

Workplace Investigations

Contributing Editors

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

22. What must the employee under investigation be told about the outcome of an investigation?

Switzerland

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

Workplace investigations often result in an investigation report that is intended to serve as the basis for any measures to be taken by the company's decisionmakers.

The employee's right to information based on article 8, Swiss Federal Act on Data Protection also covers the investigation report, provided that the report and the data contained therein relate to the employee.^[1] In principle, the employee concerned is entitled to receive a written copy of the entire investigation report free of charge (article 8 paragraph 5, Swiss Federal Act on Data Protection and article 1 et seq, Ordinance to the Federal Act on Data Protection). Redactions may be made where the interests of the company or third parties so require, but they are the exception and must be kept to a minimum.^[2]

^[1] Arbeitsgericht Zürich, Entscheide 2013 No. 16; Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p. 393 et seq.

^[2] Roger Rudolph, Interne Untersuchungen: Spannungsfelder aus arbeitsrechtlicher Sicht, SJZ 114/2018, p. 394.

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Vietnam

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

It is recommended that the employer informs the employee under investigation of the outcome and provides information on a need-to-know basis. Consequently, the employer has the discretion to proceed with any labour disciplinary procedure or actions against the employee based on the outcome of the investigation.

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 | hrtoday.ch> (last visited on 27 June 2022).

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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.

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Contributors



Switzerland

Laura Widmer
Sandra Schaffner
Bär & Karrer



Vietnam

Stephen Le
Trang Le
Le & Tran Law Corporation

www.internationalemploymentlawyer.com