

# **Practical Guide**

## **How to Conduct Forensic Interviews**

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# 1 Forensic Interviews - an introduction

## 1.1 Preliminary comment

This document is intended to provide practical assistance in questions concerning the planning and execution of forensic interviews. The content is regularly extended or adapted by the author. Specific legal questions are not dealt with in detail in this practical guide, and instead reference is made to the literature references mentioned at the end.

## 1.2 Term and meaning

An internal investigation is the repressive part of a compliance management system. Repressive in the sense that it represents the company's/organisation's response to a possible violation of applicable values, policies, regulations or laws. The goal is to identify and stop possible misconduct, to identify responsible persons and possible causes and to restore credibility and trust. An internal investigation is always conditional and should have the following quality characteristics:

- Independence of the investigator
- Systematic
- Complete
- Critical
- Believable
- Comprehensive
- Objective
- Based on facts
- Documented
- Commensurate

- In compliance with the law

In an internal investigation:

- Indications and evidence will be made available to confirm or refute misconduct
- Allegation / suspicions will be compared with the facts in the past
- Involved persons and their roles or responsibilities will be identified in the matter under investigation
- Favourable factors or causes will be determined in the case of identified misconduct and proposing possible process adjustments and preventive measures

Internal investigations are not regulated by law in Switzerland and are considered as private special investigations.<sup>1</sup> Quite often internal investigations can go hand in hand with, and possibly support, official investigations.

Forensic interviews or interviews with employees are at the heart of the internal investigation<sup>2</sup> and complement the file and document analysis (physical and electronic). These are planned and structured surveys of employees at all levels of the hierarchy with the premise of obtaining as much information as possible. The use of forensic interviews can considerably reduce the investigation effort and make time-consuming data analyses superfluous. For it is only through a statement or clarification or interpretation by the creator or recipient of a document that it receives its evidential value. However, this requires the willingness to talk, which can be significantly influenced by careful preparation and planning of the interviews.

### 1.3 Definition of the roles

In the context of an objective and factual clarification of a business situation, the following roles can occur:

**Reporter (whistleblower)** means the person who gives the indication of a possible violation of the rules. This can be done as part of an escalation within the line or via reporting to HR, Compliance etc. or via the internal whistleblowing system (speak-up line).

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<sup>1</sup>cf. ROMERIO FLAVIO, p.12.

<sup>2</sup>cf. LAENZLINGER ANDREAS, p.111.

**Subject of Interest - SOI** Since internal investigations are not comparable in their effect to criminal proceedings, terms such as suspects or accused persons should be avoided (also for psychological reasons). For persons who may be associated with misconduct, the term subject of interest is recommended.

**Subject Matter Expert - SME** SMEs should be used by the investigator wherever specific expertise (such as IT, production know-how, etc.) is considered necessary to conduct the investigation.

**Informant** This is a person whom the investigator suspects may be giving guidance for the preparation of the facts (for example, people working with the SOI in the same team). The term is defined differently in the legal literature.

**Witness** This is a person who has been the eyewitness and/or oral witness to an event, which is considered relevant for the preparation of the facts. The term is defined differently in the legal literature.

## 1.4 Legal aspect

### 1.4.1 Participation and obligation to cooperate

According to employment law provisions, article 321a (1) OR [Swiss Code of Obligation- CO] (Duty of Care and Fiduciary Duty), article 321b (2) CO (Accountability and Surrender Obligation) and article 321d (2) CO (Right of Instruction), an employee is obliged to attend such interviews and to make truthful and complete statements on the relevant events being investigated.<sup>3</sup> These duties are independent of the way in which they are involved in the matter being investigated. The gathering of information must be as comprehensive as possible and should take into account both incriminating and exonerating statements. See also page 13, chapter 2.14 Participation in the interview: Duty - but no compulsion

### 1.4.2 Instructing the interviewee

The form and content of the forensic interviews are determined based on the duty of care of the employer (article. 328 CO). The essential elements here include the widest possible orientation regarding the purpose and content of the questioning,

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<sup>3</sup>cf. LAENZLINGER ANDREAS, p.113f.

