

# 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?

#### Austria

Author: *Michaela Gerlach, Sonia Ben Brahim*  
at GERLACH

If the investigated employee believes that individual measures violate his rights, he or she can defend him or herself against them, but he or she cannot stop the entire investigation.

In principle, the employee has various rights such as access, rectification, erasure and the right to contest the processing of his or her data (articles 12-17 and 21 GDPR). Should these principles be violated, the employee has the right to lodge a complaint with the data protection authority.

Last updated on 29/09/2023

#### 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.

Last updated on 15/09/2022

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

#### Austria

Author: *Michaela Gerlach, Sonia Ben Brahim*  
at GERLACH

If a lawyer is involved in the investigation, communication between the lawyer and client is subject to legal professional privilege. These communications must not be disclosed. Any documents collected by an internal audit can be seized and used. However, a document created by a lawyer can only be seized. The same applies to other professional representatives of parties, such as notaries and auditors, as potential holders of professional secrecy.

Last updated on 29/09/2023

## 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.

Last updated on 15/09/2022

### Contributors

#### Austria

Michaela Gerlach  
Sonia Ben Brahim  
*GERLACH*

#### Switzerland

Laura Widmer  
Sandra Schaffner  
*Bär & Karrer*

