

When Executives Are Under Investigation: Managing Investigations at the Top

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"An investigation into senior executive misconduct tests independence, governance, and courage - not just facts."

Neue Zürcher Compliance-Konferenz 2026

Agenda

Handling Allegations at the Top - Governance under Pressure

Case Study & Immediate Response

1. CEO Favoritism & Expenses: A Case Study
2. Discipline Before Action – First 12 Hours

Governance & Independence

3. Setting Up the Investigation
4. Independence Under Fire

Investigation Process

5. From Governance to Execution

External Pressure & Decision-Making

6. The First Media Inquiry: What to Say - What Not to Say
7. Conclusions, Consequences & Board Responsibilities

Key Takeaways

Case Study (Hypothetical) & Immediate Response

1. CEO Favoritism & Expenses: A Case Study*

You: Group Head Legal & Compliance

Direct Report to the CEO

From: Employee A.

To: Speak-UP! **CC:** Group Head Legal & Compliance

Date: 2 November 2025 08:02 p.m. CET

Subject: serious concern – please read immediately

Dear Compliance,

I'm writing because I don't see a safe way to raise this otherwise.

There is a **personal relationship between the CEO and a direct report**. This is widely known internally and has coincided with **promotions** and project assignments that are difficult to explain on performance alone. I've also seen **travel and expense claims** linked to this individual that don't appear to have a clear business purpose.

Because this involves the CEO, I'm concerned about confidentiality and **retaliation** if my identity becomes known. I'm willing to provide details and documentation, but only if this is handled independently.

Please confirm this will be taken seriously and that **safeguards** are in place.

A.

* Hypothetical example for training purposes only. Any resemblance to real persons or events is coincidental.

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Case Study & Immediate Response

2. Discipline Before Action – First 12 Hours

What to Do in the First 12 hours

- ✓ Acknowledge receipt to whistleblower without compromising confidentiality
- ✓ Assess if immediate harm or legal risk exist
- ✓ Secure and restrict access to whistleblower report
- ✓ Preserve allegation and evidence in its original form: investigation hold
- ✓ Instruct recipients of message not to act
- ✓ Stop any informal handling of allegations
- ✓ Prepare a neutral escalation note: what is alleged, not what is "true"
- ✓ Keep a log of every step

What Not to Do in the First 12 hours

- ✗ Do not inform the CEO or other management (absent immediate legal necessity or safeguarding concerns)
- ✗ Do not start fact-finding or interviews
- ✗ Do not involve HR, Finance, or Internal Audit
- ✗ Do not assess credibility of allegations based on reputation or trust

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Case Study & Immediate Response

2. Discipline Before Action – First 12 Hours

Confidential Escalation – Same Evening

- ✓ Audit Committee Chair – direct, confidential call
- ✓ Board Chair – aligned escalation
- ✗ Not (yet) the Executive Management

Key Risks

- Evidence loss or contamination
- Retaliation against whistleblower
- Internal leakage
- Media leakage / regulator / legal exposure
- Perception of lack of independence

How

- ✓ Oral escalation first
- ✓ Short factual note on Monday morning

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Case Study & Immediate Response

2. Discipline Before Action – First 12 Hours

Monday morning agenda

- **Triage plausibility** (not proof)
- **Map legal/regulatory exposure**
- **If listed:** document **ad-hoc disclosure** analysis and keep current
- **Prepare holding lines/Q&A** with Communications & Legal
- **Issue preservation notices** and secure data
- **Define ownership & independence** (investigation governance)
- **Set preliminary scope;** inform CEO **after governance is established** (unless law dictates otherwise)

Takeaway

-  Success on day zero is restraint, protection, controlled escalation
- Early errors are often errors of overreach

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Governance & Independence

3. Setting Up the Investigation

Monday, 3 November 2025 | 08:00 a.m. CET

Meeting: Board Chair & Audit Committee Chair

Key Topics: Allegations against the CEO are now a governance reality

What Can Constitute a Duty Breach?

- Undisclosed or unmanaged conflicts of interest
- Abuse of position or favoritism
- Misuse of company resources
- Conduct undermining internal controls or tone at the top
- Reputational or regulatory risk to the company

Is There a Legal Obligation to Investigate?

