

A Legal Perspective on Confidentiality & Whistleblowing
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1. Can a CPA currently whistleblow under U.S. federal and state rules and regulations?

The applicable law in the United States is still evolving, so the answer varies depending upon the sometimes conflicting priorities of federal law, state accountancy statutes and rules, and the degree to which states' have adopted the American Institute of Certified Professional Accountants (AICPA) Code of Conduct by reference. The issue is also currently the subject of review by the joint NASBA/AICPA Uniform Accountancy Act Committee.

AICPA and Uniform Accountancy Act's approach to whistleblowing

- The AICPA Code of Professional Conduct permits disclosure of client information for:
 - Compliance with subpoena and summons,
 - Compliance with professional obligations (AICPA, state society, state board investigations, or
 - Compliance with peer review requirements.

- The Uniform Accountancy Act (UAA) & UAA Model Rules permit disclosure of client information as required by:
 - The standards of the public accounting profession in reporting on the examination of financial statements,
 - Applicable laws, government regulations or PCAOB requirements,
 - Court proceedings,
 - Investigations or enforcement proceedings by state boards of accountancy,
 - Ethical investigations conducted by private professional organizations,
 - Peer reviews,
 - Or as required internally within the firm to assure quality control.

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- However, the UAA does not intend for an evidentiary privilege to be established for accountants and their clients. It does not aim to “prevent its disclosure in court in certain circumstances--essentially, those in which the licensee is not a party, such as divorce proceedings where one of the parties is a client of the licensee.”
- 12 U.S. jurisdictions have largely adopted AICPA language in their laws or rules.

U.S. federal laws’ approach to whistleblowing

- Federal employees who whistleblow regarding the agencies that they work for enjoy limited legal protections under the Whistleblower Protection Act of 1989.
- But, in practice, federal agency hearings judging instances of supposed whistleblowers have ruled against individuals claiming protection under the 1989 Act the vast majority of the time.
- Legislation intended to expand protection for federal employee whistleblowers has repeatedly failed to pass Congress in recent years.
- The IRS instituted a whistleblower bounty program in 2006; the Dodd-Frank Act instituted a similar program for the SEC in 2010. However, under the rules that implemented the Dodd-Frank Act, accountants have very limited protections when they whistleblow, and are unlikely to be able to take advantage of the Act’s rewards for whistleblowing. SEC Rule 21F-4.
- Under Dodd-Frank, a whistleblower can receive compensation from the SEC amounting to 10-30% over the first \$1 million recouped from a successful enforcement action. This can include internal or external auditors who whistleblow. However, the Act does not protect CPA whistleblowers from administrative actions if their whistleblowing violates their accountant-client confidentiality obligations under state law.
- The 2010 Dodd-Frank Act at Secs. 748 and 992 provides for the confidentiality of the whistleblower’s identity and disclosed information thusly:

Found in (A) Except as provided in subparagraphs (B) and (C), the Commission, and any officer or employee of the Commission, shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (C). For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.”

...

Found in Secs. 748 and 922: (D)(i) Without the loss of its status as confidential in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary to accomplish the purposes of this Act and to protect investors, be made available to—

“(I) the Attorney General of the United States;

“(II) an appropriate regulatory authority;

“(III) a self-regulatory organization;

“(IV) a State attorney general in connection with any criminal investigation;

“(V) any appropriate State regulatory authority;

“(VI) the Public Company Accounting Oversight Board;

“(VII) a foreign securities authority; and

“(VIII) a foreign law enforcement authority.

“(ii) CONFIDENTIALITY.—

“(I) IN GENERAL.—Each of the entities described in subclauses (I) through (VI) of clause

(i) shall maintain such information as confidential in accordance with the requirements established under subparagraph (A).

(II) FOREIGN AUTHORITIES.—Each of the entities described in subclauses (VII) and (VIII) of clause (i) shall maintain such information in accordance with such assurances of confidentiality as the Commission determines appropriate.

