from the personnel file of the employee or former employee. The existence of a separate misconduct file should, however, be noted on the personnel file—for example, by cross‑reference.

Files of this kind are to be classified ‘Official: Sensitive’, consistent with the Australian Government’s Protective Security Policy Framework, and held in secure storage.

Access for management purposes should be allowed only on a need-to-know basis. Delegates who are deciding a sanction for subsequent misconduct should have access to these records to allow them to give proper weight to the employee’s prior misconduct in deciding a suitable sanction.

It is appropriate for the misconduct file to include material such as:

* all correspondence with the person under investigation, including the letter(s):
	+ informing them they are alleged to have breached the APS Code of Conduct
	+ explaining the ‘case against them’
	+ advising them of the final determination
	+ outlining the proposed sanction and the reasons for it
	+ advising them of the sanction and their review rights
	+ any attachments to the correspondence
* decision records and any statements of reasons with respect to the breach determination and any suspension or sanction decisions
* all relevant electronic correspondence relating to the investigation, decision-making, or imposition of a sanction—this can include, for example, emails or chat logs
* all material associated with planning the investigation, such as records of telephone calls, letters, or emails or other electronic correspondence organising interviews
* the investigation report with all the evidence relevant to the breach and sanction decisions attached, such as IT records or transcripts of witness interviews.

Where the agency has engaged an external investigator, the agency should require the investigator to provide the following on completion of the investigation:

* the investigation report, the evidence relevant to the breach decision, and any sanction decision for the file
* copies of any draft material provided to the employee for comment
* the employee’s response to the correspondence.

Further information can be found in **Chapter 12** of **Handling Misconduct.**