

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?

Greece

Author: *Angeliki Tsatsi, Anna Pechlivanidi, Pinelopi Anyfanti, Katerina Basta*
at Karatzas & Partners

There is no explicit legal provision stating the whole report must be communicated with the employee under investigation. The legal framework (L.4990/2022 and L.4808/2021) is governed by strict confidentiality obligations and obligations to protect the complainant's data. From a data protection regulation perspective, it could be argued that the right of the person under investigation to know the identity of the complainant, witnesses or sources of information should be limited to protect the rights of such persons.

However, if the outcome of the investigation leads to the imposition of disciplinary measures, the right of the employee under investigation to request the whole investigation report, to aid in their defence is enhanced. Moreover, if a complaint is made in bad faith or is unfounded, it may be supported that the employee under investigation is entitled to receive full documentation so he or she can seek adequate legal protection or file an action before the courts.

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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).

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Contributors



Greece

Angeliki Tsatsi
Anna Pechlivanidi
Pinelopi Anyfanti
Katerina Basta
Karatzas & Partners



Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer

www.internationalemploymentlawyer.com