



## **POLICY ON CONFIDENTIALITY**

### **Purpose**

The purpose of this policy is to ensure that all Congressional Research Service (CRS or Service) employees recognize the long-standing requirement for preserving the confidentiality of our work for Congress, and understand the obligations for adhering to this fundamental core value.

### **Scope**

This policy applies to all CRS employees and all other persons working in CRS (including, but not limited to, probationary period employees, contractors, interns, resident scholars, volunteers, and individuals on detail from another agency). The term "staff" as used in this policy refers to all CRS employees and all other persons as defined here. This policy does not nullify additional or specific professional or ethical obligations that may attach to CRS employees.

### **Policy Statement**

CRS staff members have knowledge of the services we provide to Congress and the majority of our staff produce, or become privy to (through collaboration or otherwise), work for specific congressional clients. (A Congressional client may be an individual Member, someone on a Member's personal staff, or a Member or their staff acting in their capacity as a member of House or Senate leadership, a committee or subcommittee chair or ranking member, or on behalf of a recognized congressional commission or caucus.)

CRS staff must consider and treat as confidential all information related to CRS' work for Congress. Only in very limited circumstances may the principle of confidentiality be relaxed. One such example is when a congressional client has granted permission for CRS to share the work or knowledge of the work with another congressional client, or with another governmental entity or official (e.g., for purposes of the Member obtaining information from the Executive Branch).

Adherence to CRS policy requires the following understanding:

- Staff must maintain a confidential relationship with congressional clients at all times. Each and every inquiry CRS receives is part of a confidential relationship. The sources or content of congressional inquiries, or the responses thereto, must not be revealed outside of CRS to other congressional offices, the public, the media, or another governmental entity or official, either through written, oral, or electronic communications. No exceptions are made for categories of individuals in the public (e.g., attorneys, potential future employers, professional contacts, former CRS employees) absent explicit permission from an Assistant or Associate Director or his/her Deputy, and the Office of the Counselor to the Director.
- Copies of confidential memoranda, briefing materials, substantive email responses, and other materials prepared specifically for one congressional client may be shared with another client only with the former's express permission (e.g., commonly when a

congressional requester asks a specific question of CRS, and CRS responds with a memorandum tailored to the specific client). However, when memoranda or other written materials are clearly marked to indicate that the content may be used to respond to other congressional inquiries, then it is permissible to reuse information or analysis. (For example, a confidential memorandum marked: *Information in this memorandum may be used in other products for general distribution to Congress. Your confidentiality as a requester will be preserved in any case.*) Additionally, certain types of analytical or informational responses (e.g., side-by-side legislative comparisons, information conveyed by KSG) may be duplicated for any number of congressional requesters. However, care must be exercised so as not to reveal client identities, confidences, requests, or tailored responses to specific inquiries. When in doubt about repurposing analysis or information for different clients, consult division management.

- The fact that written materials were prepared or interactions conducted with a specific congressional client is also confidential. This applies to clients within the same Member or committee office.
- Confidentiality requires that CRS staff members never acknowledge to another congressional client, government entity or official, or to the public or media, work that has been done for a specific Member or committee. Even in instances when a Member or committee publicly releases a confidential memorandum that CRS has prepared, staff may not provide copies of the memorandum to other congressional clients.
- Staff members must not discuss in public, to another government entity or official, with the media, on social media sites, or at conferences or presentations, the existence of congressional requests on a particular issue. Furthermore, staff must not publicly speak of congressional interest in a topic in such a way that reveals the congressional inquiries made to CRS, or could lead to a public perception that the information derives from congressional interactions with CRS. Acknowledgement of congressional interest in an issue is permissible provided it can reasonably be attributed to publicly-available information (e.g., articles in newspapers, journals or electronic media, statements by government officials, legislative action).
- CRS Reports are prepared exclusively for Congress, but their content is accorded a less restrictive level of confidentiality than other types of CRS work (e.g., confidential memoranda). Thus, CRS staff members who attend conferences or provide presentations to varied, including public, audiences may discuss the contents of CRS Reports without violating the confidentiality policy. Products published by CRS for Congress on CRS.gov (e.g., CRS Reports, Insights) may only be disseminated outside of CRS in according with policy.
- Congressional requests, responses to congressional inquiries or the internal CRS processes surrounding responses to congressional inquiries must not be publicly disclosed (e.g., internal CRS emails discussing work for Congress). Work-related email communications, whether in the form of client communications, communications between management and staff, or communications between staff members, may not be sent or forwarded to personal email accounts, downloaded to file sharing sites, copied to portable drives, or otherwise disclosed outside CRS.

- Records contained in the client request management system (currently known as Mercury) are to be treated with the utmost confidentiality. These records may not be removed from CRS, or shared with anyone outside of CRS, without the explicit authorization of the Office of the Counselor to the Director. This prohibition applies even if portions of the records are redacted.

