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A LIST WITH RELEVANT ADDRESSES  
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## WHY IS WHISTLEBLOWING SO IMPORTANT?

Without the assistance of people with insider knowledge, mismanagement, fraud or corruption cases are hardly ever exposed. Neither of the parties involved have an interest in their activity coming to light, especially when it comes to cronyism or the payment of bribes or facilitation payments. Both sides benefit from these acts of corruption. Therefore, they go to great length to cover their tracks. The real figures are not known, but it is estimated that more than 95% of the cases of corruption are unreported. A direct victim does not always exist and those damaged indirectly are often widespread and are completely unaware of the disadvantages they are facing due to the hidden nature of corruption. Potential victims are taxpayers, companies competing to win a new contract, shareholders, or parts of the population in developing countries.

Whistleblowers play a central role in the discovery of unethical or criminal behaviour. Without their information, most of the offences remain undiscovered.

## THE LEGAL RIGHTS OF WHISTLEBLOWERS: THE STATUS QUO

There are no specific laws in Switzerland protecting whistleblowers from retaliation. Even internal disclosures may lead to sanctions, such as losing one's job, but the real problem starts when allegations about fraud or corruption are made to people or institutions outside the organization. With outside disclosures, employees are likely to violate the Swiss labour law's secrecy and loyalty provisions (Art. 321A para. 4 of the Code of Obligations). The provisions are stating that employees cannot disclose sensitive information or information that is potentially damaging for the employer to third parties, even if the information concerns illegal activities. Exceptions are only allowed if the public interest in disclosing the information is deemed higher than the interest of the employer in keeping the information a secret. Unfortunately, it is not clear when this is the case in practice. When exactly an employee has the right to report his or her concerns to the competent authorities, has not yet been fully answered by the courts and laws in Switzerland.

It is quite easy to give notice of dismissal to employees on such grounds. A dismissal may be improper; it is however up to the employee to prove it. If there is sufficient evidence, the court may award up to six months' salary as compensation. In practice, not more than two months' salary is being granted. There is no provision giving the private sector employee the right to have his/her old job back, though.

It is a fact that whistleblowers are not well-protected in Switzerland. More often than not, they have to face sanctions, such as demotion, dismissal or even criminal charges for making a justified report.

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**THE GUIDING PRINCIPLE IN THE WHISTLE-BLOWER'S CODE OF CONDUCT IS FAIRNESS. REMAIN FAIR IN ALL PHASES OF THE DIS-CLOSURE PROCESS. TRY TO REMAIN FACTUAL AND IMPARTIAL WHEN TREATED UNFAIRLY, AND AVOID PROVOCATIVE DECLARATIONS. MAKE NO FALSE ALLEGATIONS THAT CAN BE USED AGAINST YOU (LIBELLOUS STATEMENTS ETC.)**

## TIPS FOR WHISTLEBLOWERS

As a whistleblower, you must be aware of the risks. Your actions may elicit little sympathy and cooperation from your employer. It is possible that your report is seen as an attack on the organization and it will be met with a fight. As a result it is important to take the following points into account:

### PERSONAL CONSEQUENCES OF YOUR ACTIONS

- Prepare your family and your close friends that due to your report you may be facing a lot of stressful situations and that this pressure may have a big impact on your life and the life of your loved ones.
- Draw a line of retreat and know how far you are willing to go before taking any action.
- Think about your career and where you want to be in one to ten years from now. How real is the risk of being dismissed as a consequence of your report? What will a report to the media do to your personal life and your career prospects?

### RECOMMENDED COURSE OF ACTION

- Document your actions as detailed as possible and keep a diary, logging correspondence and steps taken.
- Do not use company computers or email or telephones for your research. The data can be recovered and used against you.
- Analyse your vulnerability. Are there parts of your professional history that can be used against you? Be aware that they can be unearthed and used against you.
- Find allies before your employer attempts to isolate you. Have any other employees noticed the unethical behaviour you are about to report, so that you can band together? Do you have a confidant within the organization that can support you throughout the process? As a lone fighter, you have a much smaller chance of success than in a group.
- Consult a trustworthy lawyer. The Transparency International hotline can provide a list of legal advisers, as well as contacts (to Ombudsman etc).
- In almost all Cantons there are free consultations available for legal issues. Unions and professional associations often provide legal advisory services for members.

- From a legal point of view, it is crucial that the following is observed if you consider making a report:
  1. First, notify the competent body or person within the organizations (internal whistleblowing). An employer should be given the chance to handle the situation internally. Get a written confirmation of the receipt of your notification.
  2. If there is no reaction by the employer within a reasonable time-frame, then you may notify the appropriate authorities outside your organization, such as law enforcement agencies, tax authorities, the unfair competition commission etc. However, you still might violate secrecy and confidentiality laws unless the public interest in the disclosure is higher than the interest of the employer in keeping the information confidential.
  3. Only if the competent authorities are not reacting within a reasonable time-frame the media may be notified as a last resort in order to apply pressure for action. It is not recommended to skip one of the two earlier steps, except if it is clear that the higher ranking interest of third parties or the public is at stake. But know that the scope and nature of what is a higher ranking interest is not well-defined.



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## GOING TO THE MEDIA?

- Disclosures to the media can only be made as a last resort. First, you have to inform your organisation about any allegations. As a second step, the competent external authorities need to be notified. Only if both of them are not reacting in a satisfying manner, addressing the media becomes an option.
- However, journalists are not your friends. Do not be too trusting.
- Verify if your documents are able to withstand unsparing public scrutiny. The media may discover things not in your favour that you overlooked or that you thought were unimportant.
- Be aware that the information you disclosed can take on a life of its own that you can no longer influence once it is in the hands of the media and general public.



### JORGE RESENDE – RSR

Jorge Resende, a computer support technician, discovered pornographic images on the computer of a top member of management at RSR in May 2005. He notified his immediate supervisor, asking him to follow up on the case. The supervisor took action and an internal investigation was launched. The top manager in question admitted his guilt. He was required to undergo psychiatric care and given probationary employment status. It was not deemed necessary to report the case to the police. Resende attempted to encourage his supervisor to report the case to the police and make a criminal report several times but was unsuccessful. For him, it was important that such cases be reported to the police. In 2008 after it became aware that Resende had been informing fellow employees about the case, the management of RSR sent out an email to all employees to clarify the situation. Resende answered the email with one that gave his point of view. According to the RSR management, Resende continued to talk about the case and share information with third parties outside the organization, and he was therefore fired without notice.

Motivated by strong support from co-workers, Resende held a hunger strike in June 2008 in front of the RSR building in a bid to get his job back and to demand improved communication on the part of RSR management. The result was that the board decided to fire the manager that had the illicit files on his computer. As for Resende, he did not get his job back. And the management of RSR was mandated to improve its internal communication.

Sources: [www.ssm-site.ch](http://www.ssm-site.ch); [www.medienfreiheit.ch](http://www.medienfreiheit.ch)