

Workplace Investigations

Contributing Editors

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12. Can the identity of the complainant, witnesses or sources of information for the investigation be kept confidential?

China

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At the level of criminal procedure in PRC, only the Criminal Procedure Law of PRC provides that pseudonyms may be used in the indictment as a substitute for the disclosure of a witness's personal information, such as name, address, employer and contact information, to protect the personal safety of the witness. However, there are no relevant provisions on whether the identity of the complainant, the witness in civil litigation and the provider of information shall be kept confidential during an investigation.

During the course of an investigation, in order to protect the privacy of relevant personnel and avoid the risk of infringement, the employer usually keeps the identity of the complainant or the provider of investigation information confidential. However, at the civil litigation stage, the witness is unavoidably required to testify in court, and must truthfully identify himself/herself to the court.

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Switzerland

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As mentioned under Question 10, the employer's duty of care (article 328, Swiss Code of Obligations) also entails the employer's duty to respect and protect the personality (including confidentiality and privacy) and integrity of employees (article 328 paragraph 1, Swiss Code of Obligations) and to take appropriate measures to protect them.

However, in combination with the right to be heard and the right to be informed regarding an investigation, the accused also has the right that incriminating evidence is presented to them throughout the investigation and that they can comment on it. For instance, this right includes disclosure of the persons accusing them and their concrete statements. Anonymisation or redaction of such statements is permissible if the interests of the persons incriminating the accused or the interests of the employer

override the accused' interests to be presented with the relevant documents or statements (see question 11; see also article 9 paragraphs 1 and 4, Swiss Federal Act on Data Protection). However, a careful assessment of interests is required, and these must be limited to what is necessary. In principle, a person accusing another person must take responsibility for their information and accept criticism from the person implicated by the information provided.^[1]

^[1] Roger Rudolph, *Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht*, SJZ 114/2018, p. 390.

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18. What if unrelated matters are revealed as a result of the investigation?



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If any matter unrelated to this investigation is revealed during the investigation and the matter is suspected of violating regulations, the employer may comprehensively consider whether it is necessary to investigate the new matter. If the employer assesses that a combined investigation will seriously affect and hinder the progress of the investigation or complicate the investigation, the employer can handle the unrelated matters through separate investigations.

In addition, Article 6 of the Personal Information Protection Law of the PRC requires that the processing of personal information shall be for a specific and reasonable purpose and shall be directly related to the purpose of the processing and shall adopt the method with minimum impact on individuals' rights and interests. If the result of the investigation reveals unrelated personal information, it means that the collection and storage of such personal information are unrelated to the purpose of the processing. According to paragraph 1 of Article 47 of the Personal Information Protection Law of the PRC, the employer as the personal information processor shall take the initiative to delete personal information. If the employer fails to delete such information, the employee is entitled to request for deletion.

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Switzerland

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There are no regulations in this regard in the Swiss employment law framework. However, in criminal proceedings, the rules regarding accidental findings apply (eg, article 243, Swiss Criminal Procedure Code for searches and examinations or article 278, Swiss Criminal Procedure Code for surveillance of post and telecommunications). In principle, accidental findings are usable, with the caveat of general prohibitions on the use of evidence.

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