

# Construction One-Minute Read: Carefully Crafting Internal Reports

November 30, 2016

Contractors often prepare internal investigative reports concerning situations that could lead to future litigation. Like most other internal business records, internal reports are discoverable in litigation. Once disclosed externally, an internal report can be damaging to the contractor's position if its contents are sensitive, confidential, and/or express opinions regarding fault with respect to a contested issue or occurrence.

Contractors often prepare internal investigative reports concerning situations that could lead to future litigation. Like most other internal business records, internal reports are discoverable in litigation. Once disclosed externally, an internal report can be damaging to the contractor's position if its contents are sensitive, confidential, and/or express opinions regarding fault with respect to a contested issue or occurrence. Contractors may be able to limit the harm that investigative reports can potentially cause by carefully considering the following:

- Reports must contain recitations of factual occurrences, but authors would do well to avoid editorializing, characterizing the facts, or offering conclusions and opinions with respect to liability or fault whenever possible;
- It can be helpful to have a company policy mandating that an investigative report contain a conspicuous disclaimer which specifically identifies the scope of the investigation, limits any conclusions to the availability of the facts known at the time the report is finalized, and contemplates the possibility of revision in light of continued investigation and fact development;
- If legal opinions are necessary for operational or exposure analysis and decision-making, it is sound practice to involve in-house or outside legal counsel in the investigation and to prepare a version of the report containing the internal opinions directed to in-house or outside legal counsel so that the report may be protected from disclosure by the attorney-client privilege.

Implementing a policy which incorporates these practices may help limit the risk of disclosure of sensitive, internal opinions.

The attorneys in Ogletree Deakins' [Construction Industry Group](#) will continue to cover any developments, news, and legislation pertinent to the construction industry.