

Inadvertent Disclosure Guidelines

1. A practitioner has several duties in the conduct of a client's matter and should be mindful of legal professional privilege.
2. A practitioner is under a duty to pass on to a client (and use) all information which is material to the client's interests, regardless of the source of that information unless the practitioner knows that the information has been accidentally, unlawfully, improperly or surreptitiously obtained.
3. A practitioner should not seek to obtain access to information from correspondence and documents which the practitioner knows belong to or are intended for the other side.
4. Where it is immediately obvious to a practitioner that confidential documents have been mistakenly disclosed, the practitioner should not read the documents and should inform the other side of the mistake and make arrangements for the return of the confidential documents. Examples of such documents are advice from counsel, documents addressed to the other side and documents which clearly and immediately indicate their confidential nature.
5. If instead, a practitioner only discovers whilst reading a document that confidential information has been mistakenly disclosed, the practitioner should cease reading the document until the practitioner is satisfied of the propriety of continuing. The other side should be notified of the disclosure.
6. The practitioner must inform the client that;
 - a court may grant an injunction preventing the overt use of any information gleaned from the disclosed document; and
 - a court may grant an injunction prohibiting the practitioner (and possibly counsel) from continuing to act if they are in possession of confidential information to the other side.
7. Client instructions to use the disclosed material do not override the practitioner's legal and ethical obligations.
8. With regard to the particular circumstances of each case, a practitioner may:
 - return the disclosed confidential documents to the other side; or
 - request permission from the other side to use the document; or
 - form the view from case law that use is permitted, or preferably obtain a court order to permit use of the disclosed confidential documents.

How can we help you?

These are guidelines only and do not have the force of law. A practitioner must comply with the Professional Conduct & Practice Rules and the Legal Profession Act.

To discuss concerns about inadvertent disclosure, contact the LIV's Ethics Advice Line on 9607 9311 or contact the Ethics Department on 9607 9336.