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Transparency in Investigations: 5 Questions to Ask an Investigator



In [The Atlantic](#), David Brooks argues that for the past few decades the U.S. has witnessed a major decline in “social trust,” the faith we have in our institutions and fellow citizens. This is backed up by [extensive data from the Pew Research Center](#), which finds that “three-quarters of Americans say that their fellow citizens’ trust in the federal government has been shrinking, and 64% believe that about peoples’ trust in each other.”

Mintz Group can attest to the fact that declining trust is by no means a U.S.-only problem. Furthermore, while investigations themselves are nothing new, today we are seeing entirely new areas of concern that were either nonexistent or extremely rare 20 years ago. They include allegations of sexual harassment, making racist and misogynistic statements, bullying and even consensual extramarital affairs.

When it comes to more traditional allegations of fraud, mismanagement and contractual breach, corporations - publicly traded ones in particular - are more likely to launch formal investigations. The rise in shareholder class action lawsuits, as well as the combination of social media with a 24-hour news cycle, often amplifies the damage caused by a seemingly minor complaint.

One major ramification of this trend is the increasing demand for clarity and transparency in investigations.

Lack of clarity and transparency could result in legal liability

It’s obvious that in an investigation, the client seeks clarity and transparency: who is or is not responsible for a transgression; coming clean to stakeholders that the issue has been appropriately remedied.

What’s not always so evident is that the investigators need to be held to standards of clarity and transparency as well.

In fact, some investigators are known to create an aura of mystery and suspense around their efforts. Mystery is

something better left to fictional detective stories rather than real-life situations. Even practitioners who do not intentionally mystify their work may be less than clear in communicating with their clients and other parties. As a result, the investigation itself may be compromised or, in the worst cases, lead to adverse publicity and even legal liability.

There are five questions to ask when determining an investigation firm’s level of clarity and transparency. The answers will help organizations select an investigator that adheres to higher standards of trust and accountability.

1. Do investigators adhere to truth in advertising?

Since conducting investigations is a for-profit profession, salesmanship has its rightful place, but marketing their services is an area in which practitioners can needlessly, and sometimes counterproductively, sow mystery.

For example, some investigators have been known to act almost like international spies while pitching to a client. This gambit is easy to spot: a powerfully built man in a dark suit, complete with an official-looking lapel pin, bandies about terms like “espionage,” “intelligence assets” and “black ops.” Even real intelligence agents don’t use these terms in the context of a corporate assignment - as any reputable firm that employs ex-government agents should know.

In truth, the vast majority of investigations do not involve anything resembling espionage, but instead comprise a straightforward gathering of facts. Can the executive’s resume assertions be verified? Are the goods claimed in inventory actually present in the warehouses? Is there a history of past complaints against someone facing a harassment charge? Has a firm ever been named in an inquiry into human rights, environmental or corruption violations?

2. How well do they explain methods and involve the client?

Another form of transparency is informing clients in advance about the specific methods investigators will employ. Who will they interview? What information sources will they research? Which technical specialists will they consult?

The best results occur when an investigation is a partnership between the client and the investigative firm, with an open exchange of information throughout

the process. The client, who knows the situation and the people involved best, must be involved in the design of the investigation from the beginning.

One example is the scripting and rehearsing of information-gathering interviews. Clients should routinely be included - after all, they often have knowledge of the parties' motivations and sensitivities that help assure a positive outcome and avoid alienating interviewees.

3. Are they honest and straightforward with participants?

One famous old-school investigator was known for [*identifying himself as a news reporter when contacting a source for information*](#). While such a practice may have been acceptable in the past, the risk is much higher today that it will backfire into bad PR - or worse. A policy of clarity and transparency strictly prohibits this kind of subterfuge and other false pretenses, such as claiming to be someone's relative or business associate, or falsely asserting that the investigator has evidence of wrongdoing in an attempt to coax the source into cooperating.

In addition, investigators should never mislead regarding their authority to exert power over an individual or to access their personal information. Private detectives do not have the powers of police or government agents. Even something as routine as a credit check can't be done without a consumer's written permission. Investigative firms employing former law enforcement staff need to carefully retrain them regarding the greater limitations of working in the private sector.

4. Do they keep a tight rein on any "undercover" activities?

A notable example of undercover activities backfiring saw a company and its investigators [*suffering from bad press by staging a phony documentary shoot*](#) at a location where activists were demonstrating against a business. The "documentarians" told the protestors that they were producing a film sympathetic to their cause. In fact, they were actually investigators hired by the business to infiltrate the activists and unearth negative information about them.

Quite the opposite happened: instead of harming the activists' case, the stunt generated widely read exposés

in several of the world's leading news sources lambasting the business that hired the investigators.

This is not to say that investigators need to be open in informing targets of their probe. Obviously, parties engaged in fraud will attempt to cover it up, and certain undercover tactics may be necessary to catch them. One widely accepted method is a stakeout with investigators standing by to observe perpetrators in the act of conducting a prohibited activity.

Also to be avoided is fishing for any damaging information about an adversary, including of a personal nature, rather than sticking to the specific topic under investigation. Such a practice can quickly blow up into a scandal harming the client's reputation. One famous example is General Motors' hiring of investigators to dig up dirt on Ralph Nader's personal life after the publication of the consumer advocate's 1965 book, *Unsafe at any Speed*. Nader filed suit against GM, claiming intimidation and invasion of privacy. [*He won a large settlement*](#) and, more importantly, established himself in the media as the "consumer crusader," while public trust in GM plummeted.

The lesson here is that investigators should stick to finding facts to fight misdeeds or bolster a legal case, and turn down assignments aimed at simply damaging an adversary's reputation.

5. Do they deliver findings in a transparent manner?

As mentioned, the vast majority of investigators' activities do not involve cloak-and-dagger espionage but rather mundane research, phone calling and fact checking. The key is knowing where to look and how to interpret the data. Yet some investigators add drama to their reporting of the facts. More than a few investigative reports have used phrases such as, "our sources reveal..." and "the firm has discovered..." when the facts in question were obtained by searching online newspaper archives.

Full transparency in reporting means explaining where facts were obtained and the methods used in obtaining them. In addition, it's important for the investigator to educate clients about the firm's investigative sources and techniques, rather than holding them back as some sort of secret sauce.

When it comes to a high-stakes investigation, good detective work is only the beginning. Achieving clarity and transparency helps assure a positive outcome - and avoid negative ramifications in the courtroom or the press.

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