- Corporate law duties (e.g. Art. 716a, Art. 717, Art. 717a CO); possibly criminal exposure
- Regulatory, labor law, and internal policy trigger
- Possible foreign law relevance
- *"Tone from the Top"*: Strong compliance culture influences organizational response
- Practical reality: Allegations at the top require at least a plausibility assessment

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Governance & Independence

3. Setting Up the Investigation

Independence Safeguards

- **Ownership & Authority**
AC leads; external counsel reports to AC; Compliance/Legal provides operational support
- **Independence of Investigators**
Direct reporting lines to AC; mandate documented in a board resolution
- **Whistleblower & Confidentiality**
Protected channels; anti-retaliation; strict need-to-know
- **Outcome & Oversight**
Findings to AC; Board decides on remedial actions

Visibility matters:
Independence must be
documented and explainable



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Governance & Independence

4. Independence Under Fire

Key Actions & Legal Takeaways

- In high stakes matters, companies typically appoint **independent external counsel** to enhance credibility and privilege protection
- Recent Swiss Federal Supreme Court (FSC) rulings clarified aspects of privilege in internal investigations (7B_158/2023; 7B_874/2023 dated 6 August 2024)

Implications for Governance & Independence

- **Visible independence** is both a legal and reputational safeguard
- Choice of independent investigator is critical, in particular in high stakes cases, involving senior executives
- Documentation and reporting lines must clearly demonstrate independence and privilege protection

But is privileged information still protected once disclosed to third parties – and if so, to what extent and towards whom?

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Governance & Independence

Excursus: BGer 7B_874/2023 and 7B_158/2023

Attorney-Client Privilege and the Disclosure of Privileged Information

BGer 7B_874/2023

- A bank voluntarily disclosed documents protected by attorney-client privilege to FINMA
- The public prosecutor requested these documents via mutual legal assistance from FINMA

FSC Ruling:

- Once privileged information is knowingly and voluntarily **disclosed to a third party**, it is **no longer protected** by attorney-client privilege in the hands of that third party
- The Federal Supreme Court concluded that the **prosecutor could obtain these documents from FINMA**

BGer 7B_158/2023

- The public prosecutor requested an internal investigation report prepared by external legal counsel directly from the bank
- The report had previously been disclosed to FINMA

FSC Ruling:

- **Investigation reports** prepared by external counsels are **privileged**, as well as the selection and analysis of documents
- Voluntary disclosure to **FINMA ≠ general waiver** of the attorney-client privilege; the **public prosecutor may NOT seize such privileged information directly from the bank**

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Governance & Independence

Excusus: BGer 7B_874/2023 and 7B_158/2023

Practical Implications (Selected Considerations)

- Risk of **de facto erosion of attorney-client privilege** once voluntarily disclosed to third parties
- Applicable beyond FINMA (e.g. competition, tax and other authorities)?
- Potential chilling effect on **cooperation** between companies and authorities
- **Case-by-case assessment** required for any disclosure of privileged information by companies

- Consider limiting disclosure of privileged materials to what is legally required
- Where appropriate, prefer oral briefings or review only access to sensitive materials
- Conduct a case-by-case balancing of cooperation and privilege protection

However: None of these options provides a fully satisfactory solution and may be challenging to implement in practice

Governance & Independence

4. Independence Under Fire

Key Decision to Be Taken

- ✓ Confirm governance framework and decision rights
- ✓ Approve investigation mandate and scope; document via board resolution or equivalent
- ✓ Define reporting cadence and escalation for critical findings
- ✓ For listed companies: maintain a living ad hoc disclosure analysis
- ✓ Prepare principled communications (short baseline statement; Q&A)

Takeaway

- 💡 Focus on governance, true independence of investigation, and a credible scope - not facts yet
- Communication readiness is critical to maintain trust
- Pre-defined processes are a competitive advantage
- Companies are well advised to pre-define:
 - Who decides whether an investigation is opened
 - Who selects the investigators
 - What is the role of compliance and legal

Independence must be established before it is tested

Investigation Process

5. From Governance to Execution

Tuesday, 4 November 2025 | 08:00 a.m. CET

Investigation Team Meeting: Start of Investigation

Key Topics: Defining of scope, steps and safeguards

From: Dr. Klein, Partner, Klein & Partners (External Counsel to CEO)

To: Dr. Know-it-All, Investigation Lead (External Counsel to Company, reporting to Chair AC)

Date: 4 November 2025 08:00 a.m. CET

Subject: CEO Investigation

Dear Colleague,

Please be informed that we act for the CEO of your company.