U.S. states’ approaches to whistleblowing

- In the U.S., every state accountancy board sets requirements for accountant-client confidentiality. Only three states (Michigan, Colorado, and North Carolina) explicitly permit whistleblowing by CPAs; none of these states require whistleblowing.
 - Colorado Board of Accountancy Board Rule 9.7: permits the disclosure of client information “as part of the process of initiating a complaint with or responding to an investigative or disciplinary body established by law or formally recognized by the Board.”
 - Michigan Occupations Code 339.732(2)(c): “A licensee, or a person employed by a licensee, from disclosing information otherwise privileged and confidential to appropriate law enforcement or governmental agencies when the licensee, or person employed by the licensee, has knowledge that forms a reasonable basis to believe that a client has committed a violation of federal or state law or a local governmental ordinance.”
 - 21 N.C. Administrative Code 08N.0205: allows a “CPA's disclosure of confidential information to state or federal authorities when the CPA concludes in good faith based upon professional judgment that a crime is being or is likely to be committed.”

2. Can a CPA whistleblow under current international standards?

The International Federation of Accountants (IFAC)'s Code of Ethics for Professional Accountants Approach to whistleblowing

The IFAC Code currently provides for limited instances wherein an accountant may whistleblow. Under IFAC Code of Ethics for Professional Accountants Sec. 140.7 there is a general requirement that information remain confidential unless there exists a “professional right or duty to disclose.” Specifically, disclosure is permitted when:

Disclosure to the appropriate public authorities of infringements of the law that come to light; and there is a professional duty or right to disclose, when not prohibited by law:

- *To comply with the quality review of a member body or professional body;*
- *To respond to an inquiry or investigation by a member body or regulatory body;*
- *To protect the professional interests of a professional accountant in legal proceedings; or*
- *To comply with technical standards and ethics requirements.*

IFAC Code Sec. 140.8 lists relevant factors that accountants should consider when deciding whether or not to disclose information. These factors include:

- (i) *Whether the interests of all parties, including third parties whose interests may be affected, could be harmed if the client or employer consents to the disclosure of information by the professional accountant;*
- (ii) *Whether all the relevant information is known and substantiated, to the extent it is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment shall be used in determining the type of disclosure to be made, if any;*
- (iii) *The type of communication that is expected and to whom it is addressed; and*
- (iv) *Whether the parties to whom the communication is addressed are appropriate recipients.*

The IFAC Ethics Committee has expressed concern regarding the current IFAC Code's failure to provide any guidance for accountants who encounter fraud or illegal acts; who receive reports of fraud or illegal acts; who report fraud or illegal acts internally within a company; and whose internal reports are not adequately addressed. Thus, IFAC's International Ethics Standards Board for Accountants (IESBA) has drafted a series of proposed revisions to the Code that would address these concerns. These revisions have not yet been implemented; as of the date of this presentation, they were still under consideration.

Examples of countries' differing approaches to accountant whistleblowing

- United Kingdom: Disclosure of client information is required in some situations involving tax evasion, terrorism, and money laundering.

- Quebec, Canada: Disclosure is required if necessary to prevent violence, or (as found in the IFAC Code) if disclosure is "required by law."
- India: a "legal or professional right or duty to disclose" is the only circumstance when disclosure of client information is permitted for chartered accountants.

3. What would be the effect of proposed IESBA changes to accountant whistleblowing standards?)

IESBA has drafted proposed changes to accountant whistleblowing standards. If enacted, these changes would increase the instances when disclosure is not just permitted, but required by accountants. -According to IESBA Chair Jorgen Holmsquist, these changes are necessitated by the lack of protection for investors and society in the current IFAC Code: "when the consequences of non-disclosure are potentially harmful to individuals or society, confidentiality must be overridden."

