

# Workplace Investigations

## Contributing Editors

*Phil Linnard at Slaughter and May*  
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## 08. Can the employer search employees' possessions or files as part of an investigation?

### Switzerland

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The basic rule is that the employer may not search private data during internal investigations.

If there is a strong suspicion of criminal conduct on the part of the employee and a sufficiently strong justification exists, a search of private data may be justified.<sup>[1]</sup> The factual connection with the employment relationship is given, for example, in the case of a criminal act committed during working hours or using workplace infrastructure.<sup>[2]</sup>

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<sup>[1]</sup> Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 168.

<sup>[2]</sup> Claudia Fritsche, *Interne Untersuchungen in der Schweiz: Ein Handbuch für regulierte Finanzinstitute und andere Unternehmen*, Zürich/St. Gallen 2013, p. 168 et seq.

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### Thailand

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Electronic information created during employment would generally be owned by the employer and would be the employer's assets. If an employee is given a computer or laptop to use for work, the employer has the right to log into that device and take any data that is stored therein, provided that the data does not contain sensitive information of that employee and PDPA requirements are met.

To avoid any potential issues regarding physical data such as documents on the employee's desk, it is advisable to search those areas with the subject employee to show good faith. In practice, the employee

normally agrees to search those areas with the employer, or allows the employer to search alone.

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

### Switzerland

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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.

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Client-attorney privilege between qualified attorneys and the client (ie, an employer) begins once information is made available to the attorney, regardless of the form it takes.

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