The matters raised **are private and fall outside the scope of any corporate investigation** absent clear, documented evidence of policy breach or business relevance. Be advised: The CEO's email accounts **contain highly confidential company information** that must not be accessed under any circumstances. Pending written confirmation that our client's privacy rights will be fully respected, you are expressly instructed to refrain from any access to private emails or devices and to halt all interview scheduling. Any deviation will be treated as a breach of legal, privacy, and confidentiality obligations. **We expect immediate compliance.**

Yours sincerely,

Dr. Klein

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Investigation Process

5. From Governance to Execution

Business vs. Private Data

Employment & Data Protection (examples)

- Art. 328 CO
- business purpose principle
- proportionality

Employee protection

- Principle: No review of private content
- Emails, messages, photos without a clear business link are excluded from review

How to operationalize situations where business and private data overlap

- **Need-to-know access**
Small, designated investigation team
- **Progressive filtering**
Exclude private content wherever possible; escalate only if justified
- **Stepwise review**
Start narrow, expand only based on findings
- **Document rationale**
Record why access was necessary and proportionate

Test: Would the investigation still be defensible without reviewing this data?

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Investigation Process

5. From Governance to Execution

Why Execution Determines the Success or Failure of Top-Level Investigations

- Start with allegations and business relevance
- expand based on evidence

Scope



- Preserve evidence
- proportionate data access
- structured, limited interviews under confidentiality

Methods



- Privacy & labor law
- privilege
- protection of witnesses and whistleblowers
- separation of investigator vs. decision-maker

Safeguards



- Clear ownership
- timely data access
- focused, sequenced interviews

Speed & Discipline



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External Pressure & Decision

6. The First (hypothetical) Media Inquiry

Wednesday, 5 November 2025 | 14:33

From: Senior Reporter, Global News Inc.
To: VP Corporate Communications
Date: 5 November 2025 14:33
Subject: Inquiry Regarding CEO Allegations

Hi team,
I'm reaching out regarding a **whistleblower report alleging misconduct involving your CEO**. The report suggests an **inappropriate relationship with a direct report**, which has led to claims of favoritism and questionable expense claims.
Could you **confirm whether an investigation is underway** and what steps are being taken to address these issues? Additionally, how is the company ensuring confidentiality and protecting the whistleblower?
We plan to publish within the next 24 hours.

Best,
Senior Reporter, Global News
reporting@globalnews.com
+1 (555) 123-4567

- Do we **confirm or deny**?
- Who is **authorized** to respond?
- How to **protect the process** and **whistleblower**?
- What are the **legal issues**?

Key risk: Premature confirmation or denial can undermine the investigation and create legal and reputational exposure

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External Pressure & Decision

6. The First Media Inquiry: What to Say – What not to Say

What NOT to do

- ✗ Do not confirm or deny an investigation
- ✗ Do not restate or summarise allegations
- ✗ Do not speculate or "fill silence"
- ✗ Do not imply credibility before facts are established
- ✗ Do not respond without Legal / Compliance alignment

What to do

- ✓ Speak in principles
- ✓ Protect the investigation, and the company's position
- ✓ Avoid names, scope or status
- ✓ Use a single authorized spokesperson and maintain consistency across all channels



Immediate impact on timelines

Media leakage compresses decision-making

"We take concerns seriously and have established processes to address them. As a matter of principle, we do not comment on unverified allegations or internal procedures."

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External Pressure & Decision

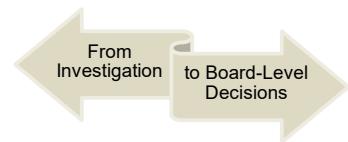
7. Conclusions, Consequences & Board Responsibilities

Assessment and Findings

- Clear distinction between established facts, unproven allegations, and residual risk; articulate uncertainties
- Assessment of legal, compliance and reputational exposure
- Clear articulation of remaining uncertainties

Board Decisions

- Potential measures (up to and including dismissal)
- Remedial actions (controls, governance, culture)
- Regulatory engagement including self disclosure where appropriate



Communication of Outcomes

- Consistent with prior positioning and legal considerations
- Feedback to the whistleblower within legal limits
- Internal comms as appropriate

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External Pressure & Decision

7. Conclusions, Consequences & Board Responsibilities

Protection & Follow-up

- Ongoing whistleblower protection
- Retaliation monitoring
- Tracking of remedial actions
- Clear ownership

Formal Closure

- Board decision to close the investigation
- Preservation of records and privilege
- Lessons learned

An investigation's conclusion is as critical as its commencement

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Key Takeaways

Allegations will reach the C-suite - **preparation** is the differentiator

Allegations against senior executives are a **governance event**, not just a compliance issue

The **tone at the top** is part of what's under scrutiny

The **first 12 hours** set credibility - internally and externally

Visible, documented independence is essential

Scope discipline protects both the company and individuals

Privilege and whistleblower protection are safeguards, not obstacles

Media pressure compresses timelines and decision-making

Investigations succeed or fail **both at the start and at closure**

Consistency across governance, execution and communication is the ultimate credibility test



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