

# Confidentiality & Government Lawyers

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legal ethics

government ethics

law of whistleblowing

confidentiality

for

lawyers

in

public v private sector

2 distinct legal norms

L-C rel'p: secrecy

govt: openness

# Lawyer – Client setting

government  
setting

accommodate

conflicting

norms

# Lawyer – Client setting



Lawyer = Fiduciary

exceptions  
to  
confidentiality

client  
consent

entity client

entity client

vulnerable

government  
setting

constitution

constitutive statutes



# constitutive statutes

- FOIA
- Privacy Act
- Govt in Sunshine Act
- Fed Advisory Comm Act
- Presidential Records Act

- FOIA

harmonizing  
L-C secrecy  
with  
govt openness

client  
consent

identify  
government  
lawyer's  
client

wide  
range  
of  
possible  
clients

- the “public interest”
- the public
- entire govt
- branch of govt
- agency
- govt official

- the “public interest”
- the public



a

government

official

a

government

entity

# Rule 1.13(a)

Rule 1.13(a)

a lawyer

employed by an org

represents the org

which  
government  
entity  
?

significance  
for  
confidentiality

no  
universal  
answer

defining  
identity of client  
may be  
more difficulty  
in govt context

- Utah R 1.1 Com [13a]



client  
identity  
depends on  
structure of  
government  
power

a couple cases

*In re Grand Jury Subpoena*

886 F.2d 135

(6<sup>th</sup> Cir. 1989)

*Reed v. Baxter*

134 F.3d 351

(6<sup>th</sup> Cir. 1998)

the  
structure  
of  
authority  
within  
the government

some  
govt  
lawyers  
have  
client-like  
authority

sovereigns

are

different

consider  
the  
public  
interest



if C = govt,  
different balance  
between confidentiality &  
preventing / rectifying  
wrongful act

- Utah R 1.1 Com [13a]

norm of  
openness

re:

government  
wrongdoing

may have  
obligation to  
divulge info to  
persons outside govt re:  
illegal / improper conduct

- Utah R 1.1 Com [13a]

Q & A

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