the preservation of objectivity and fairness, the mention of the accusation against the employee, and the obligation to grant the „right to be heard“.<sup>4</sup>

### **1.4.3 Self-incriminating statements by the interviewee**

The question of whether an employee may refuse to testify in an internal investigation otherwise he would incriminate himself is judged differently by lawyers. For an in-depth discussion on the subject of „compulsory disclosure“<sup>5</sup> as well as „right to refuse to provide information when self-incriminating?“<sup>6</sup> refer to the literature mentioned in the footnotes. It should be mentioned here that there is no right established by employment contract to refuse statements in case of a possible self-incrimination.<sup>7</sup>

### **1.4.4 Participation of third parties**

The employee's obligation to provide information must be fulfilled in person and the employee is not entitled to have a lawyer present at the interviews. In view of the pursuit of optimal information retrieval, other solutions may also be provided on a case-by-case basis.<sup>8</sup>

### **1.4.5 Issuing of a signed statement/report**

If the interviewee signs a statement/report, s/he is entitled to a copy for reasons of data protection.<sup>9</sup> However, in order not to thwart the purpose of the investigation, it is recommended that it be published only after the end of the examination.

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<sup>4</sup>Cf. LAENZLINGER ANDREAS, p.114.

<sup>5</sup>Cf. LAENZLINGER ANDREAS, p.114ff.

<sup>6</sup>Cf. FRITSCHÉ CLAUDIA, p.173ff.

<sup>7</sup>Cf. LAENZLINGER ANDREAS, p.118.

<sup>8</sup>Cf. LAENZLINGER ANDREAS, p.118.

<sup>9</sup>Cf. LAENZLINGER ANDREAS, p.135.

## 1.5 Prohibited methods

In their essay „Conversational techniques in the interrogation“ (german title: Gesprächsführungstechniken in der Einvernahme), Henriette Haas and Christoph Ill distinguish between permissible ruses and forbidden deception<sup>10</sup>, which are listed in excerpts below. A forensic interview has parallels to a hearing, but the legal court framework is missing. In this regard, the special significance of proportionality in forensic interviews should be noted.

Forbidden deception:

- Lie in relation to the existence of evidence
- Misrepresentation of the object of investigation
- Necessary deception
- Previews of a false legal situation

Permissible ruses:

- Concealment of the origin of legally procured evidence
- Taking advantage of previously existing misconceptions
- Tactically planned order of presenting evidence
- Tactically planned withholding of evidence

The use of the REID interview technique (interrogation technique) is discouraged since this technique is a means of influencing through uninterrupted speaking on the part of the interviewer, suggestive and alternative questions, as well as downplaying misbehaviour by comparison with others' tortious acts.

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<sup>10</sup>Cf. HAAS HENRIETTE/ILL CHRISTOPH, p.5.



## **2 Planning, preparation and implementation**

### **2.1 Planning the order of interviews**

Careful planning of the timing and order of the interviews is required. The latter depends, among other things, on the investigative strategy, the material evidence collected, the personality of the person to be interrogated and sudden events (for example, pressure on a witness). As a general rule, the SOI is interviewed at the end, if as much relevant information as possible has been made available.<sup>11</sup> In the case of several SOIs, parallel questioning is recommended to prevent possible collusion. A reporter (whistleblower), on the other hand, should be questioned at the very beginning in order to be able to verify and make plausible the statements with the suspicious facts. Eyewitnesses should be interviewed as soon as possible, as their memory fades or with several eyewitnesses there is the danger of an unintentional influence on one another.

### **2.2 Case knowledge and knowledge about the interviewee**

Careful preparation includes comprehensive case knowledge as well as familiarisation with the subject area in which the facts to be investigated took place. Information about the professional background of the interviewed person within the company is also of great benefit.

### **2.3 Objectives of the interview**

The ultimate goal of a forensic interview is to obtain as much true information as possible about the matter under investigation. The guideline is the answer to the seven W's (who, when, where, what, how, with whom, why). It should be noted that the focus of the interview with the SOI should not be on a confession, but on the complete and truthful statement of the facts. The assignment of responsibilities is a secondary priority. This attitude also prevents pressure being put on the interrogated person too early (see page 16, chapter 2.21 Mistakes to avoid).