A summary of the IESBA's August 2012 proposal for whistleblowing additions to the Code

The accountant must:

- *Take reasonable steps to determine whether illegal activities or fraud has occurred.*
- *Take his or her concerns to the appropriate management level within the client's company. If this response is not appropriate, and if the accountant, in his or her professional judgment, decides that disclosure of the suspected act would be in the public interest, then:*
 - *The professional accountant would be required to disclose certain acts to the appropriate authorities, and*
 - *If the accountant provides non-audit services, he or she would be required to disclose the matter to the external entity's auditor.*

Other considerations for an accountant under these new rules:

- *The accountant must take into account all relevant law and rules in making a disclosure decision.*
- *The accountant may need to consider terminating the relationship (though that does not substitute for disclosure).*
- *The accountant must document all of the steps he or she takes.*

These are the types of suspicious activities that the new disclosure requirements will apply to:

- *For a professional accountant in public practice providing services to an audit client:*

- *Suspected illegal acts that directly or indirectly affect the client's financial reporting; and*
- *Suspected illegal acts the subject matter of which falls within the expertise of the professional accountant;*
- *For a professional accountant in public practice providing services to a non-audit client:*
 - *Suspected illegal acts that relate to the subject matter of the professional services being provided by the professional accountant;*
- *For a professional accountant in business:*
 - *Suspected illegal acts that directly or indirectly affect the employing organization's financial reporting; and*
 - *Suspected illegal acts the subject matter of which falls within the expertise of the professional accountant.*

4. When can a CPA claim attorney/client privilege in the United States?

In U.S. federal courts

- An attorney for a taxpayer may retain an accountant, and they may form a written agreement stating that all of the accountant's work papers belong to the attorney's firm and are therefore privileged. See 26 U.S.C. § 7525(a)(1); US v Kovel, 296 F2d 918 (2d Cir 1961). ("What is vital to the privilege is that the communication be made in confidence for the purpose of obtaining legal advice from the lawyer. If what is sought is not legal advice but only accounting service, ... or if the advice sought is the accountant's rather than the lawyer's, no privilege exists.")
- It can be difficult to determine exactly when it is appropriate to apply the privilege. Michael W. Loudenslager, *Cover Me: The Effects of Attorney-Accountant Multidisciplinary Practice on the Protections of the Attorney-Client Privilege*, 53 BAYLOR L. REV. 33, 62 (2001).

At the state level

- Many U.S. jurisdictions recognize accountant-client privilege in state court proceedings. For example:
 - Colorado, Colo. Rev. Stat. Ann. § 13-90-107(1)(f) (West Supp. 2000);
 - Florida, Fla. Stat. Ann. § § 90.5055, 473.316 (West 1999 & Supp. 2001);
 - Georgia, Ga. Code Ann. § 43-3-32(b) (1998);
 - Idaho, Idaho Code § 9-203A (1998); Idaho R. Evid. 515; 225;
 - Illinois, Ill. Comp. Stat. Ann. 450/27 (West 1998);
 - Indiana, Ind. Code Ann. § § 25-2.1-14-1, 25-2.1-14-2 (West Supp. 2000);
 - Maryland, Md. Code Ann., Cts. & Jud. Proc. § 9-110 (1998);
 - Michigan, Mich. Comp. Laws Ann. § 339.732 (West Supp. 2000);
 - Missouri, Mo. Ann. Stat. § 326.151 (West 1989);
 - Nevada, Nev. Rev. Stat. § § 49.185, 49.195, 49.205 (Michie 2000);
 - New Mexico, N.M. Stat. Ann. § 38-66(C) (Michie 2000);

