

PRACTICE ADVISORY

To Whom Can I Give Client Information?

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CPA Code Rule 208 “Confidentiality of Information” (“Rule 208” or “Rule”) triggers many calls to practice advisors. This article previously ran in the Autumn 2003 issue of CheckMark, and has been updated to include additional scenarios and added clarification regarding various aspects of the Rule.

From time to time, practitioners are asked by third parties to provide them with copies of financial statements, tax returns or information that the practitioner may possess as a result of a client engagement. The following scenarios will help you determine whether you can provide this information.

Both husband and wife in the family business

Imagine a situation where a husband and wife are equal shareholders in the family business. They both, on paper, are equal owners. However, in this situation, one shareholder has significant day-to-day involvement with the management of the business while the other shareholder has little, if any, participation. In the unfortunate event that the couple’s personal relationship comes to an end, the practitioner may receive a request from the lawyer of the “silent” shareholder to provide any and all information relating to the business – tax returns, financial statements, etc. Should the practitioner comply?

At first glance this may appear to be a reasonable request but the practitioner must remember Rule 208. This Rule includes the following guidance: “A member or firm shall not disclose any confidential information concerning the affairs of any client, former client, employer or former employer...”

In the above instance, the practitioner must determine who the client is. Generally, management is responsible for preparing financial statements, and the (board of) directors are responsible for approving them. Any questions regarding financial information should be directed to management or the board. In small businesses, shareholders and management are often the same people. In this scenario, the one shareholder is not involved in the business – either as management or as a director. The practitioner should not release the financial statements to the inactive shareholder’s lawyer without a court order or the written consent of management or the board (i.e. the active shareholder). If in doubt, the practitioner should consult with legal counsel.

Often it is easier to answer this question when the business is larger. Imagine that you are a shareholder of an actively traded public company. As a shareholder, you may question disclosures contained in the company’s annual report. Would you expect the company’s auditors to release information that would answer your concern? Notwithstanding that they may have the answer to your questions, these inquiries should be directed to management; the company’s auditors are only required to provide their auditor’s report to shareholders.



Sheriff or police officer shows up at your door

Now imagine a situation where a sheriff or a police officer shows up at your door. He or she may want you to answer some questions about a client or former client. Or they may want access to your working paper files, as well as books and records for a particular client (if you have them). Rule 208 states that any confidential client information shall not be disclosed, “except when such information is required to be disclosed by order of lawful authority” (e.g. a subpoena), or when the client, former client, employer or former employer, as the case may be, has consented to such disclosure.

What can you provide or say? You should only turn over documents that are specifically listed on a search warrant, or with consent of your client, preferably in writing. You should also, unless the client instructs otherwise, assert your client’s interest in the confidentiality of the documents, and immediately inform your client of what was seized. You are not required to answer any questions, except under a subpoena, or with the consent of your client (which you should have in writing). And if you are subpoenaed to testify, it will be up to whoever is presiding at the hearing to determine which questions you have to answer and which documents you have to produce.

While communications between clients and accountants do not have legal privilege, they are confidential, and the accountant must take all reasonable steps to preserve that confidentiality. As described in paragraph 2 to the Guidance to Rule 208, “the courts have held that a member or firm faced with a subpoena or other request to disclose information should be aware of the member’s obligation to bring to the attention of the court or other authority the member’s duty of confidentiality to the client. If there is doubt as to the legitimacy or scope of a claim for disclosure, legal advice should be sought. Ultimately, in a dispute, a court will determine, based on the facts, whether the confidentiality of client information should be maintained.”

CRA audit or investigation of your client

What do you do when Canada Revenue Agency (CRA) decides to conduct an audit or an investigation of one of your current or former clients? Per section 231.1 and paragraph 231.1(a) of the *Income Tax Act*, CRA “may, at all reasonable times, for any purpose related to the administration and enforcement of this *Act*, inspect, audit or examine the books and records of a taxpayer and any document of the taxpayer or of any other person that relates or may relate to the information that is or should be in the books or records of the taxpayer or to any amount payable by the taxpayer under this *Act*”. The term “document” appears to be broadly interpreted to include all documents in the possession of the taxpayer or his/her advisors.

If an investigation is taking place in the course of a tax evasion criminal prosecution, CRA has the authority to request that third parties meet information requests within a reasonable time period. You may want to obtain legal advice if you are requested to make a statement to CRA. If so requested, you have a duty of confidentiality to your client, which can only be displaced by order of lawful authority or your client’s permission.



In closing

The next time you receive a request to provide information, take note of who is making the request. In the meantime, take a close look at Rule 208 and the related Guidance. As in any matter involving legal issues or consequences, you should consider obtaining legal advice. It is also prudent to contact your insurer as they may provide you with additional advice regarding your situation.

As always, feel free to call a member or practice advisor at 416 962.1841 or 1 800 387.0735, ext. 4456 or e-mail memberadvisory@cpaontario.ca or practiceadvisory@cpaontario.ca.