



ICAS Code of Ethics Helpsheet:

Confidentiality

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1. Introduction

The fundamental ethics principle of confidentiality is discussed in Subsection 114 of the ICAS Code of Ethics (“the Code”). As it states in the Code at paragraph 114.0 A1:

“The principle of confidentiality is not only to keep information confidential, but also to take all reasonable steps to preserve confidentiality. Whether information is confidential or not will depend on its nature. A safe and proper approach for professional accountants to adopt is to assume that all unpublished information about a client’s or employer’s affairs, however gained, is confidential. Some clients or employers may regard the mere fact of their relationship with a professional accountant as being confidential.”

2. Maintaining confidentiality

Definition of confidential information

A definition of ‘confidential information’ is included in the Glossary to the Code: “Any information, data or other material in whatever form or medium (including written, electronic, visual or oral) that is not publicly available.”

Client confidentiality

Professional accountants in public practice must not disclose confidential information to a client even though the information is relevant to an engagement for, or would be beneficial to, that client.

Where professional accountants in public practice have confidential information which affects an assurance report, or other report which requires a professional accountant to state their opinion, the professional accountant cannot provide an opinion which they already know, from whatever source, to be untrue. If the professional accountant in public practice is to continue the engagement, the professional accountant must resolve this disparity. In order to do so, the professional accountant is entitled to apply normal procedures and to make such enquiries in order to enable the professional accountant to obtain that same information but from another source. Under no circumstances, however, should there be any disclosure of confidential information outside the firm.

Conflict of interest

Member firms should ensure that all who work on their behalf are trained in and understand:

- The importance of confidentiality;
- The importance of identifying any conflict of interest and confidentiality issues between clients, or between themselves or the firm and a client, in relation to a current or prospective engagement; and
- The procedures the firm has in place for the recognition and consideration of possible conflict of interest and confidentiality issues.

Detailed guidance on conflicts of interest, including situations where such conflicts may result in threats (or perceived threats) to preservation of confidentiality, are included in the ICAS Code of Ethics Sections 210 and 310, and also the ICAS publication “[Guidance on Conflict of Interest](#)” (March 2019).

Disclosure of confidential information

Paragraphs R114.1 to R114.2 of the Code describe the prohibition on disclosure of confidential information. In addition, paragraph 114.1 A1 highlights that maintaining the confidentiality of information involves protecting information throughout the data cycle i.e. in the course of its collection, use, transfer, storage or retention, dissemination and lawful destruction.

These provisions are followed by paragraph R114.3 which states the limited situations where a professional accountant may disclose or use confidential information:

“R114.3 As an exception to paragraph R114.2, a professional accountant may disclose or use confidential information where:

- (a) There is a legal or professional duty or right to do so; or
- (b) This is authorised by the client or any person with the authority to permit disclosure or use of the confidential information and this is not prohibited by law or regulation.”

Paragraph 114.3 A1 then states:

“Confidentiality serves the public interest because it facilitates the free flow of information from the professional accountant’s client or employing organisation to the accountant in the knowledge that the information will not be disclosed to a third party. Nevertheless, the following are circumstances where professional accountants might be required or have the duty or right to disclose confidential information:

- (a) Disclosure is required by law or regulation, for example:
 - (i) Production of documents or other provision of evidence in the course of legal proceedings; or
 - (ii) Disclosure to the appropriate public authorities of infringements of the law that come to light; and
- (b) There is a professional duty or right to disclose or use, when not prohibited by law or regulation:
 - (i) To comply with the quality review of a professional body;
 - (ii) To respond to an inquiry or investigation by a professional or regulatory body;
 - (iii) To protect the professional interests of a professional accountant in legal proceedings; or
 - (iv) To comply with technical and professional standards, including ethics requirements.”

Where required by law or regulations to disclose confidential information, for example as a result of anti-money laundering or anti-terrorist legislation, or in connection with legal proceedings involving either themselves or their employing organisation, professional accountants should always disclose that information in compliance with relevant legal requirements. Professional accountants should take care when communicating relevant facts to others relating to known or suspected money laundering or terrorist activities. Under The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“the Money Laundering Regulations 2017”) and subsequent, the Terrorism Act 2000, the Terrorism Act 2006, and The Proceeds of Crime Act 2002, it is a criminal offence to “tip off” a money launderer or terrorist.

For further discussion, please refer to the money laundering legislation and guidance available from the ICAS website: www.icas.com

A professional accountant may disclose confidential information to third parties, when not obliged to do so by law or regulations, if the disclosure can be justified in the public interest and is not contrary to laws and regulations. Before making such disclosure, professional accountants ought to obtain legal advice as to their duties and obligations in the context of their

professional and business relationships, and possible protection under the Public Interest Disclosure Act 1998.

See also the ICAS Code of Ethics Section 260 or 360, as applicable, “Responding to Non-Compliance with Laws and Regulations.”

Confidentiality and privilege

Confidentiality and privilege is a complex area. For example, information which is confidential may not be privileged and, therefore, may be admissible in court proceedings. Privilege is a difficult area, quite distinct from confidentiality, and it is recommended that further advice be taken if a professional accountant is in doubt as to the action to be taken.

