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PERSPECTIVES

CONDUCTING AN EFFECTIVE AND EFFICIENT INTERNAL INVESTIGATION

BY **GERRY ZACK**

> SOCIETY OF CORPORATE COMPLIANCE AND ETHICS & HEALTH CARE COMPLIANCE ASSOCIATION

Conducting effective internal investigations is an essential element of any compliance and ethics programme. Benefits go far beyond finding out who violated the rules. In addition to identifying corrective actions that can guard against subsequent recurrences, effective investigations can send a powerful message that helps to promote a workplace culture of integrity.

But a poorly conducted investigation can create more problems than it solves. In this article, we explore a few areas that are most prone to the types of mistakes that can have adverse consequences for companies.

Careful intake and preliminary assessment

An effective investigation begins with a reliable process for receiving and assessing reports of wrongdoing. Whether received via a tip line or in person, all reports should be documented and assessed to determine whether an investigation is warranted. Not all reports turn into investigations. There must be adequate information to follow up on. However, if there is sufficient information, no matter how unlikely the allegation may sound, it is critical to perform follow-up procedures. Just as important

is to document steps taken during an investigation, particularly those that lead to a conclusion that no further investigation was necessary. When a workforce knows that allegations are taken seriously, employees are more likely to trust the process and be willing to report things that do not look right in the future.

Plan the scope of the investigation

Never allow an investigation to turn into a 'look around and see what you see' exercise. If a report justifies an investigation, always develop a plan for the investigation. Realise that once an investigation begins, that plan may need to be altered as new information comes to light. Scope modifications are rather common. But always start with a plan that identifies key procedures and scope considerations, including who will be interviewed, which documents or information will be reviewed, and the time period covered.

Do not fall in love with a theory

Sometimes a report includes a very specific allegation while in other cases the assertions are broader. In either situation, the investigator must



consider a variety of scenarios that could explain the observations described by the reporter or the investigator must develop multiple theories that could explain the preliminary information presented.

Often, there is a theory about what happened or who was involved that seems to be the most likely. But it is important not to focus solely on a single theory. Going down a path of proving one theory, without proper consideration of alternatives, leads to confirmation bias, interpreting information as supporting the theory and ignoring or dismissing information that may conflict with the theory.

The role of the investigator is to find the facts, not to prove or disprove an allegation. Investigators must keep an open mind throughout an investigation. One way of doing this is to actively think of alternative explanations for evidence that, on the surface, seem to support a theory or make an individual appear guilty. Investigators should evaluate evidence like a defence attorney for the subject would.

It is natural to think that one theory is the most likely. But always remember to challenge that theory. One good way of proving a theory is by disproving all the alternative theories.

Know when to call for help

Investigators need to know when it is time to call on others to perform or assist with an investigation. And organisations need to support this by recognising that there may be times when

temporarily bringing on additional investigative resources is necessary.

There are three common reasons for bringing in external help in connection with an internal investigation: expertise, capacity and independence.

Expertise is the most obvious reason, yet it is one that some investigators have difficulty with. It can be hard to admit that a certain skill is needed in an investigation or that nobody on the team has that skill. But there is a lengthy trail of investigators that have made the mistake of taking on investigative procedures that they were not trained on or qualified for. Often, it is a technical expertise, such as the need to access and extract data from complex mobile and other devices. But it can also involve softer skills, such as the ability to conduct a proper investigative interview in a particular language or to translate documents.

Capacity simply refers to scheduling and the ability for an investigator or team of investigators to drop everything and quickly address an urgent matter or to be able to commit to a sufficient amount of time while balancing other responsibilities. Investigations need to be conducted in a timely manner by individuals who can devote sufficient time to the investigation. Sometimes, the amount of time required to conduct an investigation turns out to be much more than initially expected. Knowing when to bring in some help is crucial.

The final reason for turning to external help is independence. Investigators need to be free from any real or perceived impairments to their independence. Finding out that there is an independence issue after an investigation is complete can have disastrous effects on an organisation. Be sure that every person who works on an investigation goes through an independence attestation or verification process prior to beginning work on the investigation.

Investigative teams, whether internal or co-sourced with outside parties, must possess a

“Good interviewers go into each interview with a plan, but are adept at knowing when to deviate from that plan when the circumstances justify it.”

Embrace technology

Gone are the days of conducting investigations by looking through boxes of documents and interviewing people. The interviewing part is still important, and there may be some documents to review. But more often, the documents are digital rather than paper and many steps in an investigation involve tracing transactions and activities through a digital trail in complex computer systems.

Today's investigations require the use of sophisticated tools used to extract and analyse many different types of data. Case management can be done much more effectively using software tailored for that use. And even the presentation of data and results of investigations can be done more effectively when data visualisation and other reporting tools are used.

mastery of the technical skills and tools needed to conduct investigations effectively and efficiently in today's environment. Resisting the use of these tools is a recipe for failure.

No substitute for good interviewing

Even with all of the use of technology, data analysis and document review, rarely can an investigation be conducted without talking to people. While it is not always practical, generally as much of the data analysis and document review as possible should be done before conducting the interviews. It makes for better interviews to know ahead of time the details that this analysis can provide.

A detailed list of effective interview techniques is beyond the scope of any single article. Entire

books are devoted to it. However, most ineffective interviews seem to result from either of two opposite issues: poor preparation or a rigidity that prevents the interviewer from making adjustments along the way.

On the one hand, interviews are conversations. But that does not mean there should not be a good plan for the goals and line of questioning for the conversation. On the other hand, sticking rigidly to a plan can result in an interviewer missing important signals being sent by an interviewee – indications that a detour from the plan would be smart.

Good interviewers go into each interview with a plan, but are adept at knowing when to deviate from that plan when the circumstances justify it. This ability comes from a baseline of sound training as well as experience.

Document the investigation

We began with documenting the intake and initial plan for an investigation. But the importance of documentation continues through the lifecycle of an investigation. Key things to document along the way are timelines of the events being investigated but also of the investigative procedures performed, results of those procedures and changes made to the investigative plan. Remember, it might be years later that someone asks why a certain procedure was or was not conducted. Memory fades, documentation does not.

Careful reporting of results

Too many good investigations have been ruined by a hastily written final report. Report writing is not an area to skimp on time, particularly if there is a chance the report itself could end up in court or being distributed more widely than initially expected.

Reports need to be extremely accurate, but they should also be complete. All investigative procedures should be described, along with the results, including results that may conflict with the final conclusion. Too many investigators have lost their credibility when the overwhelming evidence provided by dozens of procedures they performed became tainted by the fact that one or two other procedures performed were omitted from their report because they could have led to a different conclusion. The proper way of handling this is to include a description of these procedures along with an explanation of why the overall picture painted by all of the procedures supports the conclusion drawn by the investigator.

Remember, the investigator's job is to find and report on the facts. **RC**



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