

# 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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at Bredin Prat

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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#### South Korea

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There is generally no obligation to report violations to the Korean authorities, subject to limited exceptions (eg, financial institutions are required to report certain types of wrongdoing to the financial regulator; if there was a leak of an industrial technology developed through a national research and development project or a national core technology, this leak should be reported to the Ministry of Trade, Industry and Energy and the National Intelligence Service). However, even in the absence of a self-reporting obligation, the company may consider strategically deciding to make a voluntary report. For example, there have been instances where the police or prosecutors' investigations were conducted in a more limited manner where the company filed a voluntary report and cooperated with the investigation. Also, for certain types of violations (eg, cartel activities), self-reporting to the relevant authority may entitle the company to leniency

provided under the law.

In certain instances, the company may also consider reporting violations to the relevant foreign authorities, in addition to, or instead of, the Korean authorities. For example, if the company found potential violations of US law such as sanctions law or the Foreign Corrupt Practice Act, the company may want to self-report these violations to the relevant authorities such as the Office of Foreign Assets Control, or the US Department of Justice.

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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.[\[2\]](#)

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[\[1\]](#) 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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