

ACQUIRING CONFIDENTIAL INFORMATION

Confidential information comes into the possession of your team, who make use of it. How should you react to this and similar occurrences?

BACKGROUND

You are a senior manager in a major firm of investment managers.

Your employer, an international firm with a publicly stated commitment to the highest standards of ethical behaviour, is due to make a presentation to a major corporate client which, in the light of the recent pensions shocks is seeking a new manager to run its pension fund. Management fees for this activity will provide a lucrative return to the successful bidder for the business and a number of major investment managers have been asked to make presentations and recommendations for innovative ways of dynamising the performance of the fund.

Your firm is keen to win the mandate for the business and has committed considerable resources to its bid, for which initial presentations were held last week. Following the initial presentation, you learn that the proposal was well received and you are on the shortlist against only one other major firm. Your bid team are full of confidence and report that the enhancements that they are going to make to their initial proposal will provide a knockout blow to the competitor.

Whilst, naturally, you are pleased to hear that confidence is high, you are surprised at the level of it and, also, that some of the proposed enhancements to your firm's original proposal actually represent fairly radical change. Nevertheless you leave the team to prepare their final presentation.

During the days approaching this you are conscious of a higher than normal level of tension within the bid team and, in an effort to ease the tension, you jokingly say to the young graduate recruit providing office support to the team that it is almost as though they have a spy in the opposition camp. "Oh, its better than that" he replies gleefully, "we have chapter and verse on their proposal, as they left their pitch book in the waiting room and we have given it a good home!" and he opens his desk drawer to reveal the book.

What a conundrum!

Someone carelessly leaves a document lying about and you innocently find it. It is only human nature that you are going to look at it. And, when you discover that it relates to a competitive bid situation, taking it back to your office to have a good look at it (before you return it to its rightful owner) makes good sense, doesn't it? After all, they would do it to us and all's fair in love and war and this is war!

Actually, it isn't and even in war there are rules. But this is business and whilst it is highly competitive, there are rules and principles to ensure that certain standards are maintained. In this instance, tempting though it may be to take advantage of a competitor's carelessness, your team's actions in actually taking the pitch book back to the office and making use of it have gone beyond what should be considered acceptable behaviour and, bearing in mind the circumstances, might be regarded as theft.

But, having discovered that your firm now has a competitor's property in its possession, what should you do?

Assuming that you do feel uncomfortable at what you have discovered, the minimum possible actions range between shredding the book and telling the owners that you have done so, or returning it to them. In both cases they will be aware that you have seen the information and are likely to assume that you have read it. Is this really enough, or should you do more and, if so, what?

OPTIMUM SOLUTION

This is a question to which many of us might feel there is no easy answer, based upon the premise that, arguably, there is nothing wrong morally or legally with taking advantage of the situation. In reality, whilst there might be some hesitation caused by the certain commercial impact on your firm, the appropriate course of action should be clear. Bearing in mind your firm's reputation (and thus your own) for the highest standards of integrity, options must include withdrawing from the bid process altogether, advising both the client and your competitor of your reasons for so doing. Alternatively, you might consider that it would be sufficient to replace your original bid team with other "untainted" members of staff, but it must be debatable whether that would be practical given the stage which the bid process has reached.

If you still need convincing that honesty is the best policy, the question that you might then ask yourself is what your reaction would be if the boot was on the other foot and you discovered that valuable confidential papers belonging to your firm had come into the possession of a competitor?

Finally, would it make any difference to your response if the team had found the material in the back of a taxi?

QUICK READ SUMMARY

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What is/would be unethical

To use the Information for competitive advantage knowing that it was privileged.

Not to sanction or reprimand those who took the pitch book.

Not telling the other side that the book has been read.

Key points summary

At best, on realising that the information had been left behind, a cursory flick through would be understandable. This is unlikely to reveal sufficient depth of information to cause the original pitch to be rewritten.

This team not only read the pitch in depth, but removed it and then analysed the contents.

It's very easy for a team and management in the wrong kind of organisation to take the view that all is fair in business – it isn't; there is a code and this action was essentially deceitful.

Adverse consequences

The other side could report your firm to the FSA for theft of privileged information; theoretically they could report you to the police.

Once your organisation's behaviour is in the open, the client is unlikely to be impressed and may remove you from the bidding process altogether.

There is a very real chance of loss of business and reputational damage. Other clients may regard the behaviour as unacceptable and not renew mandates.

It sends a message throughout the firm that internal standards are low, which can excuse inappropriate behaviour elsewhere. If this situation is condoned, then it is difficult to regulate any other corner-cutting that might take place.

Optimum approach

Discipline those involved.

Advise the other institution and the client on a 'mea culpa' basis.

Offer to withdraw from the process.

Revert to the original pitch.

SII Code of Conduct impact

Principle 2 – act with integrity, do not engage in devious business practices.

Principle 3 – professional conduct.

Principle 4 – disclosure of a known conflict.

Principle 7 – to strive to uphold the highest personal standards.