- Pennsylvania, Pa. Stat. Ann. tit. 63, § 9.11a (West Supp. 2000);
 - Tennessee, Tenn. Code Ann. § 62-1-116 (Supp. 2000);
 - Puerto Rico, P.R. Laws Ann. tit. 20, § 790 (1988) and P.R. R. Evid. 25A. 53.
- At least two jurisdictions have exceptions for all criminal proceedings regardless of the accountant's level of involvement in the alleged crime:
 - Maryland, Md. Code Ann., Cts. & Jud. Proc. § 9-110(d)(2);
 - Tennessee, Tenn. Code Ann. § 62-1-116(b).
 - Of these jurisdictions, many include exceptions for different circumstances, such as cases involving professional licensure and discipline. 37 N.M.L. REV. 387, 429, citing Fla. Stat. Ann. § 473.316(4)(a)-(c), (5) (West 2006); Ga. Code Ann. § 43-3-32(b)(1)-(4) (2005); Idaho Code Ann. § 9-203A (2004); La. Rev. Stat. Ann. § 37:86 (2000); Idaho R. Evid. 515(d) (2006); La. Code Evid. Ann. arts. 515(C), 516, 517 (2006).
 - A few examples of accountant-client privilege in U.S. jurisdictions:
 - Mississippi, § 73-33-16, (2). *Except by permission of the client engaging a certified public accountant under this chapter, or the heirs, successors or personal representatives of such client, a certified public accountant and any partner, officer, shareholder or employee of a certified public accountant shall not be required by any court of this state to disclose, and shall not voluntarily disclose, information communicated to him by the client relating to and in connection with services rendered to the client by the certified public accountant in his practice as a certified public accountant. Such information shall be deemed confidential and privileged; provided, however, that nothing herein shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements, or as prohibiting disclosures in court proceedings or in investigations or proceedings under Sections 73-33-5 and 73-33-11, when the services of the certified public accountant are at issue in such investigations or proceedings and the certified public accountant is a party thereto, or as prohibiting disclosure in the course of a practice review.*
 - Missouri, § 326.322 1. *Except by permission of the client for whom a licensee performs services or the heirs, successors or personal representatives of such client, a licensee pursuant to this chapter shall not voluntarily disclose information communicated to the licensee by the client relating to and in connection with services rendered to the client by the licensee. The information shall be privileged and confidential, provided, however, that nothing herein shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures in investigations, in ethical investigations conducted by private professional organizations, or in the course of peer reviews, or to other persons active in the organization performing services for that client on a need-to-know basis or to*

2. A licensee shall not be examined by judicial process or proceedings without the consent of the licensee's client as to any communication made by the client to the licensee in person or through the media of books of account and financial records, or the licensee's advice, reports or working papers given or made thereon in the course of professional employment, nor shall a secretary, stenographer, clerk or assistant of a licensee, or a public accountant, be examined, without the consent of the client concerned, regarding any fact the knowledge of which he or she has acquired in his or her capacity as a licensee. This privilege shall exist in all cases except when material to the defense of an action against a licensee.

○ **Montana Code §37-50-402**

(1) Except by permission of the client, person, or firm engaging a certified or licensed public accountant or an employee of the accountant or by permission of the heirs, successors, or personal representatives of the client, person, or firm and except for the expression of opinions on financial statements, a certified public accountant, licensed public accountant, or employee may not be required to disclose or divulge or voluntarily disclose or divulge information that the certified or licensed accountant or an employee may have relative to and in connection with any professional services as a public accountant. The information derived from or as a result of professional services is considered confidential and privileged.

(2) The provisions of this section do not apply to the testimony or documents of a public accountant furnished pursuant to a subpoena in a court of competent jurisdiction, pursuant to a board proceeding, or in the process of any board-approved practice review program.

5. When can a CPA claim attorney/client privilege in in other countries?

A few examples from the United Kingdom:

- In the United Kingdom generally: the Tax Management Act Sec. 20B established a limited accountant/client privilege.
- Scotland, specifically: Scottish chartered accountants also enjoy a common law professional privilege, Section 330 of the Proceeds of Crime Act of 2002 also sets forth some circumstances when a privilege exists.

6. If the CPA is going to disclose information without client consent, must he/she first let the client know?

A few examples from U.S. jurisdictions:

- California: “In the event that confidential client information may be disclosed to persons or entities outside the United States in connection with the services provided, the licensee shall so inform the client in writing and obtain the client's written permission for the disclosure.”
- Illinois: requires that the persons to whom such information is disclosed must be public accountants, licensed in Illinois or with comparable qualifications from another state.
- Vermont: requires licensees who are disclosing confidential information because of a subpoena or other judicial proceeding to make a good faith effort to notify their client of this act.