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<sup>11</sup>cf. FRITSCHÉ CLAUDIA, p.76.

## **2.4 Time of invitation to an interview**

The time when an employee is informed about his or her participation in an interview depends on the investigation tactics (for example, collusion prevention) as well as any internal agreements (for example with the works council). However, it should be noted that the willingness to talk generally increases with reasonable notification.

## **2.5 Type of invitation to an interview**

Participation in a forensic interview may be stressful for the employee. The type of invitation to participate in an interview is crucial, particularly with regard to promoting the willingness to talk. A personal invitation via telephone can break down interhuman inhibitions, serves as a pertinent orientation and gives the opportunity for queries from the person concerned (for example about the procedure). The principle is to be as transparent as possible, without thwarting the purpose of the investigation. Factual issues of the case should not be discussed at the time of the invitation.

## **2.6 Confidentiality**

All persons involved in an internal investigation must be informed verbally and/or in writing about the confidentiality and secrecy of the content of the interview or their knowledge of a situation. However, since secrecy is seldom successful within a specific group of people and, as a result, rumours can develop, adequate pro-active communication should also be examined in order to prevent insecurity in the workforce.

## **2.7 Personal presence**

A forensic interview is performed with the personal presence of interviewer and interviewee in the same room. The personal meeting enables the building of mutual respect and trust and forms the basis for optimal information gathering. Video or telephone interviews are not recommended.

## **2.8 Location of the interview**

Depending on the number of participants, a meeting room of the appropriate size must be planned. The choice of the room must take into account the protection of confidentiality as well as privacy (possibly outside the company). An interview in the interviewee's office is discouraged. Interviews with whistle-blowers or victims of sexual harassment should always be conducted at an external location.

## **2.9 Logistics**

Communications (telephone) and documentation (PC, printer, video projector, whiteboard, flip-chart) as well as drinks and meals are to be planned as part of the interview. Complex issues can often be represented with a drawing, for example on a flip chart.

## **2.10 Seating plan**

For the seating arrangement, it is recommended that the interviewee sits closest to the door (avoiding the situation of „false imprisonment“). The interviewer should have a clear view of the interviewee. Worth considering is also the preservation of the distance zones (minimum approx. 60cm and maximum approx. 1.5m).

## **2.11 Participants**

### **2.11.1 Interviewee**

The possible knowledge of a person about the matter to be examined is decisive in the selection of the interviewees. An interview may only ever be conducted with one interviewee.

### **2.11.2 Involvement of witnesses**

For forensic reasons, forensic interviews should be conducted with a witness (e.g., a person from the investigation team, HR, compliance, etc.). The presence of a witness can also reduce the risk of potential discomfort and may be de-escalating in the event of conflict.

### **2.11.3 External persons**

External persons are generally not allowed in a forensic interview in an internal investigation. Exceptions to this could be, e.g. an interpreter (creation of a non-disclosure agreement).

### **2.11.4 Language/interpreter**

Clear and unambiguous communication between the interviewer and the person being interviewed is a prerequisite for the successful completion of an interview. Under certain circumstances, foreign languages may limit the degree of detail or omit nuances. In case of doubt always check the involvement of an interpreter.

### **2.11.5 Number of interviewers**

The maximum number of three interviewers should not be exceeded in order to avoid the impression that the interviewee is being interrogated. This in turn would negatively affect the willingness to testify.

## **2.12 Time management**

A basic requirement of any interview is the planning of sufficient time. Here the following factors have a significant impact:

- Number of sub-topics (e.g., different types of misconduct, time period to be discussed)

- Amount and significance of evidence
- Complexity of the facts
- Willingness of the interviewee to cooperate
- Creation of a written statement
- Review of the written statement by the interviewee
- Breaks (Plan enough breaks to avoid any later discussion regarding pressure applied)
- The use of an interpreter almost doubles the normal duration of the interview.

## **2.13 Endangerment of self and others**

Note that the psychological burden on an employee who has to expect the discovery of his or her misconduct can be large. This person will deal with the possible consequences of their misconduct (risk of dismissal). Statements or behaviour that suggest a possible act of violence (endangerment of self and others) require the assistance of competent persons as well as appropriate precautionary measures.