## **Background**

Congress built on the established record of the Legislative Reference Service in 1970 when it vested in the newly named Congressional Research Service research and analysis duties in support of the legislative, oversight and representational functions of Congress. It recognized that the Service's staff had "well-earned reputations for objectivity, nonpartisanship, and confidentiality."

CRS staff are viewed by many in Congress (and by CRS) as Congress' extended staff. In addition to the range of privileges that apply to our policy and legal work on behalf of Congress, our legislative support work is protected from disclosure by the Constitution's Speech or Debate Clause, just as is the work of Members and congressional staff. Testimony and Senate Resolutions in the 1980s and 1990s authorizing the Senate Legal Counsel to challenge subpoenas for CRS documents reiterated the confidential relationship between Congress and CRS staff, the applicability of the Speech or Debate privilege to CRS staff and work, and the importance of preserving the confidentiality of the communications between CRS and Members and committees of Congress.

The principle of confidentiality is reflected in myriad ways in our policies and practices. All of our work products produced by the research divisions and the Knowledge Services Group are intended solely for the congressional audience. Our tailored analyses cannot be shared with anyone but the congressional requester without the requester's consent; they are not available on the CRS website; and, they do not appear on product lists prepared for the general congressional audience. The internal repository of archived non-distributable written products (CRSX) contains explicit limitations on distribution of such material outside CRS and cautions that such material is for internal reference only. The Mercury system that logs and tracks congressional requests is a secure computer system accessible only by CRS staff. Computer workstations, laptops, and iPhones are also protected to ensure there is no unauthorized access.

Today's electronic environment requires greater attention to preserving confidentiality. Thus, CRS devices are encrypted and malware-protected. Any digital work products that are not stored centrally on the secure managed network must be kept on an encrypted device. See: security tips on How to Keep Your Computer and Information Safe.

All CRS employees and all other persons working in CRS must err on the side of caution when it comes to such a fundamental aspect of our mission and operations as client confidentiality. Once confidentiality is breached, it may not be possible to restore a relationship of trust.

Breaches of confidentiality will be addressed promptly and may be the basis for appropriate administrative action, including disciplinary action up to and including removal. For bargaining unit employees, see Article 32 (Adverse Action) of the Collective Bargaining Agreement with CREA. For non-bargaining unit members, see LCR 2020-3.1 (Adverse Actions for Non-bargaining Unit Staff GS-15 and below)

## **Additional Guidance**

See: [Frequently Asked Questions on Confidentiality](#).

## **Responsibilities**

All CRS employees are responsible for reviewing, understanding, and adhering to CRS Policy on Confidentiality.

## **Questions**

Direct questions to your first-line supervisor, your Assistant or Associate Director, or the Office of the Counselor to the Director.

## **Effective Date**

9/22/2015

## **Date of Next Review**

9/30/2018

## **Authorized By**



*Mary B. Mazanec*  
Mary B. Mazanec  
Director, CRS



# Confidentiality

## Frequently Asked Questions (FAQs)

*Note: The FAQs provided below are intended to assist CRS staff in understanding how the confidentiality standards discussed in the CRS Policy on Confidentiality apply in situations that they may commonly encounter in the regular course of their work. These examples are not exhaustive, and it is essential for CRS staff to proactively engage CRS management in the event they encounter a scenario in which questions or concerns result regarding the applicability of CRS confidentiality standards.*

**1. I received an email from my SRM with comments on a draft memorandum that I am writing for a congressional client.**

**1.1. Can I forward the email to my personal email account so that I can review it more closely at my leisure?**

**1.2. Can I forward the SRM's comments to an expert outside the Service to get his/her perspective?**

No. Communications concerning CRS work for Congress are strictly confidential. Such communications must never be shared outside of CRS. Staff may view their work email messages remotely (e.g., from their residence) on CRS-issued laptop devices or iPhone devices, but messages and documents concerning CRS work or internal processes must not be sent to external email accounts.

**2. Can I call the Counselor's Office and discuss the policy with them without violating confidentiality?**

**2.1. Can I discuss the request with a colleague in another division?**

Yes. You may contact the Counselor's Office to discuss the possible policy concern and you may consult a colleague in another division to help you respond to a congressional request. The policy on maintaining client confidentiality applies to interactions between CRS and Congressional clients. Collaboration within CRS is appropriate when needed in order to provide a response back to the client.

