

## CEP Magazine – March 2019 When whistleblowers blow their cover

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By Miguel Rueda, MBA, CCEP, CFE, CIA, CRMA

Miguel Rueda ([miguel.rueda@aircanada.ca](mailto:miguel.rueda@aircanada.ca)) manages the ethics reporting program in a global enterprise based in Canada.

What do you do when whistleblowers don't care about anonymity? "I don't care if you have my name. I've got nothing to hide," said an employee. Let's call him Jeff. Jeff had just provided information about what he believed was unethical behavior in his department. When he was reminded that his identify could be protected, Jeff insisted: "No, go ahead and use my name; it's not me who should be worried!" Jeff was reporting certain manipulations by people working very close to him. More on Jeff later.

Although this scenario may not be common in the realm of ethics reporting, we need to be prepared, because the situation may present unique challenges and opportunities.

### **Do we know what motivates a whistleblower?**

Last year, I wrote an article about communicating with reporters in which I outlined the importance of managing a reporter's expectations carefully.<sup>[1]</sup> Understanding the reporter's motivation is very important as well.

If reporters, on their own volition, provide information that identifies them, you (the compliance professional) now have more elements to consider when assessing the case. Inevitably, this includes a possible motive for reporting.

I recommend the following five steps to assess the information when a reporter has decided to forego anonymity.

### **Maintain your professional skepticism**

Those who have worked as auditors will know this very well: When evaluating information provided by third parties, a healthy degree of skepticism is your friend. This does not mean that you have to mistrust everyone, but it indicates the need to seek independent validation of the information you receive.

Your exercise in skepticism should apply to the most basic information when a reporter reveals their identity.

- Is the reporter really who he or she claims to be?
- Is this person an employee in your organization? A customer? A supplier?
- Is there any history on file (e.g., a recent disciplinary action, an unresolved complaint, or an unsuccessful RFP)?
- Are there any ongoing (e.g., legal) processes underway involving this person?

In my years investigating ethics reports, I have come across instances when a reporter purported to be someone else in an attempt to give a higher profile to the report, or even as a form of retaliation against someone else.

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If you have the reporter's name, you should be able to verify, at least, preliminary information about the individual.

## **Clarify the process**

When a reporter decides to provide their name, you should communicate very clearly that it is a voluntary disclosure (assuming your ethics reporting system is based on the premise of anonymity).

In one of my cases, the reporter revealed her name, believing that this would give her “immunity” for any allegations that she made. In her view, “no one would dare” to fire her, since she had stepped up to flag what she believed was unethical behavior. Unfortunately, it is not that straightforward. Although there are safeguards and legislation protecting whistleblowers, they do not necessarily entitle the reporter to immunity.

## **Assess with objectivity**

Clarifying the process will help you have more effective communication with the reporter. Once you have an understanding of the reporter's role in your organization, you will be in a better position to evaluate the information you are receiving. Can the reporter be reasonably expected to have the information he or she is providing? Are there any specific events that would play a role? For example, was the reporter recently passed up for a promotion? Did the reporter recently receive a bad performance review?

This does not mean that we should judge the reporter. Instead, by assessing your communications with objectivity, you should be able to gain a broader understanding of the different factors surrounding the allegations being made. This will help you direct the investigation accordingly.

Again, this is based on the premise that the reporter has voluntarily disclosed their identity.

## **Manage the reporter's expectations**

Every reporter will have a preconceived expectation about how the information they provided will be used. This is the case with both anonymous reporters and those who reveal their identities. Everyone expects a desired outcome. You, the compliance professional, should ensure that exchanges with reporters provide them with assurance that the information will be reviewed, but you cannot promise a specific result. I find that when you communicate with a reporter in a candid way, you are more likely to receive meaningful cooperation, and this helps the reporter understand what outcomes can reasonably be expected.

Even if a reporter has revealed their identity to you, you have to continue to protect all information as if it were provided under anonymity. The reporter should know this, and should understand that providing their information to you does not mean that the case has become public. The reporter must continue to exercise caution to help ensure the confidentiality and integrity of the process.

## **Make the most of information available**

When you know the identity of the reporter, you will most likely be engaged in two-way communications with this individual. Your conversations are less like talking to someone on the other side of a wall, and more like sitting face-to-face. This enables you to probe more directly into what the reporter knows and why they are bringing the information forward. As your investigation progresses, your research will help you “place” the reporter in the context of the allegations. This will help evaluate both credibility and substance. This is a key difference between communicating with anonymous reporters and those whose identities are known to you.

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