

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?

France

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The findings must be submitted to the employer or management, but there is no obligation to disclose them to anybody else. The only exception is if a judicial investigation has been opened. In this case, the entire report must be provided to the authorities if the judge requests this. Normally the investigators only take written notes and there is no audio or video recording, unless the employee consents. Whether or not to make a voluntary disclosure of wrongdoing is a tactical decision for companies. Disclosure may mitigate fines and penalties or even help the employer avoid liability entirely. However, the downsides of disclosure include increased costs, the possibility of a follow-on government investigation and exposure to penalties. Thus, most companies assess their options on a case-by-case basis to determine what steps would be in the best interests of the company.

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Japan

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If it is information related to a crime, and if it is necessary to report it to the supervisory authority, it is necessary and possible to report it even if the content relates to personal information. There is no obligation to report to the police even if one is aware of a criminal fact. However, it is possible to use the results of an investigation to file a complaint or charge with the police. It is also possible to use the results of the investigation to realise the company's rights (eg, to claim damages based on tortious behaviour).

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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]

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

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

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