

Workplace Investigations

Contributing Editors

Phil Linnard at Slaughter and May
Clare Fletcher at Slaughter and May

23. Should the investigation report be shared in full, or just the findings?

Portugal

Author: *André Pestana Nascimento*
at Uría Menéndez - Proença de Carvalho

If the employee is accused by the employer, they will be entitled to consult the entire investigation report and not just the findings, as well as the witnesses' depositions, which should be in writing, and any other sources of information that were used by the employer

Even though the law is silent in this respect, courts have ruled that if this is not complied with, the employee's right of defence would be deemed to be disrespected.

Last updated on 15/09/2022

Switzerland

Author: *Laura Widmer, Sandra Schaffner*
at Bär & Karrer

In principle, there is no obligation to disclose the final investigation report. Disclosure obligations may arise based on data protection law vis-à-vis the persons concerned (eg, the accused). Likewise, there is no obligation to disclose other documents, such as the records of interviews. The employee should be fully informed of the final investigation report, if necessary, with certain redactions (see question 22). The right of the employee concerned to information is comprehensive (ie, all investigation files must be disclosed to him).^[1] Regarding publication to other bodies outside of criminal proceedings, the employer is bound by its duty of care (article 328, Swiss Code of Obligations) and must protect the employee as far as is possible and reasonable.^[2]

^[1] Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, in: HR Today, to be found on: <Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten | hrtoday.ch> (last visited on 27 June 2022).

Last updated on 15/09/2022



United States

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Only the findings should be shared with the complainant and the subject of the complaint.

Last updated on 15/09/2022

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