

# Workplace Investigations

## Contributing Editors

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

## 05. Can the employee under investigation bring legal action to stop the investigation?

### Singapore

Author: *Jonathan Yuen, Doreen Chia, Tan Ting Ting*  
at Rajah & Tann Singapore

The employee under investigation is entitled to apply to the Court to stop the investigation. However, the employee bears the legal burden of showing that the employer has, for instance:

1. failed to comply with the organisation's grievance policy;
2. committed a serious breach of natural justice; and/or
3. breached the implied term of mutual trust and confidence when investigating the matter, and that such a breach will, unless remedied, cause such prejudice to the employee that it would be more just for the investigation to be stopped than to be allowed to continue.

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### Switzerland

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

The accused could theoretically request a court to stop the investigation, for instance, by arguing that there is no reason for the investigation and that the investigation infringes the employee's personality rights. However, if the employer can prove that there were grounds for reasonable suspicion and is conducting the investigation properly, it is unlikely that such a request would be successful.

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## 14. When does privilege attach to investigation materials?

## Singapore

Author: *Jonathan Yuen, Doreen Chia, Tan Ting Ting*  
at Rajah & Tann Singapore

Litigation privilege may attach to investigation materials if there was a reasonable prospect of litigation at the time of the creation of the materials, and the materials were created for the dominant purpose of a pending or contemplated litigation.

Legal advice privilege may attach to investigation materials if the materials were created to seek or obtain legal advice; or if the materials contain legal advice that is so embedded or has become such an integral part of the materials that the legal advice cannot be redacted from them. If the legal advice is separable from the materials, then only the parts of the materials containing legal advice will be protected by privilege.

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## Switzerland

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

As outlined above, all employees generally have the right to know whether and what personal data is being or has been processed about them (article 8 paragraph 1, Swiss Federal Act on Data Protection; article 328b, Swiss Code of Obligations).

The employer may refuse, restrict or postpone the disclosure or inspection of internal investigation documents if a legal statute so provides, if such action is necessary because of overriding third-party interests (article 9 paragraph 1, Swiss Federal Act on Data Protection) or if the request for information is manifestly unfounded or malicious. Furthermore, a restriction is possible if overriding the self-interests of the responsible company requires such a measure and it also does not disclose the personal data to third parties. The employer or responsible party must justify its decision (article 9 paragraph 5, Swiss Federal Act on Data Protection).<sup>[1]</sup>

The scope of the disclosure of information must, therefore, be determined by carefully weighing the interests of all parties involved in the internal investigation.

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<sup>[1]</sup> Claudia M. Fritsche, *Interne Untersuchungen in der Schweiz*, Ein Handbuch für Unternehmen mit besonderem Fokus auf Finanzinstitute, p. 284 et seq.

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### Contributors

#### Singapore

Jonathan Yuen  
Doreen Chia  
Tan Ting Ting  
*Rajah & Tann Singapore*



## Switzerland

Laura Widmer  
Sandra Schaffner  
*Bär & Karrer*

[www.internationalemploymentlawyer.com](http://www.internationalemploymentlawyer.com)