## **2.14 Participation in the interview: Duty - but no compulsion**

According to above mentioned employment law regulations (see page 6, chapter 1.4.1 Participation and obligation to cooperate) the employee has a duty to participate in a forensic interview to make complete and truthful statements about a company matter. An employee can be instructed to participate but cannot be forced. From this point of view, a signature confirmation of voluntary interview participation (for all roles) on a standard form is recommended.

## **2.15 Interview strategy**

Based on evidence already made available (factual or personal proof), an interview strategy must be drawn up and the conversation must be structured. The strategy involves planning the order of topics or submitting the evidence.

## **2.16 Interview guide or questionnaire**

Answering this question essentially depends on the interviewer's work methodology. However, it should be noted that interviews very often develop their own momentum with leaps in subject and time, and in this situation a questionnaire may lose its function.

## **2.17 Documentation**

### **2.17.1 Memos**

Written records (handwritten notes or ones made on a PC) about the statements made and also about the course of events (for example, emotional reactions, pauses) must be prepared by the interviewer. These records are part of the investigation files and copies should not be issued to the interviewee.

### **2.17.2 Video/Voice Recording**

Video and / or voice recordings are discouraged because they can cause potential blockages and require the consent of the respondent. Make sure that the interviewee cannot make any secret/hidden recordings.

## **2.18 Written statement**

In the sense of a work product of the interview, a statement signed by both sides is recommended with the essential statements of the interviewee. If the statement made lacks relevance to the case, the notes of the interviewer suffice. With statements made by witnesses and the SOI and interviews with victims of sexual harassment a signed statement is strongly recommended.

### **2.18.1 Statement or word log**

For reasons of efficiency and focus on the essentials, I believe that a statement summarizing the relevant statements should be preferred to a verbatim record.

### **2.18.2 Additions and corrections**

When reviewing the statement, corrections or additions to the original must be made in handwriting by the interviewer. Corrections and additions must be initialled and dated by the interviewer and interviewee. It is advisable to read through/review each page (avoiding double-sided printing) with a final signature by the interviewee and the interviewer. This avoids the interviewee „infinitely“ correcting the statements.

### **2.18.3 Signature**

Each page of the statement must be dated with the date and signature of the interviewer and the interviewee (recommended on all headers and footers).

### **2.18.4 Issuing a copy**

For privacy reasons, the interviewee is entitled to a copy of the statement signed by her/him. However, in order not to jeopardize the purpose of the investigation, the delivery of copies should take place only after the investigation has been completed. See page 7, chapter 1.4.5 Issuing of a signed statement/report

## **2.19 At the end of the interview**

### **2.19.1 Summary at the end**

In the interests of transparency and to avoid misunderstandings, an oral summary by the interviewer is recommended at the end of the interview.

### **2.19.2 Final form**

Upon completion, it is recommended that the interviewee (regardless of their role) be given a standard form for signing. With their signature, the interviewee confirms:

- Place, date and start and end time of the interview

- The fact that they were given the chance to voice their own opinion (Interviewee's account)
- Fair and decent treatment
- Sufficient breaks and meals
- The possibility to leave the room at any time

This final form should also be signed by the interviewer and any witnesses.

### **2.19.3 Before leaving the meeting room**

Do not leave any documents in the room. Clean whiteboards and take any written-on flipcharts with you. Do not throw notes or draft statements in the paper basket.

## **2.20 Possible subsequent measures**

Consider (for example, with a confession) that a return of the person being questioned to the workplace is unreasonable, or that a notice of termination may be necessary to safeguard legal deadlines. Clarify with HR such a possible outcome of the interview and organise the creation of the necessary documents. Please also note that in the event of a suspension or dismissal of the employee, he or she may only remain on the company premises under accompaniment. This prevents possible sabotage actions. IT and access rights are to be suspended immediately in such a case.

