Workplace Investigations

Contributing Editors

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

25. Who can (or must) the investigation findings be disclosed to? Does that include regulators/police? Can the interview records be kept private, or are they at risk of disclosure?

Greece

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In principle, there is no specific obligation for investigating persons to disclose their findings. For proceedings before a court that have been initiated or investigated by the police or competent regulatory bodies, the relevant findings may be communicated under strict conditions and provided that the personal data of the parties involved are not publicly disclosed.

More specifically, under L. 4490/2022, in the context of whistleblowing procedures, personal data and any information that leads, directly or indirectly, to the identification of the complainant are not disclosed to anyone other than employees involved in the investigation, unless the complainant consents. The identity of the complainant and any other information may only be disclosed in the context of investigations by competent authorities or judicial proceedings, to the extent necessary for the protection of the employee under investigation's rights of defence. Confidentiality obligations govern the procedure for revealing trade secrets to police and regulatory bodies, especially in the framework of L.4990/2022.

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Netherlands

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The fundamental right to a fair hearing entails that the investigation findings must be disclosed to the employee under investigation at least once, so that they are given the opportunity to respond to them. Under Dutch administrative or criminal law, there are no general provisions requiring disclosure of investigative findings to regulators or criminal authorities. Certain specific provisions, however, apply, for example, in reportable incidents at financial institutions or certain HSE incidents that need to be disclosed to relevant regulatory authorities. Regulatory and criminal authorities, however, do have broad

investigative powers enabling them to order the provision of data from subjects or involved parties in investigations they are conducting. Such information may also comprise investigation findings and underlying documents, such as interview records. If such interview records are subject to legal privilege (see question 14), they are typically not subject to disclosure to the relevant authorities.

Under Dutch civil law, a party that possesses certain records (such as investigation findings and underlying documents) is generally not required to disclose those to other parties for inspection. Parties are, in principle, not required to share information with third parties, other than relevant authorities (see above).

An exception to this rule is section 843a Dutch Code of Civil Procedure. Under section 843a, a party can be required to produce specific exhibits, if:

- the requesting party has a legitimate interest;
- the request concerns specific and well-defined records or information (ie, no fishing expeditions); and
- the documents pertain to a legal relationship (e.g., a contract or alleged tort; the requested party does not need to be a party to the relevant legal relationship).

If these requirements are met, the requestee should, in principle, disclose the requested information, except for specific exceptions. Such exceptions, which can also be relevant in the context of internal (workplace) investigations, could include confidentiality arrangements and privacy protection, to the extent that this would qualify as a compelling interest. To establish such a compelling interest, the relevant interest should outweigh the requesting party's legitimate interest regarding the requested information. This is a balancing act. Documents that are subject to legal privilege are protected against disclosure.

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Switzerland

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The employer is generally not required to disclose the final report, or the data obtained in connection with the investigation. In particular, the employer is not obliged to file a criminal complaint with the police or the public prosecutor's office.

Exceptions may arise, for example, from data protection law (see question 22) or a duty to release records may arise in a subsequent state proceeding.

Data voluntarily submitted in a proceeding in connection with the internal investigation shall be considered private opinion or party assertion.[1] If the company refuses to hand over the documents upon request, coercive measures may be used under certain circumstances.[2]

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[1] Oliver Thormann, Sicht der Strafverfolger – Chancen und Risiken, in: Flavio Romerio/Claudio Bazzani (Hrsg.), Interne und regulatorische Untersuchungen, Zürich/Basel/Genf 2016, p. 123.

[2] Oliver Thormann, Sicht der Strafverfolger – Chancen und Risiken, in: Flavio Romerio/Claudio Bazzani (Hrsg.), Interne und regulatorische Untersuchungen, Zürich/Basel/Genf 2016, p. 102 et seq.

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