

Legal Professional Privilege

What is legal professional privilege?

Legal professional privilege is a common law right which protects certain documents and communications from disclosure.

How does information become privileged?

A communication or document will be privileged if it is made or brought into existence for the dominant purpose of:

- (a) obtaining or providing legal advice; or
- (b) conducting, or aiding in the conduct of, litigation.

Merely sending a document to, or receiving a document from, a lawyer does not make it privileged. For example, a letter to or from a lawyer in relation to management or administrative advice only will not be privileged.

Likewise, simply adding the words "*Privileged*" or "*Subject to legal professional privilege*" to a document does not make it privileged. However, it is good practice to add these words to documents which is intended to be privileged.

Why is it important?

Legal professional privilege is important as it enables employees of the University to fully disclose relevant matters the University's lawyers, which in turn assists the lawyer to provide competent and complete legal advice.

Dangers of losing privilege

Disclosure of advice or documents which contain legal advice or material relevant to litigation may expose the University to further legal risk. In particular, it may disclose negative, tactical or strategic information.

How is legal professional privilege lost?

Legal professional privilege can be lost if the University acts in a way which is inconsistent with the maintenance of the privilege. The most obvious way that privilege is lost is if the communication or document is disclosed to a person outside of the University. For example, forwarding an email from the lawyer to a person outside of the University.

Privilege can also be lost if the substance or gist of the advice is referred to when dealing with a person outside of the University. For example, a media statement which states “*The University has received legal advice and based on that advice we are confident of our prospects*” may waive privilege.

Steps to take to minimise the risk of losing privilege

There are some simple steps to take to minimise the risk of losing privilege.

1. Any requests for legal advice should be in writing and marked confidential. Using the Legal Office’s online Legal Assistance Form will meet this requirement.
2. Any communications in relation to legal advice should only be sent or copied to people within the University who are directly involved in the issue.
3. Communications in relation to legal advice should NEVER be sent or copied to anyone outside the University, unless approved by the Legal Office;
4. Legal advice should not be copied, summarized or commented on in other internal documents (such as minutes of meetings, memoranda and so on). Instead, the advice should be attached separately and marked as confidential and privileged.
5. Legal advice should not be referred to in documents to be circulated outside of the University (such as media statements, letters to external parties and so on).