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Best Practices For Saving And Protecting Critical Data Following An Incident

Part II

An ioMosaic White Paper

Introduction

Properly conducted interviews of witnesses following an incident is as important to understanding what occurred, as is saving data and information following an incident (presented in the first paper of this series). If interviews are not done correctly, information can be lost to the incident investigation team, and later for the litigation, should it occur. The interviews must take into account human nature, an understanding of it, and the fragility of human memory. This paper will try to illustrate some of the problems encountered in performing interviews and suggests techniques to plan and conduct interviews. Due to space limitations it must be recognized that this is not a detailed discussion of this topic.

Initial Statements

The first interview with personnel should take place as soon as possible after an incident. It is recommended that this interview take place after the site is secured and before personnel leave the site. All staff, including location management that are involved in the incident as well as the emergency response team should be interviewed before they leave the site. This should not be a long interview. Either have the witnesses write down or dictate into a tape recorder, whichever is their preference, a short statement that tells where they where when the incident occurred, what they saw or heard, what time they think it happened, and what they think might have caused it. After that, they should be immediately released.

Interviewing as soon as possible after the incident occurs, yields more precise evidence as the incident is still fresh in the witnesses minds. Also, the witness may not have had a chance to talk with others or the time to reflect upon the impact their involvement in the incident may have. Given time to think, witnesses may start to withhold information out of fear of punishment or other reasons. If this occurs, then persons on duty when the event occurred may start to distort or omit major facts to establish a reduced responsibility. By collecting statements quickly after the site is secured these tendencies can be countered.

All of the initial statements should be turned over to the incident investigation team immediately after it is organized. The investigating team should create a group of more than one person to deal with the interviews. For a small incident it may be the whole investigation team. In a large incident it should be a separate team composed of three to four people and supplemented as necessary by other personnel as will be detailed shortly, called the Interview Sub team. Whether a large or small incident, the same method of operation applies.

Planning for Interviews

Once the interview team has received all the initial statements, the taped statements should be transcribed. After transcription the tapes should not be erased, but put in a safe location and a chain of custody procedure established for them. All the initial statements should be studied in detail by the Interview Sub team to determine the key witnesses, understand what happened, the sequence of events, and where contradictions exist. With this information in hand the Interview Sub team is now ready to move to the next phase of the interview process.

From this point forward preparation is the key and several actions must be taken in parallel. One action is to develop a list of general questions to asked all the involved personnel. Then groups of specific questions need to be asked. These questions may be based on the location of the person when the incident occurred, the persons job assignment, and/or information contained in their initial statement. The questions should not allow the person being interviewed to give just yes or no answers, but should be phrased to have them provide details of the incident and let the witness tell it like a story. Avoid questions that are leading as the witness will quickly sense the desired answers and give them to you.

Some of the questions in this list must be prepared to try and reconcile the discrepancies noted in the preliminary interviews. However, these questions should not be asked as if you don't believe their answers, e.g., Joe said this happened and you are saying the other thing happened. Instead they should be probing and asking for more details of what happened to see if another scenario may have possibly occurred, or if not why not.

A list of people to interview must be developed. This list should include all individuals at the site and key individuals that are frequently on site but were not near the site when the incident happened, such as operators from the previous shift, contactors, delivery truck drivers, railroad switching crews and service technicians. These key individuals may have information to contribute on conditions they observed before the incident occurred that could help piece together what happened, how and why.

Finally, an interview schedule must be prepared. In preparing the schedule, communicate it to the facility personnel and ask them to arrange to have the individuals present at the requested time and place. An estimate of the time required to do the interview should also be made. Make sure you allow plenty of time between each interview, probably equal to the estimated interview time, before the next witness is to be interviewed. This gap is needed to allow for the interview taking longer than planned, or to avoid having witnesses sitting in a waiting area and talking to each other, as the subject matter of their conversations may be the incident and this can result in a witnesses being swayed or influenced by another witnesses view, thus possibly changing their version of the event. Also, this gap will give the interview team members time to reflect on what they heard and how they are handling the interview process. The interviewer also needs time to go over the notes more to ensure that they are accurate and legible.

