



## Committee on Professional Ethics

Opinion #377 - 3/26/75 (7-75)

Topic: Confidential or secret information sought by governmental agency

Digest: Confidential or secret information may not be revealed unless permitted by Code or required by law or court order.

Code: Canon 4;  
DR 4-101(C)(2);  
EC 4-4

### QUESTION

When a client is under investigation by a governmental agency with regard to a completed transaction, may his attorney in the absence of the client's consent furnish the investigators with photostatic copies of checks drawn from the attorney's escrow account in the transaction?

### OPINION

A lawyer may not ordinarily turn over such instruments without being directed to do so by a proper tribunal or being required by law. Whether a communication between a lawyer and his client is confidential and privileged, is a matter of law, not ethics. ABA 247 (1942). Likewise, the interpretation of a statutory direction is a matter of law, not ethics.

However, a lawyer should preserve the confidences and secrets of a client. Canon 4. This concept, as an ethical precept is not as limited as the concept of the attorney-client privilege, and exists without regard to the nature or source of information or the fact that others share the knowledge. EC 4-4. A confidence or secret may be revealed by a lawyer when permitted under Disciplinary Rules or required by law or court order. DR 4-101(C)(2).

This committee does not answer questions of law. Whether certain information, sought by a governmental agency, known to the lawyer, is to be considered a privileged communication that may not be communicated, is a question of law. ABA Inf. 393 (1961).

Without specific statutory direction, when public authorities demand that a lawyer turn over documents that may be secret, and not protected by the attorney-client privilege, the lawyer should assert that he received the documents in confidence and thereafter abide by the determination of the tribunal to which the solution of the question may be committed. N.Y. County 462 (1958); N.Y. City 312 (1934); DR 4-101(C)(2); EC 4-4. The fact that the attorney may thereafter be directed to turn over the documents, O'Donnell v. Sullivan, 364 F.2d 43 (1st Cir. 1966) cert. denied 385 U.S. 969 (1966), does not negate the Disciplinary Rules or Ethical Considerations under Canon 4. See, N.Y. State 168 (1970); N.Y. State 183 (1971).