



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I am in-house counsel for a company, and field a steady stream of requests for legal advice from various business department heads. In looking at internal emails, I am finding that often the advice I provide is then quoted, forwarded or otherwise relayed to subordinates of those business department heads, usually without the presence (in-person or by email) of myself or any other lawyer. Does this risk waiving the privilege protection for my advice?

A: Generally not, so long as the legal advice (or request for information to facilitate legal advice) is conveyed to those employees who would otherwise be within the umbrella of privilege protection. In some jurisdictions, this means those with a "need to know it," and in other jurisdictions, this means that the communication at least is "related generally to the employees' corporate duties." E.g., *F.T.C. v. GlaxoSmithKline*, 294 F.3d 141, 147-48 (D.C. Cir. 2002).

Please check the test for privilege protection in your applicable jurisdiction. Of course, for privilege to be maintained, the information must be conveyed and preserved in an atmosphere of confidentiality, i.e., if circulation of your advice extends to third parties, then protection can be lost.

The Ethics Lawyer

About Dear Ethics Lawyer

The twice-monthly "Dear Ethics Lawyer" column is part of a training regimen of the Legal Ethics Project, authored by [Mark Hinderks](#), former managing partner and counsel to an AmLaw 132 firm; Fellow, American College of Trial Lawyers; and speaker/author on professional responsibility for more than 25 years. Mark leads Stinson LLP's [Legal Ethics & Professional Responsibility](#) practice, offering advice and "second opinions" to lawyers and law firms, consulting and testifying expert service, training, mediation/arbitration and representation in malpractice litigation. The submission of questions for future columns is welcome: please send to mark.hinderks@stinson.com.

Discussion presented here is based on the ABA Model Rules of Professional Conduct, but the Model Rules are adopted in different and amended versions, and interpreted in different ways in various places. Always check the rules and authorities applicable in your relevant jurisdiction – the result may be completely different.