## **2.21 Mistakes to avoid**

- Putting pressure on already in the initial phase as well as the focus on a confession leads with high probability to the refusal to speak or reference to memory gaps
- A preconceived opinion of the interviewer and accordingly one-sided questioning leads to a loss of trust and respect in the interviewed person



- Too many people present can interfere with the conversational atmosphere and the flow of information
- Insufficient preparation for submission of evidence and case knowledge
- Disclosure of the identity of the whistle-blower or witnesses
- Insufficient time calculation
- Unclear information on the internal investigation process
- Insufficient information about the subject matter of the survey or the allegations made against the respondent
- Chain questions or leading questions
- Closed instead of open questions
- Interrupting / not allowing interviewee to finish speaking
- Self-portrayal or moralising
- Ironic comments

### **3 The four interview phases**

The forensic interview is divided into four phases:

#### **3.1 Warm-up**

The warm-up phase is about creating a rapport (same wavelength). The creation of a positive discussion climate is essential for further progress. The manner of invitation to this meeting as well as demonstrated flexibility in scheduling the meeting can support this process. A friendly greeting with eye contact and a handshake are further supporting elements.

## 3.2 Presentation and information about the process

### 3.2.1 Presentation of the interviewer and information about the process

At the beginning, the interviewee should be informed about the following:

- Introduction of the interviewer and his/her function
- Interviewer's task
- Confidentiality of the interview content
- Topic of the interview (no details)
- Role of the interviewee. If the interviewee is an SOI, it should be noted that the investigation is primarily concerned with the establishment of the facts and the persons involved. If there is suspicion of a possible wrongdoing, then all significant incriminating as well as exonerating evidence is collected.
- Aim of the interview
- Progress of the interview
- Obligation under employment law of the interviewee to make complete and truthful statements. But also that their presence is voluntary and that the interviewee can leave the room at any time, but under certain circumstances this can be understood as a behaviour that violates employment law.
- Breaks, location of toilets, drinks
- Type of logging via notes / recording of key statements
- That no voice and/or video recordings are made or even permitted
- In the end, a written report with the essential statements may be drawn up (it is not recommended to draw up a verbatim record)

### **3.2.2 Introducing the interviewee**

Following the above-mentioned orientation, the interviewee should provide information about his/her professional career within the company. Particularly in the case of Matrix organizations, current as well as previous functions, including the reporting line, provide important information. Here, the focus is on the respective tasks, responsibilities and competencies.

### **3.3 Interview main phase**

The introductory phase is followed by the actual interview phase with the goal of obtaining as much true and relevant information as possible via the facts. This phase should begin with a free narration by the interviewee. Interruptions should be avoided as far as possible (exceptions: the interviewee deviates too much from the topic, or to clarify misunderstandings). This is followed by the factual questions about a specific incident or process. Based on the answers of the interviewee a possible contradiction to submitted evidence, existing instructions, or own statements is raised (Challenging). Open questions (who, when, where, what, how, with whom, why) and direct questions (to clarify and identify misconduct) are instruments that can be used here.

### **3.4 End of interview**

Particularly in interviews with a person with SOI status tensions may arise, and these should be reduced again towards the end. The willingness to make further statements should be ensured and for this the perception of the interviewee of being treated fairly and respectfully is essential.

## **4 Communication fundamentals**

### **4.1 Personal attitude and competencies of the interviewer**

In the course of an investigation, working hypotheses are created about a possible course of an event. This is necessary to define the evidence and to create the

interview guide. However, the working hypothesis must not anticipate the outcome of an interview. Some of the key skills of an interviewer include:

- Empathy
- Impartiality
- Objectivity
- Curiosity
- Fairness
- Tenacity
- Patience
- Ability to listen and
- to be able to endure silence

These skills of an interviewer are considered elementary, otherwise important clues to the truth can be overlooked. Furthermore, the interviewer must not lose sight of the discussion guide even in complex situations and time and topic jumps, and should be able to recognise contradictions in statements. The interviewer does not make judgements (even non-verbally) about a certain behaviour. Only when the respect shown is credible and the interviewer is rated as authentic and trusting does the interviewer gain access to the interviewee's information, such as personal problems, desires, opinions, confidential matters and needs. This basis also allows the interviewer to present confrontational (challenging) questions as well as opposing opinions, as long as these are not associated with condemnation of a behaviour. Objectivity, impartiality and interest in the „whole“ are further important elements for a successful interview. The rule is: „The interview is not about yourself, but about the other person“.

