

From: Ian Robertson
Sent: Tuesday, 16 December 2014 9:22 AM
To: 'solutions@sinc solutions.com.au'
Subject: RE: I'm looking for a procedural fairness solution

Hi everyone

Well, I think I can conclude that you are refusing to respond to this. All I am seeking is clarification if it's your decision or Bankstown's. Or both.

I have no alternative now than to alert our members that if their council is looking for an investigator that will provide access to their report when its concluded, then they had better not get you to do the job. I will also, of course raise this with the other unions and LGNSW.

We can't let our members be investigated by

There is still time to clarify this. depaNews goes out today about 1 or so.

Ian Robertson
Secretary
depa

Ph: 9712 5255
www.depa.net.au

From: Ian Robertson
Sent: Thursday, 11 December 2014 11:52 AM
To: 'solutions@sinc solutions.com.au'
Subject: FW: I'm looking for a procedural fairness solution

I will give up on this shortly and deal with this in another way, but I am doing this to allow you to tell me how you conduct interviews and whether it's you, or Bankstown in this case, that decided the employee subject to the complaint doesn't get access to the report etc.

Then we can decide whether we need to convince you, or Bankstown, that there is a procedurally fair alternative.

Ian Robertson
Secretary
depa

Ph: 9712 5255
www.depa.net.au

From: Ian Robertson
Sent: Tuesday, 9 December 2014 1:21 PM
To: 'solutions@sinc solutions.com.au'
Subject: FW: I'm looking for a procedural fairness solution

Hi Kath (or whomever)

I have now left a message on your mobile to which you didn't respond and I've not yet had a response to this.

You will see from the email from Anton Duc below that Bankstown has effectively blamed you, (the way you conduct investigations and your desire for the report to be confidential) in refusing to let the person the subject of the complaint have access to it, I really do need to know whether this is you and the way you do business, or whether the report becomes the property of the Council and they can do whatever they want with it - including, in the interests of procedural fairness, provide it or parts of it to the person being investigated.

The Council is required under the Award to "properly conduct and speedily conclude" investigations and the usual practice in the industry (up until this experience at Bankstown) is to allow the employee the subject of the complaint access to findings and justification for those findings, so that they are aware, and capable of testing, the veracity of the findings. Most councils provide the document in full and redact anything they believe could be a problem. This is also the approach of lawyers operating in the industry in this area.

I'm quite happy to pursue the Council if it's their responsibility but if it's your corporate approach that prevents them doing so, I would like to know.

I'm also concerned (and so too are the other unions) that there are a variety of people conducting investigations in the industry, it is a competitive market, and if it becomes clear that one of the organisations offering investigation services has an approach which transgresses the principles of procedural fairness, then it's better that we know, so that we can avoid them.

Next week we will be awarding our Golden Turd for the worst HR in the industry and the question of how investigations are conducted and issues of procedural fairness are relevant here. We have a number of nominees.

Please let me know.

Ian Robertson
Secretary
depa

Ph: 9712 5255
www.depa.net.au

From: Ian Robertson
Sent: Friday, 5 December 2014 1:12 PM
To: 'solutions@sinc solutions.com.au'
Subject: I'm looking for a procedural fairness solution

Hi Kath (or whomever)

I have been involved as a support person in at least one earlier sinc solutions investigation at Bankstown and I don't remember there being some reluctance to supply details of the specific allegation, nor the investigators final report.

You were involved in the investigation of Paul Crossan, a member of ours at Bankstown, where you found that the allegations made were not substantiated. However, the Council has concluded that

there is sufficient of something in the report to take action against Paul. Initially they wanted an apology from him to the complainant (who'd have thought, someone with a final warning in trouble again files a grievance about the way an interview was conducted!) and they said this:

The Report clearly finds that Mr Crossan acted in an authoritarian manner in the interview in a situation that did not require it. Mr Crossan has demonstrated conduct that has fallen short of the people management skills expected of coordinators. To that end, Mr Crossan is directed to attend a series of one-on-one coaching sessions that will assist his understanding of human resources processes and helping to improve his people management skills.