**3. I just received an urgent email on my CRS mobile device from a congressional client seeking information on a rush basis for floor debate tomorrow. The client wants to send me facts and figures and have me analyze them for her tonight. I was not anticipating this request so I don't have my CRS laptop at home. I would like to prepare the response from my home email account, and send it back to her from the same account. Trying to prepare a lengthy response from my CRS mobile device is very cumbersome and I want to be responsive. The client says that she cannot wait until tomorrow morning.**

**3.1. Can I use a non-CRS device to prepare the requested information in this situation?**

Yes. However, CRS staff may only prepare work for congressional clients from non-CRS devices in emergency situations such as this. Because CRS devices are encrypted and malware-protected, they are the best means of protecting the confidential work that we prepare for the Congress. In this instance, you can use your personal computer to process the client request using the CRS Outlook Web Access (OWA) email to send/receive documents. If for some reason, OWA is not available, then you should make the client aware that you will need to use your personal email account. You should note that it is not as secure as sending the response from your CRS email. If the client provides you with an email acknowledging this fact and telling you to go ahead regardless, then you may use your personal email. After completing this request, you will need to delete all related files from your personal computer. You should also report this in writing to your SRM, section head, or supervisor upon your return to the office the next day, with a copy to IMT Information Security.

**4. I prepared a confidential memorandum for a congressional committee. The committee turned around and posted the memorandum, minus my name and contact information, on the committee website. Now other clients and the media are calling me for a copy of the memorandum.**

**4.1. Since the committee chose to make the memorandum publicly available, am I no longer bound by confidentiality, and can I make the document available to other congressional clients?**

**4.2. Can I refer congressional requesters to the committee's web site?**

**4.3. How should I handle calls from the media?**

CRS has seen a number of Members and committees publicly release confidential memoranda in recent years (either to the media or on congressional websites). The decision by a Member or committee to release CRS information and analysis does not waive your obligation to maintain client confidentiality. You cannot answer questions for other congressional clients about the memorandum, nor can you send copies to other clients, absent the original requester's express permission. You should answer any questions that congressional clients have about the issue by preparing a new memorandum or other form of response (which can draw, as is appropriate, on the information or analysis found in the memorandum that was publicly released), but you must do so in a way that neither confirms nor denies that CRS did the work that has been made publicly available.

If you know that the committee has posted the memorandum on its website, you may refer requesters to the committee office or website (i.e., *I understand that the Committee has information posted on its website*), but you should not acknowledge that CRS prepared the response or otherwise discuss the origins of the memorandum.

Media calls should be referred to the CRS Communications Office.

**5. I need to seek peer review outside of CRS to ensure the technical accuracy of some information that I included in a draft CRS Report. The information originated with an executive branch agency and it is considered "sensitive."**

**They shared the information with me on the condition that they are able to review the text before the report is made available to Congress.**

**5.1. Will I violate the confidentiality policy if I send the report outside of CRS to an executive branch agency?**

**5.2. What happens if following the review, the executive branch agency expert says that the information either cannot be provided with attribution, or cannot be provided to Congress at all since it is deemed sensitive in a manner that could disclose confidential information or threaten national security. Can I use my own judgment on whether or not to keep the information in the report, or do I need to defer to the originator of the information?**

Sharing the draft of a CRS Report with another government expert would likely not be a policy violation, but you should discuss the need for external review in advance with your SRM or Section Head and obtain his/her concurrence. There are instances in which it may be necessary to seek peer review for portions of a draft CRS product outside of CRS – for example, when there are no appropriate subject matter experts at CRS to review your work for technical accuracy and substantive content. Alternative peer reviewers may be located at another legislative branch agency (e.g., GAO, CBO), the executive branch, a think tank or an academic institution.

If you believe that an outside expert should be consulted, you may share only that portion of your draft necessary to enable the outside expert to provide substantive and useful peer review, and you must take the necessary precautions to mitigate against the product being attributed to CRS at a premature stage of design and review (for example, the subject text should be in a plain format that does not associate it with any current or draft CRS report or memorandum – do not transmit or share a copy of a CRS report, for example, in the same format as it is published by CRS).

If the material that is proposed to be sent outside of CRS for peer review derives from, or is being prepared for, a confidential memorandum, you must never disclose the name of the requester, and must take care to ensure that the external peer reviewer cannot discern the likely identity of the congressional requester from the question being asked or the narrowness of the issue. It is always a good idea to discuss the need for peer review with your congressional client (understanding we cannot do so for CRS Reports), and to obtain their approval before sending material derived from a confidential memorandum outside of CRS for peer review.

When information from another government source is being sought (often on sensitive matters or involving national security, or “For Official Use Only” information), analysts and their SRMs should discuss the possible ramifications that may result in advance, in order for all parties to have a clear understanding as to the conditions under which CRS will be using the information. Sources should be aware that CRS is under an obligation to reveal and identify its sources to Members should they request them.

If there is disagreement between you and the other government agency on use, CRS has generally deferred to the dissemination caveats applied by the originator of the information, especially when the material is deemed to be sensitive, or classified (e.g., if combined with other information in a CRS Report), or to pose a threat to national security.