7. What should a CPA do if the FTC calls on Monday and says they want his client’s records – come in on Tuesday

- The answer depends on what state’s rules and law applies. In some states, the CPA will be required to disclose information only when a court proceeding, or more specifically, a court subpoena or summons requires disclosure. Or, a federal law or federal rule requiring disclosure may be enough. Or, simply an “official inquiry” by a federal agency such as the FTC will be enough to trump accountant-client confidentiality.
- Under the Uniform Accountancy Act Sec. 18: The normal accountant-client confidentiality requirements do not prevent disclosure of information when “applicable laws” or “government regulations” or “court proceedings” require disclosure.
- Under the AICPA Code of Professional Conduct Sec. 301: The normal accountant-client confidentiality requirements do not prevent the disclosure of information when a licensee is obligated to comply with a “validly issued and enforceable subpoena or summons” or when disclosure is required by a law or government rule.

Some State Rule Examples

- In Texas: Board Rule 501.75 applies. The normal accountant-client confidentiality requirements do not prevent the disclosure of information when disclosure is required by federal law or federal rules. Disclosure is also permitted when required by a court order signed by a judge.
- In New York: The AICPA Code of Professional Conduct Sec. 301 applies.
- In California: Regulation 54.1 applies. A licensee may circumvent the state’s accountant client confidentiality requirements when required by a court subpoena or summons to disclose information, or in response to an “official inquiry” from a federal (or state) government agency, or when required by law.

8. What is a public record? Is every document NASBA sends to a board office a public record?

- State public record acts may control in some instances, but a state's public accountancy act may control in other instances. Information provided by licensees as part of the peer review process is generally not a public record, although exceptions may apply. Under the UAA, information collected by the Board pursuant to an investigation or complaint is not a public record, but no mention is made of documents NASBA sends to Boards.

Under the Uniform Accountancy Act Sec. 4:

- Not public records:
 - Any record, paper, or other document received by the Board as a result of a self-reporting requirement.
 - Records, papers, and other documents containing information collected or compiled by the Board, its members, employees, contractors or agents, including its legal counsel, as a result of a complaint, investigation, inquiry, or interview in connection with an application for examination, certification, or registration, or in connection with a licensee's professional ethics and conduct.
 - Information protected by this confidentiality provision shall not be disclosed to other authorities unless the recipient confirms in writing that it will assure preservation of confidentiality and the licensee has been given reasonable notice that the information will be provided to another entity.
- Is a public record:
 - Any record, paper or other document received by the Board as a result of a self-reporting requirement that is admitted into evidence in a hearing by the Board.
 - However, upon a showing of good cause, the presiding officer at such a hearing may order that confidential or privileged information be redacted or admitted under seal.
- Is a public record unless contradicted by the state's public records act: disclosures to law enforcement and regulatory authorities and, only to the extent deemed necessary to conduct an investigation, to the subject of the investigation, persons whose complaints are being investigated and witnesses questioned in the course of investigation, shall not be considered public disclosures and shall not deprive such records of their confidential status.

Some State rule examples:

- Texas:
 - *Under Rule 521.6: Any matter deemed confidential by statute, attorney general opinion, or court order is not subject to release.*
 - *Under Rule 527: Any report or document submitted to the Board for peer review is confidential. Additionally, Information concerning a specific firm or reviewer obtained by the peer review oversight board (PROB) during oversight activities shall be confidential, and the firm's or reviewer's identity shall not be reported to the board. Reports submitted to the board will not contain information concerning*