The way this issue was handled by HR was clumsy and sub-professional. They backed away from the requirement of an apology and they accepted in the Commission that the letter to Paul conveying the results of the investigation "may have been better drafted" and that the use of the expression "assist his understanding of human resources processes" but I have included above, it was not appropriate and should not have been there either. They also agreed to remove everything to do with this affair from his personal file.

But, the issue we have is that the Council is refusing to supply to Paul a copy of your Investigation Report. They say that is because of the way in which syncsolutions conducts investigations by assuring everyone of confidentiality and that in turn means that the employee who is subject of the investigation is not provided with access to the report.

(As an aside, Paul was trained by the Police while he was serving as a police officer to conduct interviews, so can be no suggestion about the competence of the manner in which the interview was conducted.)

In the IRC, where procedural fairness underpins all of these processes, that assertion beggars belief.

We know that the Council uses other investigators and subsequent to the investigation you did into Paul, another investigation was undertaken where the investigator was surprised that the employee had not been given a copy of the allegations, so they supplied a copy themselves, and they did undertake that the resulting report would be available for examination. How could it be any other way?

We wanted access to the report so that he can understand what is perceived to be some sort of problem, or, at the very least, be satisfied that when the Council says that "the report clearly finds that Mr Crossan acted etc etc", then that is in fact what the report found and that he is able to examine the evidence that allows the Investigator to make that conclusion.

But I'm writing to you to clarify your business model in the way you conduct investigations and what you believe appropriate to be supplied to the person being investigated at the beginning, during, and at the conclusion. The Council argued certain things and the email below is a clarification I sought from the Council Solicitor Anton Duc.

There would not be a tribunal anywhere in Australia (or any other democracy, for that matter, that would think our request unusual and the only parallel I can think of about the Council's desire for secrecy and withholding of the report, is with the mysterious new anti-terrorism laws, where no one is obliged to tell anyone anything and people continually disappear. I know it's a long bow, but you will know that if we arbitrated the dispute, the IRC would require that the Report be provided to us.

Would you mind please giving me a call to discuss this? We will be engaging with the GM over the next week or so encouraging them to develop a better investigations policy (I'll be suggesting to him that the Cambelltown policy is a good model because, apart from anything else, it was pretty much agreed as part of an industrial dispute between depa in the Council where the Council was represented by an extremely experienced solicitor in local government, Roland Nagel and Commissioner Newall was involved in finalising the document) and I have supplied a copy of this to him already.

On the afternoon of the IRC proceedings where the Council agreed that they would take everything to do with this unseemly matter from Paul's personal file and where they conceded that there was to be no adverse impact or blot or anything else on Paul's file, I did ring and leave a message on your mobile.

Now you understand why, I hope you can give me a call.

I do remember being very impressed with the way things were set up at Sutherland, as you might recall, but this experience doesn't sound consistent with my experience with you and yours.

Regards

Ian Robertson
Secretary
depa

Ph: 9712 5255
www.depa.net.au

From: Anton Duc [<mailto:anton@duclegal.com.au>]
Sent: Friday, 21 November 2014 11:55 AM
To: Ian Robertson
Subject: Finalised Paul Crossan matter

Dear Ian

Information provided to the investigation on the basis of confidentiality. The investigation was conducted within the terms outlined in Bankstown City Council's policies and procedures including the Bankstown City Council's Code of Conduct. All persons involved in the investigation, and who provided information to the investigation, were advised of the strict confidentiality of the process, both verbally and in written correspondence, and that the evidence which was provided would remain confidential.

Regards

Anton Duc
Principal Solicitor
Duc Legal
Level 1 459 Great Western Highway
Faulconbridge NSW 2776
m 0412 421 786 | p 4752 2132 | f 02 8079 5983 |
e anton@duclegal.com.au