It is suggested that the interviews be held in a neutral location to provide the most comfort to the witness. The site should be free of distractions either audible or visual, this is a benefit to both the witness and the interview team. To accomplish this, offices of plant executives and/or managers should not be used. Two people should carry out the interview. One of the interview team should be someone the witness knows and will feel comfortable with, to help dispel feelings that the interview is in any way an adversarial relationship or that interviewers are ganging up on the witness.

Conducting Interviews

An important aspect of interviewing is the seating arrangements. Have the seating arranged so that everyone is sitting next to each other or in a small circle is probably best. It is not recommended that the interviewer sit at a table and have the witness sit opposite him. This can be taken as confrontational by some witnesses and cause them to be less forthcoming with information.

Start the interview by thanking the witness for coming and being prompt. For a witness interview program to be successful at the very beginning before any questions are asked, it must be made clear to the witnesses that the investigation team will make every reasonable effort to protect the witnesses identity. Information they furnish will not be attributed to them in the incident report. To help the witness relax and feel secure ask him or her some questions about themselves, for example, how long they have worked for the company and the what positions they have held there.

After the witness is made comfortable the actual questions that have been prepared can be asked. Allow the witness to talk and provide the information in his or her own words. If jargon is used that may have an unclear meaning or a different meaning, then questions should be asked to have the terms clarified. The person doing the interview should give their full attention to the witness and what he or she is saying by maintaining a respectful and neutral persona. The second interviewer in the room should just take notes and should be in view of the witness at all times to maintain the trust of the interviewee.

If the witness was a close friend of either a fatality, someone severely injured, or saw the incident occur, then a great deal of compassion for the witness and care for their well-being is necessary. If it becomes very difficult for the witness to tell the story, it is better to stop and put off the rest of the interview until a later date.

When the interview is over it is important to close out the session. First, the interviewer should ask the witness if there is anything else he or she would like to add or tell. This is to give a witness a chance to tell something that has not been covered by the questions. It is common for a witnesses to have information that they did not provide in the investigation because no one asked them the right questions. The notes that were taken should be reviewed with the witness to ensure the witness is aware of what was recorded and that there are no misunderstandings. Inform the witness what is to be done with the notes. Finally, thank the witness for their time.

One of the problems that the interview sub team may have to face is the insistence of regulators, such as OSHA, the EPA or state agencies, sent to investigate the incident want to conduct the interviews. In this case arrangements must be made by legal counsel for someone from the interview team to attend the interviews and make their own notes. It is not recommended that the members of the *interview*. Sub team ask any of their prepared questions unless sanctioned by counsel. It should be arranged that a copy of the interviews conducted by the regulators be given to the incident investigation team. After the copy of the regulators interviews has been secured, a separate follow-up interview with the individuals under the conditions described above should be scheduled. At his time, any clarification or outstanding questions that the interview team have, should be asked.

Information Review and Handling

Part of the duties of the interviewer is to prepare a written copy of information learned in the interviews he or she conducted. It should be a requirement, and time scheduled for the write-up of the interviews to take place before the end of the day on which they occurred. This is so the interview will be fresh in the interviewers memory. Once the interview is written-up a copy should be given to the witness to review, make comments or corrections, and then sign. This signing should only be done if counsel advises it.

As the interviews are being conducted, one person of the sub team should be assigned to study the interview records and determine the critical facts that have been recorded, i.e. agreement of the facts by several people and where the contradictions exist. The results then feedback to the team members involved in the interviews. Then the information is passed on to the other members of the incident investigation team so they can make use of the information in their work. Either to confirm with physical evidence or possibly help determine what evidence is true.

For any contradictions that exist, the reviewer of these interviews must be responsible for developing questions for follow-up interviews to get the true answers of how the incident occurred and to clear up and settle the contradictions.

Experience has shown that no matter how long you thought it would take, interviewing will always take longer. However, if the interview program is properly handled, significant information about the incident will be gathered making the time spent worthwhile.

This is a short description of organizing and performing interviews for gathering information from witnesses following an incident. If you would like more information or help in an incident investigation please feel free to call the author or his colleagues at ioMosaic Corporation

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