**USEFUL INFORMATION FOR WHISTLEBLOWERS**

**TRANSPARENCY INTERNATIONAL SWITZERLAND**

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**TALK IS SILVER, SILENCE IS GOLDEN**

Every child learns that tattling is not fair and mean. So what to do when one discovers that a fellow employee is taking cash off the books? What to do when the purpose of donations is questionable and might in fact be bribes in disguise? What to do when managers are cutting regulatory corners in order to save time? Is a co-worker paying bribes in order to win contracts for the company? Employees that discover irregularities (illegal or unethical activity) and who take it upon themselves to expose or bring to light these cases are called whistleblowers. They are not «snitches», rather they are reporting to comply with the law or the company guidelines. Often they act in the belief that what they are doing is helpful and in the company's interest. However, the organization’s management may perceive it as an attack. Therefore many whistleblowers are treated unjustly, are mobbed, demoted, and even fired.

Margrit Zopfi and Esther Wyler had worked for ten years at the Zurich Department of Social Services. Both were controllers, responsible for the social security benefits fund. The two came across unjustified expense claims. After notification of internal authorities had no results, they sent an anonymous and edited file (name fields were blacked out to protect individuals’ privacy) to the **Weltwoche**, a Swiss weekly magazine.

The magazine published details of the file and severely criticized the government department responsible. A fellow colleague identified Zopfi and Wyler as the senders of the file and they were arrested at their workplace and fired without notice. A legal case was made against the two claiming they violated the official secrets act. The women were unemployed for two years. It was only through their own personal networks and luck that they were able to find new positions in summer 2009. Shortly thereafter, the justice department processed the case and on September 17th, 2009, the Zurich regional court announced its judgement: Zopfi and Wyler had committed a breach of official secrecy but were justified because internal reporting had failed to bring about corrective actions, and that it was in fact their duty to bring to light the irregularities.

**MARGRIT ZOPFI AND ESTHER WYLER, DEPARTMENT OF SOCIAL SERVICES, ZÜRICH**

Furthermore, for the first time in a whistleblower case, the public interest in disclosing the irregularities was deemed to be more important by the court than the interest of the employer in keeping everything a secret. Nevertheless, in October 2009 an appeal was filed by the public prosecutor’s office and the two women will have to undergo due process in a higher court.

**Sources**: Weltwoche.ch ; www.tagesanzeiger.ch
WHY IS WHISTLEBLOWING
SO IMPORTANT?

Without the assistance of people with in-
sider knowledge, mismanagement, fraud
or corruption cases are hardly ever ex-
posed. 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. Pot-
tential victims are taxpayers, companies
competing to win a new contract, share-
holders, or parts of the population in de-
v eloping countries.

Whistleblowers play a central role in the
discovery of unethical or criminal behav-
 iour. 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 organi-
zation. With outside disclosures, employ-
ees 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 autho-
rities, 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 dis-
missal 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 pro-
vision 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.
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.
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-sile.ch; www.medienfreiheit.ch