

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?

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's 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.^[1]

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

Last updated on 15/09/2022

Vietnam

Author: *Stephen Le, Trang Le*
at Le & Tran Law Corporation

The identity of the complainant and witnesses must be kept confidential and cannot be disclosed to anyone, unless both the complainant and witnesses consent to its disclosure or if the employer is asked to disclose this information by the competent authorities under Vietnamese law.

Last updated on 25/09/2023

23. Should the investigation report be shared in full, or just the findings?



Switzerland

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

In principle, there is no obligation to disclose the final investigation report. Disclosure obligations may arise based on data protection law vis-à-vis the persons concerned (eg, the accused). Likewise, there is no obligation to disclose other documents, such as the records of interviews. The employee should be fully informed of the final investigation report, if necessary, with certain redactions (see question 22). The right of the employee concerned to information is comprehensive (ie, all investigation files must be disclosed to him).^[1] Regarding publication to other bodies outside of criminal proceedings, the employer is bound by its duty of care (article 328, Swiss Code of Obligations) and must protect the employee as far as is possible and reasonable.^[2]

^[1] Nicolas Facincani/Reto Sutter, *Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten*, in: HR Today, to be found on: <Interne Untersuchungen: Rechte und Pflichten von Arbeitgebern und Angestellten | hrtdaily.ch> (last visited on 27 June 2022).

Last updated on 15/09/2022



Vietnam

Author: *Stephen Le, Trang Le*
at Le & Tran Law Corporation

There is no obligation to share the investigation report or the findings unless the employer and employee agree to do so.

However, under Decree No. 13/2023/ND-CP on personal data protection, the contents of the investigation report or findings related to the employee are likely to constitute the personal data of the employee under investigation. In that case, the employee may have a right under the said Decree to obtain copies of such documents by making a statutory data access request after the workplace investigation is completed. Where the employer is required to provide such documents to the employee under Decree No. 13/2023/ND-CP but the requested documents also contain the personal data of any other third parties (such as the employee's co-workers who participated in the interview during the investigation), the employer should first redact or erase such data before providing the requested documents, unless the relevant third parties have consented to the disclosure of their personal data.

Last updated on 25/09/2023

Contributors



Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer



Vietnam

Stephen Le
Trang Le
Le & Tran Law Corporation

www.internationalemploymentlawyer.com