

# Workplace Investigations

## Contributing Editors

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

## 12. Can the identity of the complainant, witnesses or sources of information for the investigation be kept confidential?

### Hong Kong

Author: *Wynne Mok, Jason Cheng, Audrey Li*  
at Slaughter and May

Subject to any internal policies and terms of the employment contract, an employer would have discretion as to whether the identity of the complainant, witnesses or sources of information for the investigation should be kept confidential. In general, the employer should consider how the confidential treatment or its absence would affect the conduct and outcome of the investigation. The disclosure of the identity of the complainant in some cases may be necessary for the employee under investigation to respond in a meaningful way. On the other hand, both the complainant and witnesses may be more forthcoming in providing information if he or she is assured that his or her identity will not be made known to the person under investigation (especially if the latter is senior management personnel). A balance should be struck between the interests of the complainant or witnesses in maintaining confidentiality and the need for the employee under investigation to make a proper response to the allegations made. In any case, the employer should follow its whistleblowing policy if there is one (as discussed in question 9), and take into account practical and statutory considerations relating to confidentiality (as discussed in question 10).

Last updated on 15/09/2022

### Switzerland

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

As mentioned under Question 10, the employer's duty of care (article 328, Swiss Code of Obligations) also entails the employer's duty to respect and protect the personality (including confidentiality and privacy) and integrity of employees (article 328 paragraph 1, Swiss Code of Obligations) and to take appropriate measures to protect them.

However, in combination with the right to be heard and the right to be informed regarding an investigation, the accused also has the right that incriminating evidence is presented to them throughout the

investigation and that they can comment on it. For instance, this right includes disclosure of the persons accusing them and their concrete statements. Anonymisation or redaction of such statements is permissible if the interests of the persons incriminating the accused or the interests of the employer override the accused' interests to be presented with the relevant documents or statements (see question 11; see also article 9 paragraphs 1 and 4, Swiss Federal Act on Data Protection). However, a careful assessment of interests is required, and these must be limited to what is necessary. In principle, a person accusing another person must take responsibility for their information and accept criticism from the person implicated by the information provided.<sup>[1]</sup>

---

[1] Roger Rudolph, *Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht*, SJZ 114/2018, p. 390.

Last updated on 15/09/2022



## Thailand

Author: *Ratthai Kamolwarin, Norrapat Werajong*  
at Chandler MHM

It is generally possible to keep the identity of the complainant, witnesses, or information sources confidential. There is no mandatory rule to disclose the identity of a complainant, witnesses, or sources of information. If the complainant, witnesses, or sources of information for the investigation know that their identities would not be disclosed, they will be more confident in cooperating with and supporting the investigations.

Last updated on 15/09/2022

### Contributors



#### Hong Kong

Wynne Mok  
Jason Cheng  
Audrey Li  
*Slaughter and May*



#### Switzerland

Laura Widmer  
Sandra Schaffner  
*Bär & Karrer*



#### Thailand

Ratthai Kamolwarin  
Norrapat Werajong  
*Chandler MHM*

