

Workplace Investigations

Contributing Editors

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

07. What data protection or other regulations apply when gathering physical evidence?



India

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In India, the collection, disclosure, transfer and storage of personal data is regulated by the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (SPD Rules). Accordingly, if during an investigation any sensitive personal information (such as information relating to passwords; financial information such as a bank account, credit or debit card or other payment instrument details; a physical, physiological or mental health condition; sexual orientation; medical history; and biometric information) is collected, then the requirements under the SPD Rules will need to be complied with. This would include obtaining an individual's "informed consent" before collecting any sensitive personal data if such information is intended to be collected or stored in an electronic format.

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Philippines

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The procedure for gathering physical evidence is governed primarily by company policy. Nevertheless, the Data Privacy Act of the Philippines protects all data subjects from unlawful processing of their personal information without consent.

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Switzerland

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The Swiss Federal Act on Data Protection applies to the gathering of evidence, in particular such collection must be lawful, transparent, reasonable and in good faith, and data security must be preserved.^[1]

It can be derived from the duty to [disclose and hand over benefits received and work produced](#) (article 321b, Swiss Code of Obligations) as they belong to the employer.^[2] The employer is, therefore, generally entitled to collect and process data connected with the end product of any work completely by an employee and associated with their business. However, it is prohibited by the Swiss Criminal Code to open a sealed document or consignment to gain knowledge of its contents without being authorised to do so (article 179 et seq, Swiss Criminal Code). Anyone who disseminates or makes use of information of which he or she has obtained knowledge by opening a sealed document or mailing not intended for him or her may become criminally liable (article 179 paragraph 1, Swiss Criminal Code).

It is advisable to state in internal regulations that the workplace might be searched as part of an internal investigation and in compliance with all applicable data protection rules if this is necessary as part of the investigation.

^[1] Simona Wantz/Sara Licci, Arbeitsvertragliche Rechte und Pflichten bei internen Untersuchungen, in: Jusletter 18 February 2019, N 52.

^[2] Claudia Fritsche, Interne Untersuchungen in der Schweiz, Ein Handbuch für Unternehmen mit besonderem Fokus auf Finanzinstitute, p. 148.

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