- *Under Act Sec. 901.161: Any statement or record prepared or an opinion formed in connection with a positive enforcement or peer review is privileged and is not:*
 - *Subject to discovery, subpoena, or other means of legal compulsion for release to a person other than the board; or*
 - *Admissible as evidence in a judicial or administrative proceeding other than a board hearing.*
- *The privilege provided by Subsection (a) does not apply to information involved in a dispute between a reviewer and the person, including an entity, who is the subject of the review.*
- **New York:**
 - *Under Rule 7410: Notwithstanding any provision of law to the contrary, the reports submitted in accordance with subdivision one of this section shall be confidential and shall not constitute a public record and shall not be subject to disclosure under articles six and six-A of the public officers law. However, when any such report is admitted into evidence in a hearing held by the department, it shall then be a public record subject to disclosure under articles six and six-A of the public officers law.*
- **New Jersey:**
 - *N.J.A.C. 13:29-5.7: Information concerning a specific firm or reviewer obtained by the Committee during oversight activities shall be confidential, except as provided under the Open Public Records Act.*
- **North Carolina:**
 - *N.C. Gen. Stat. § 93-12.2 is similar to the provisions of UAA Section 4: Board records are confidential. Records, papers, and other documents containing information collected or compiled by the Board, its members, or employees, as a result of a complaint, investigation, inquiry, or interview in connection with an application for examination, certification, or registration, or in connection with a certificate holder's professional ethics and conduct, shall not be considered public records within the meaning of Chapter 132 of the General Statutes. Any notice or statement of charges against a certificate holder or applicant, or any notice to a certificate holder or applicant of a hearing to be held by the Board is a public record, even though it may contain information collected and compiled as a result of a complaint, investigation, inquiry, or interview conducted by the Board. If any record, paper, or other document containing information collected and compiled by the Board is admitted into evidence in a hearing held by the Board, it shall then be a public record within the meaning of Chapter 132 of the General Statutes.*
 - *Recently the North Carolina Attorney General ruled that § 93-12.2 also applied to information gathered by the Board in connection with applications for licensure and renewal, and, as a result, the Board's database of licensee email addresses was not a public record.*

9. When must a Board provide a document? AND 10- Can a Board preserve confidentiality of its proceedings?

Public Accountancy Acts generally focus mainly on when documents may be disclosed by a Board, not when they must be disclosed. The UAA calls for preserving the confidentiality of documents (and their status as non-public records) even when the Board is required to hand them over to federal or state authorities.

Under UAA Sec. 4, the Board's materials are subject to the following confidentiality and disclosure requirements:

- *Records, papers, and other documents containing information collected or compiled by the Board, its members, employees, contractors or agents, including its legal counsel, as a result of a complaint, investigation, inquiry, or interview in connection with an application for examination, certification, or registration, or in connection with a licensee's professional ethics and conduct, shall not be considered public records within the meaning of this State's public records laws. Additionally, any record, paper, or other document received by the Board as a result of a self-reporting requirement shall not be considered public records within the meaning of this State's public records laws. When any such record, paper, or other document is admitted into evidence in a hearing held by the Board, it shall then be a public record within the meaning of this State's public records laws. However, upon a showing of good cause, the presiding officer at such a hearing may order that confidential or privileged information be redacted or admitted under seal.*
- *Notwithstanding any other provision of this act, information protected by this confidentiality provision shall not be disclosed to other authorities unless the recipient confirms in writing that it will assure preservation of confidentiality and the licensee has been given reasonable notice that the information will be provided to another entity.*
- *Notwithstanding any contrary provision in the State's Public Records law, disclosures to law enforcement and regulatory authorities and, only to the extent deemed necessary to conduct an investigation, to the subject of the investigation, persons whose complaints are being investigated and witnesses questioned in the course of investigation, as provided in Section 11(b), shall not be considered public disclosures and shall not deprive such records of their confidential status.*
- *Nothing in this subsection shall confer confidential status on any record collected under this subsection which was a public record when collected or thereafter becomes a public record through other lawful means.*

Under the UAA Sec. 11, Board investigations are subject to limited confidentiality requirements:

