Practice Advisory 2400-1:
Legal Considerations in Communicating Results

Primary Related Standard
2400 – Communicating Results
Internal auditors must communicate the engagement results.

Caution: *Internal auditors are encouraged to consult legal counsel in matters involving legal issues as requirements may vary significantly in different jurisdictions. The guidance contained in this practice advisory is based primarily on the legal systems that protect information and work performed for, or communicated to, an engaged attorney (i.e., attorney–client privilege), such as the legal system in the United States of America. PA 2400-1 discusses attorney–client privilege.*

1. The internal auditor needs to exercise caution when communicating noncompliance with laws, regulations, and other legal issues. Developing policies and procedures regarding the handling of those matters as well as a close working relationship with other appropriate areas (e.g., legal counsel and compliance) is strongly encouraged.

2. The internal auditor gathers evidence, makes analytical judgments, reports results, and determines whether management has taken appropriate corrective action. The internal auditor's need to prepare engagement records may conflict with legal counsel's desire to not leave discoverable evidence that could harm the organization's position in legal matters. For example, even if an internal auditor gathers and evaluates information properly, the facts and analyses disclosed may negatively impact the organization from a legal perspective. Proper planning and policy making — including role definition and methods of communication — are essential so that a sudden revelation does not place the internal auditor and legal counsel at odds with one another. Both parties need to foster an ethical and preventive perspective throughout the organization by sensitizing and educating management about the established policies.

3. A communication made between "privileged persons" — in confidence and for the purpose of seeking, obtaining, or providing legal assistance for the client — is necessary to protect the attorney–client privilege. This privilege, which is primarily used to protect communications with attorneys, can also apply to communications with third parties working with an attorney.

4. Some courts have recognized a privilege of critical self-analysis that shields self-critical materials (e.g., audit work products) from discovery. In general, the recognition of this privilege is premised on the belief that the confidentiality of the self-analysis in these instances outweighs the valued public interest.

5. Privilege usually applies when:
   - The information results from a self-critical analysis undertaken by the party asserting the privilege.
   - The public has a strong interest in preserving the free flow of the information contained in the critical analysis.
   - The information is of the type whose flow would be curtailed if discovery were allowed.

6. Self-evaluative privileges are less likely to be available when a government agency — rather than a party involved in a private legal matter — seeks out the documents. Presumably, this reluctance results from recognition of the government's stronger interest in enforcing the law.

7. Documents intended to be protected under the work-product doctrine usually need to be:
   - Some type of work product (e.g., memo, computer program).
   - Prepared in anticipation of litigation.
   - Completed by someone working at the direction of an attorney.

8. Documents prepared and delivered to the attorney before the attorney–client relationship is established are not generally protected by the attorney–client privilege.

***