**6. In the past, congressional clients have occasionally asked to review the drafts of confidential memoranda or portions of CRS reports that I was preparing prior to distribution.**

**6.1. Is it okay to share drafts with congressional clients before they are finalized?**

No. Draft language from CRS reports should not be shared prior to publication, even if the product is prompted by a Member or committee staff request. Language in CRS reports is not negotiated with, or divulged to, congressional clients prior to publication. In the case of memoranda (e.g., confidential, general distribution) consultations regarding the scope and focus must be completed prior to the drafting and distribution stages. If a requester insists upon setting the parameters for the product's analysis, the request becomes one for directed writing and must be noted as such on the final product. CRS staff must consult with CRS management prior to agreeing to provide directed writing services to a requester.

**7. In order to respond to a congressional request, I need certain data from an executive branch agency. I called the legislative affairs office at the agency and was told that they cannot share the data with me unless they know the name of the congressional requester.**

**7.1. Can I reveal the name of a client to an executive branch employee without violating the CRS Policy on Confidentiality?**

No. You must never reveal the name of the congressional requester without the client's express permission. In this case, you should explain to the executive branch agency that CRS's statutory mission is to provide confidential research and analysis for the Congress, and that we cannot identify the requester. (The Office of the Counselor to the Director can provide you with the language to use.) If the agency still declines to provide the information, you should talk to your division management and then consult the Office of the Counselor to the Director.

CRS' organic statute authorizes CRS to act as the agent for Congress in requesting information from the executive branch, but only when we are authorized to do so by the chairman of a committee. (2 U.S.C. § 166(d)(1)(C)). This in effect means that CRS cannot act as an agent on behalf of anyone other than the chairman (e.g., not a ranking member or a member of the committee). Other options include having the Director send a letter to the agency requesting the information without identification of the congressional requester, and obtaining permission from the congressional requester to identify the Member or committee as the source of the request. You can discuss these options with the requester, and determine if they would like CRS to pursue any of them.

**8. I recently completed a confidential memorandum for a congressional client in response to a specific set of questions that were asked. The same issue is now generating additional requests.**

**8.1. Can I send the same memorandum to additional clients, without violating the policy?**

**8.2. What if my response is in the form of an email or information transmittal?**

No. Generally, you should not send a duplicate of a confidential memorandum to more than one congressional client in response to different inquiries. In some cases, the requester may authorize

you to share information prepared for him/her with other Members of his/her Member's delegation or committee (or more broadly), and thus sharing a duplicate of the original memorandum is permissible. Remember though, absent the permission of the requester, each memorandum, email, or other type of response (excluding products like CRS Reports) that we prepare is intended to be confidential in order to protect the requester, and is tailored to respond to the specific questions posed by the individual Member. You may reuse specific facts or analysis in other documents that you prepare on the same issue, but you generally should not reuse memoranda verbatim for different clients lest you inadvertently reveal the identity of the requester. Certain types of responses (e.g., side-by-side legislative comparisons, factual information conveyed by KSG) are the exception and may be duplicated for more than one congressional requester.

Frequently, CRS uses a caveat in its written responses for Congressional clients stating: *Information in this memorandum may be used in other products for general distribution to Congress. Your confidentiality as a requester will be preserved in any case.* This signals for the client that CRS may need to use or document certain facts, developments or analysis in subsequent work for the Congress. No permission is required from requesters to reuse information from a product that is marked with this caveat.

You may also periodically seek to prepare a general distribution memorandum when an issue generates multiple concurrent requests for the same information and you don't want to make repeated requests for permission from the original requester. CRS staff must consult with their SRM or Section Head prior to drafting a general distribution memorandum.

**9. The staff director for a House committee remembers a confidential memorandum that I prepared two years ago for the Representative that she used to work for. The Representative has now retired and she works for a new committee chair. She asked if I can send her a copy of the original memorandum that I wrote.**

CRS owes a duty to keep confidential the work it has done on behalf of Members of Congress both during their tenure in Congress and after they have left office. You can use some or much of the same information that you compiled and drafted for the original memorandum as is appropriate, but the best course of action here is to draft a new document to send to the client that reflects her status as staff director for a different committee chair, as well as her current focus, interest, need for the information, and recent developments

**10. A congressional requester asked me for information that requires an analysis of foreign domestic law. I need to split part of the request involving foreign law off to the Law Library.**

**10.1. Will it violate confidentiality if I refer part of the request to the Law Library?**

No, but you must contact the congressional requester before you refer an inquiry outside of CRS. When you realize that you need to split part or all of a request that you took in, or that was assigned to you, to another service unit in the Library, you must contact the congressional requester and let them know that you will need to refer part of the inquiry outside of CRS to another unit. The Congressional Services Section can assist you with this. Once the congressional office conveys understanding that another service unit in the Library of Congress will be responding to all/part of the request, then the split can be made.