For guidance on money laundering reporting requirements in privileged circumstances contact ICAS’ anti-money laundering helpline, telephone +44 (0)131 347 0271, or submit a query via the ICAS Technical Helpdesk. We provide guidance on general issues concerning the regulations, for example, the extent of identification procedures required, plus guidance for specific instances.

Disclosure of confidential information – factors to consider

Paragraph 114.3 A2 of the Code provides some factors to consider when deciding whether to disclose or use confidential information:

“In deciding whether to disclose or use confidential information, factors to consider, depending on the circumstances, include:

- Whether the interests of any parties, including third parties whose interests might be affected, could be harmed if the client or employing organisation authorises the disclosure or use of information by the professional accountant.
- Whether all the relevant information is known and substantiated, to the extent practicable. Factors affecting the decision to disclose or use, the information, include:
 - Unsubstantiated facts.
 - Incomplete information.
 - Unsubstantiated conclusions.
- The proposed means of communicating, the information.
- Whether the parties to whom the information is to be provided or access is to be granted are appropriate recipients.
- Any applicable law or regulation (including those governing privacy) in a jurisdiction where disclosure might take place and, if different, the jurisdiction where the confidential information originates.”

Other matters to consider may include:

- Whether or not the information is privileged, either in the sense of common law “Privilege” (“Legal Professional Privilege” in England), or, in a narrower sense, according to the interpretation of “privileged circumstances” under Section 330 of the Proceeds of Crime Act 2002; and
- The legal and regulatory obligations and the possible implications of disclosure for the professional accountant.

Application material is included at paragraph 114.3 A3 of the Code to provide examples of circumstances where a professional accountant might seek authorisation to use or disclose confidential information:

“The circumstances in which a firm or employing organisation seeks authorisation to use or disclose confidential information, include where the information is to be used for training

purposes, in the development of products or technology, in research or as source material for industry or other benchmarking data or studies. Such authorisation might be general in its application (for example, in relation to use of the information for internal training purposes or quality enhancement initiatives). When obtaining the authorisation of the individual or entity that provided such information for use in specific circumstances, relevant considerations to be communicated (preferably in writing) might include:

- The nature of the information to be used or disclosed.
- The purpose for which the information is to be used or disclosed (for example, technology development, research or benchmarking data or studies).
- The individual or entity who will undertake the activity for which the information is to be used or disclosed.
- Whether the identity of the individual or entity that provided such information or any individuals or entities to which such information relates will be identifiable from the output of the activity for which the information is to be used or disclosed.”

This paragraph explains that the authorisation could be of a general nature, for example, as found in some contracts signed between firms and their clients that permit the use of confidential information acquired in the course of a professional activity for the purposes of the firm’s internal training or other quality enhancement initiatives.

The reference to “internal training” in this paragraph is intended to encompass the training of both internal AI systems and staff in either a firm or an employing organisation.

In more specific circumstances where a professional accountant seeks authorisation to use or disclose confidential information the paragraph:

- Sets out what a professional accountant might communicate when seeking the authorisation, preferably in writing.
- Specifies that such authorisation should be sought from the individual or entity that provided the confidential information.

Alleged illegal or improper actions by employees or management of a business

The paragraphs above deal with professional accountants’ treatment of confidential information belonging to a client or employer. There is another context in which professional accountants will be given or may obtain information which they must handle sensitively. Professional accountants may be approached in confidence with information about alleged illegal or improper actions on the part of employees or management of the business for which the informant works or with which the informant has some other relationship.

Professional accountants may receive that information because of being trusted by the informant, or may receive it in connection with work their firm is carrying out for the informant’s employer.

Whatever the circumstances in which the information comes to professional accountants, the professional accountants should:

- Advise informants to pass the information to their employer through the medium of the employer’s own internal procedures (if they exist);
- Use their best endeavours to protect the identity of the informant, taking care not to mislead the informant as to the extent to which this can be done, and should only cause the employer to be made aware of the informant’s identity where this cannot be avoided; and
- Take care in determining the quality of the information and how best to use it, if at all.

See also the ICAS Code of Ethics Section 260 or 360, as applicable, “Responding to Non-Compliance with Laws and Regulations”.

Other sources of guidance

Professional accountants who are in doubt as to their ethical position may seek guidance from the following sources, available to all members of ICAS:

- ICAS Technical Helpdesk (<https://www.icas.com/regulation-technical-resources/support>).
- Alternatively, members with a Code of Ethics query which is not audit/assurance related may also contact us at complaints@icas.com or by telephone on + 44 (0) 131 347 0271.
- For ICAS’ anti-money laundering helpline, telephone +44 (0)131 347 0271, or submit a query via the ICAS Technical Helpdesk. We provide guidance on general issues concerning the regulations, for example, the extent of identification procedures required, plus guidance for specific instances.

ICAS has also partnered with whistleblowing charity Protect to provide members and CA Student members with access to an independent, confidential [helpline](#). This service offers free advice regarding whistleblowing and speaking up. ICAS Protect Helpline Number: 0800 055 7215.

In addition, we offer the [ICAS Ethics Buddy Service](#) which enables members with an ethical dilemma, where deemed appropriate, to have confidential, informal, discussions with an experienced member in order to explore their issue and assist them in considering how they might approach their dilemma.




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Leadership
since 1854

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