## **4.2 Speed and comprehensibility**

Do not forget that as an interviewer, you have studied the topic to be dealt with intensively. Your task is to develop the topic with the interviewee. Your questions should therefore be clear, short and at an understandable pace. Avoid long introductions or even chain questions.

## 4.3 Active listening

Active listening is the use of supporting actions to motivate the interviewee to make statements. This can be done by the following measures:

- Non-verbal listening: Open-faced posture, eye contact, temporary nodding is signalled as an interest in what has been said, and the person being questioned is motivated to make statements.
- Inquiry / Paraphrasing / „Do I understand you correctly?‟: The statements made are summarised by the interviewer with the aim of avoiding misunderstandings and encouraging further details.
- Echo technique: In the echo technique, certain words from the statements made are repeated and questioningly repeated by the interviewer (example: „Aha, problematic?“). This is intended to encourage the interviewee to continue talking and to focus on the repeated word or phrases.

## 4.4 Questioning technique

### 4.4.1 Questioning tactic

The goal of an interview and which information should be made available for an ongoing investigation determine the strategy and influence the questioning technique. Careful planning does not mean that every question should be formulated in advance, but the order of issues to be dealt with, as well as planning for the presentation of the evidence, then prevents the exploitation of excuses or „opportunities for evasion“.

### 4.4.2 The free report and open questions

A good questioning technique, especially at the beginning of the main phase of the interview, is open questions (for example, who, when, where, what, how, with whom, why). These questions cannot be answered with „yes“ or „no“ and should motivate the interviewee to talk (free report or narration). The free narrative is the opportunity for the interviewee to present their knowledge and their view of things. The requirement for the interviewer here is not to rush into the subject for which evidence is being sought, but to apply patience and empathy and to show

curiosity for the statements. Interrupting or asking too much can inhibit the flow of information in the free-narrative phase. Here, too, the way that the interviewer handles silence or remains silent is also important. Closed questions (answer with yes or no) serve to concretise. Very often, however, closed questions are asked and free answers/reports are expected.

#### **4.4.3 Closed questions**

For closed questions, the answer options are limited to a „yes“ or „no“. Closed questions serve to concretise.

#### **4.4.4 Direct questions**

Direct questions include the naming of a misconduct and should only be asked towards the end of the interview (example: How did the bribe to Mr. X take place?).

#### **4.4.5 Leading questions**

Leading questions should be avoided, since this includes a hypothetical stipulation in the question which the interviewer expects as the answer.

### **4.5 Aided recall**

Remembering a specific detail in the past often requires the use of contextual information. The question: What did you have for lunch last Tuesday? can be answered more easily with the help of supplementary questions about the place, date, weather, companion, restaurant name.

### **4.6 Dealing with resistance**

The involvement of a witness on the part of the interviewer serves to ensure the integrity of the investigation process. But a witness can also have a de-escalating effect. Refusal or lack of cooperation can manifest itself in provocations or

aggression. Here it is necessary to maintain peace and not to turn the situation into a power struggle. Uncooperative behaviour (example: responding to each question with a question) is to be communicated to the interviewee in a calm tone, as well as the meaning and benefit of the interview and the expectations regarding respectful handling. Uncooperative behaviour should always be documented, and if the trend escalates, consideration should be given to discontinuing the interview.

## **4.7 Lie recognition**

False information or lies can best be identified on the basis of evidence (e.g. document). The lie itself is not a proof of wrongdoing. The identification and confrontation with the lie, however, helps to find the truth by increasing the pressure on the interviewee to provide true information. The identification of lies is not an exact science and noticing so-called micro expressions in facial expressions is demanding. Nevertheless, it is advisable to pay attention to the situation-related, inappropriate behaviour. Here, feelings of guilt (visible through the basic emotion of sadness) as well as stress in the narration of a fact (recognisable by little details, the same choice of words when questioning, problems with time leaps) play an important role. The stress is accompanied by a greater self-control and a wooden/rigid body language. The above features may indicate a lie if inappropriate to the situation or cumulative occurrence.

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