Collecting and Managing Evidence in Fraud Investigations

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1. Foundations of Evidence Management in Fraud and Improper Conduct Investigations

2. Prioritising Evidence Effectively

3. Securing and Preserving Evidence

4. Managing Evidence in Line with Whistleblower and Other Legislation

5. Key Takeaways and Practical Guidance

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1. Why Evidence Matters

1. **Foundation of Investigations**
Quality and integrity of evidence determine success or failure in fraud investigations.

2. **Supports Multiple Outcomes**
Proper evidence management enables disciplinary actions, loss recovery, and regulatory compliance.

3. **Prevents Investigation Failures**
Avoid process weaknesses like data loss and unrestricted access gaps to reduce legal risks.

4. **Ensures Fairness and Defensibility**
Robust evidence practices protect against bias.

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Prevailing Legislation and Standards

AGIS – Australian Government Investigations Standards
Government Departments required to comply.

AS 8001:2021 – Fraud and Corruption Control
Applies to Companies
Requires information security management systems consistent with ISO/IEC 27001, *Information technology – Security techniques – Information Security Management Systems – Requirements*.

AS/NZS ISO 19011:2019 Audit and Investigation Evidence Principles
Internal Audit and Fraud Investigations

Other Laws
Evidence Acts (State based)
Privacy Act and Workplace Surveillance laws
Other Common Laws
Whistleblower Legislation

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Types of Evidence Encountered in Fraud Matters

1. **Digital Evidence**

Digital evidence includes emails, invoices and logs.

2. **Physical Evidence**

Physical evidence such as documents and storage devices (USBs, Hard Drives)

3. **Interview Evidence – often challenging to capture**

Interview evidence. Minimum two investigators in an interview.

4. **Direct vs Corroborative Evidence**

Direct evidence – ie Witness Statements, documents supports allegations independently, while corroborative evidence i.e. cell phone tower GPS strengthens or contextualizes other findings.

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2. Principles for Evidence Prioritisation

1. Risk of Loss or Alteration

Prioritise evidence with high risk of loss or alteration, especially from volatile or controlled systems. Immediate preservation is critical to prevent irreversible data loss, for example CCTV footage.

2. Relevance to Core Allegations

Focus on evidence directly addressing who, what, when, how, and why of the investigation to strengthen case impact and efficiency.

3. Reliability and Independence

Give priority to automatically generated or independently maintained evidence, as it is generally more reliable than manually altered records.

4. Legal and Regulatory Compliance

Consider statutory deadlines and whistleblower safety to ensure evidence preservation meets legal obligations and protects identities.

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Using an Evidence Triage Framework

1. **Key Questions to Ask Yourself**

Investigators ask if evidence can be quickly lost, is central to allegations, or risks legal or reputational harm.

2. **Prioritizing Evidence**

Evidence categorised into high, medium, and low priorities guides preservation and collection actions effectively.

3. **Ongoing Reassessment – particularly for long cases**

Evidence priorities should be regularly reviewed and documented to maintain a defensible investigation process.

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Securing Evidence

1. **Integrity Preservation**

Evidence must remain complete and unaltered, using copies and protecting originals from modification.

2. **Access Control**

Only authorised individuals with legitimate needs may access or handle the evidence.

3. **Confidentiality Importance**

Sensitive information must be protected to avoid disclosure that could compromise investigations or breach legal obligations.

4. **Traceability and Audit Trails**

Every interaction with evidence should be documented to ensure proper handling and accountability.

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3. Digital and Physical Evidence

1. Handling Digital Evidence
Create forensic copies and use read-only access controls to protect digital evidence integrity and prevent alteration.

2. Securing Physical Evidence
Catalogue, photograph, and store physical evidence in tamper-evident containers with detailed chain-of-custody records.

3. Importance of Documentation
Consistent documentation and standardized processes strengthen evidence defensibility and reduce handling errors.

4. Challenges of CCTV and Surveillance Evidence
Ensure this is legally captured – numerous cases have failed here.

5. Implement an Evidence Register

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4. Whistleblower Legislation and Evidence Handling

1. **Legal Confidentiality Requirements**

Strict laws protect whistleblower identities to prevent disclosure and impose penalties for breaches.

2. **Evidence Handling Protocols**

Segregate whistleblower evidence, restrict access, and redact identifiers to reduce exposure risks. Principle of least privilege.

3. **Preventing Victimisation Risks**

Avoid revealing whistleblower involvement to protect against legal risks and ensure ethical investigations.

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Balancing Confidentiality, Fairness, and Regulatory Expectations

1. **Maintaining Confidentiality**

Techniques like anonymising extracts and summarising evidence help protect confidentiality during investigations.

2. **Regulatory Compliance**

Organisations must demonstrate compliance with whistleblower laws and robust evidence management for regulators.

3. **Structured Evidence Management**

A well-documented, structured approach reduces risk and increases confidence in investigative outcomes.

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5. Practical Takeaways for Fraud Professionals

1. **Evidence Prioritisation and Preservation**

Prioritize fragile, high-risk, and central evidence, ensuring preservation before analysis to protect investigation integrity.

2. **Securing Evidence with Controls**

Implement robust access controls, integrity checks, and audit trails for both digital and physical evidence.

3. **Handling Whistleblower Evidence**

Handle whistleblower-related evidence with extra care to prevent identity exposure and support ethical investigations.

4. **Comprehensive Documentation**

Document decisions, evidence access, and protection methods to create defensible and trustworthy investigation records.

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5. Evidence Matrix

Evidence Type	Examples	How to Collect	Key Controls at Collection	Storage Method	Retention
Hard Copy Documents	Contracts, invoices, personnel files	Collect originals where possible; certify copies	Log date/time/source; avoid marking originals	Locked cabinet; labelled folders	Retain per policy;
Electronic Documents	Emails, PDFs, spreadsheets	Collect native files; preserve metadata	Read-only copies; document extraction method	Secure evidence drive	Audit trail;
System Data / Logs	Access logs, audit trails	Extract directly from system with IT	Validate completeness; define scope	Encrypted storage	retention aligned to system rules
Emails & Messaging	Outlook, Teams, Slack data	Use eDiscovery tools; capture full threads	Preserve headers & timestamps	Secure indexed repository	retention aligned to system rules
Interview Evidence	Notes, statements, transcripts	Notes taken promptly; follow protocol	Date/sign notes; confirm accuracy	Password-protected files	HR/legal aligned retention
Physical Evidence	USBs, devices, notebooks	Bag and label immediately	Chain of custody log	Locked evidence cabinet	Retain until case closure
Images / CCTV / Audio	Footage, photos, recordings	Export original files	No editing; log source	Encrypted storage with backup	Retain originals only
Third-Party Evidence	Bank records, vendor data	Formal request; log receipt	Verify authenticity	Separate third-party folder	Comply with legal conditions
Investigation Working Papers	Analysis, timelines	Clearly label as analysis	Reference evidence IDs	Working papers file	Internal policy retention

Thank you

Any questions?

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