- *Unless there has been a determination of probable cause, the report of the investigating officer, the complaint, if any, the testimony and documents submitted in support of the complaint or gathered in the investigation, and the fact of pendency of the investigation*

Some State Law Examples:

- In Texas, the Board may provide a document in the following circumstances:
 - Under Rule 519.10: *The board, pursuant to §901.160(e) of the Public Accountancy Act, may disclose information that is confidential under §901.160(c) of the Public Accountancy Act to a governmental, regulatory or law enforcement agency if the requesting agency makes the request in writing and states that it is involved in an enforcement action.*
 - Texas applies to the following confidentiality rules to its board members and proceedings: Under Act Sec. 901.160: *The board may disclose information that is confidential under this section to another governmental, regulatory, or law enforcement agency engaged in an enforcement action. The board by rule shall adopt guidelines to assist the board in exercising its authority to share information under this subsection.*
 - Under Rule 507.4: *Members of the board, the executive director, members of board staff, and independent contractors retained by the board shall not disclose any confidential information which comes to their attention, except as may be required by law. All complaints, investigation files, investigation reports, and other investigative information in the possession of, received or gathered by the board is confidential and any employee, agent, or member of the board may not disclose the information contained in these files except to another governmental, regulatory or law enforcement agency engaged in an enforcement action.*
 - In Texas, alternative dispute resolution and mediation occur subject to the following confidentiality requirements: Under Rule 519.25: *A communication relating to the subject matter made by a party in an alternative dispute resolution procedure is confidential, is not subject to disclosure, and may not be used as evidence in any further proceeding. Any notes or record made of an alternative dispute resolution procedure are confidential, and parties, including impartial third party mediators, moderators, or arbitrators may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute or under consideration. An oral communication or written material used in or made a part of an alternative dispute resolution procedure is admissible or discoverable only if it is admissible or discoverable independent of the procedure. If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to a judge or administrative law judge in Travis County, Texas to determine, in camera, whether the facts, circumstances, and*

- In California, the confidentiality of board information is maintained with a few exceptions where disclosure may occur:
 - Rule § 54.2: *Members of the Board, its appointed representatives professional practice reviewers and other persons designated in section 54.1(a)(4)-(a)(6) shall not disclose information concerning licensees or their clients which comes to their attention in carrying out their professional responsibilities; provided, however, such information may be disclosed:*
 - (a) *As part of disciplinary proceedings with the Board,*
 - (b) *As part of legal actions in which the Board is a party,*
 - (c) *In response to an official inquiry from a federal or state governmental regulatory agency,*
 - (d) *In compliance with a subpoena or summons enforceable by order of a court,*
or
 - (e) *When otherwise specifically required by law.*

- In North Carolina, in addition the NC Gen. Stat. § 93-12.2, the Board's rules also provide:
 - 21 NCAC 08N .0205 CONFIDENTIALITY
 - (a) *Nondisclosure. A CPA shall not disclose any confidential information obtained in the course of employment or a professional engagement except with the consent of the employer or client.*
 - (b) *Exceptions. This Rule shall not be construed:*
 - (1) *To relieve a CPA of any report obligations pertaining to Section .0400 of this Subchapter; or*
 - (2) *To affect in any way the CPA's compliance with a validly issued subpoena or summons enforceable by this Board or by order of a court; or*
 - (3) *To preclude the CPA from responding to any inquiry made by the AICPA Ethics Division or Trial Board, by a duly constituted investigative or disciplinary body of a state CPA society, or under state statutes; or*
 - (4) *To preclude the disclosure of confidential client information necessary for the peer review process or for any quality review program; or*
 - (5) *To preclude the CPA from assisting the Board in enforcing the accountancy statutes and rules; or*
 - (6) *To affect a CPA's disclosure of confidential information to state or federal authorities when the CPA concludes in good faith based upon professional judgment that a crime is being or is likely to be committed; or*
 - (7) *To affect a CPA's disclosure of confidential information when such disclosure is required by state or federal laws or regulations.*