

## Attorney-Client Privilege

The attorney-client privilege is a vital attribute of the relationship between a lawyer and his or her clients. The privilege shields written and oral communications from disclosure in litigation as well as from disclosure under the Oregon Public Records Law and similar laws. The purpose of the privilege is to permit clients to obtain confidential legal advice and to encourage candor between lawyers and clients. It facilitates compliance with the law by allowing clients to seek guidance on their legal obligations without fear that their communications with legal counsel will someday be used against them.

Communications must meet certain criteria to qualify for privileged status.

1. They must be confidential. This means that attorney-client communications should not be disclosed to third parties or even others within the University who do not need to be involved in providing legal advice, as doing so can waive the privilege. It is good practice to label confidential communications as “Confidential: Attorney-Client Privileged,” to maintain them in a secure place, and to consult with legal counsel before disclosing them to anyone, even internally.

2. They must be between an attorney and a client. At the University, an “attorney” generally means an attorney in the Office of the General Counsel (OGC) or outside legal counsel retained by OGC. While there are attorneys in many other offices on campus, because they may not be authorized by University policy to provide legal advice, communications with them may be held not to be privileged. The privilege does, however, extend to communications that include non-lawyers, such as investigators or paralegals, who are facilitating the legal consultation on the attorney’s behalf. Although the University, not an individual employee, is considered the “client,” communication between University counsel and employees acting within the scope of their University duties can be privileged.

3. They must be for the purpose of seeking or providing legal advice. For that reason, copying an attorney on an email or having a lawyer in the room during a meeting does not necessarily establish the privilege. It is helpful when communicating with an attorney to include a specific request for legal advice to avoid later claims that the communication was not “legal.” The privilege protects communications between attorney and client, not underlying information, so providing existing non-privileged information or documents to an attorney does not render them privileged.

The privilege is “held” by the client, which means that the client—that is the University—may waive it. An individual employee who has communicated with a University attorney does not have a personal right to invoke the privilege, and privileged communications between a

University employee and University lawyer may be shared with other University employees with a need to know.

These are some of the basic rules governing the attorney-client privilege at OSU. University employees can and should inquire about the privilege with University legal counsel when legal issues arise to be sure they are able to take advantage of this powerful protection of the attorney-client relationship.