Department of the Treasury

Internal Revenue Service Office of Chief Counsel



November 12, 2002

Until Incorporation

Subject: Protection of Confidential Sources

Cancellation Date: Into The CCDM

PURPOSE

The purpose of this Notice is to remind Chief Counsel employees of our adherence to the Service's practice of <u>not</u> disclosing the identity of confidential sources. This Notice also establishes the requirement that the Deputy Chief Counsel (Operations) be apprised of any case in which Counsel, over its objection, is being asked to disclose the identity of a confidential source.

DISCUSSION

Protecting the identity of confidential sources is essential to the Service's enforcement activities. Accordingly, it has been the longstanding practice of the Service that the identity (e.g., names, identifying details) of a confidential source of information will not be disclosed, except to those officials with a need to know in the performance of their official duties. This practice applies whether the request is made under the Freedom of Information Act or in the context of an administrative or judicial proceeding. This practice applies even if the Service's disposition of the case will be aided by identifying the confidential source.

For purposes of this Notice, a confidential source is a person who provides information under either an express promise of confidentiality or under circumstances from which such an assurance reasonably could be inferred. The Service is not entitled to a presumption that all sources supplying information are confidential. A source will be deemed confidential if an express or implied assurance of confidentiality existed at the time the information was furnished.

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Chief Counsel employees are expected to take appropriate steps to avoid the possible disclosure of a confidential source during an administrative or judicial proceeding. Generally, the identity of a confidential source, including any information that might help to identify the source, is protected by the informant privilege from discovery in court. See, e.g., Roviaro v. United States, 353 U.S. 53 (1957); Weimerskirch v. Commissioner, 67 T.C. 672 (1977), rev'd on other grounds, 596 F.2d 358 (9th Cir. 1979).

Chief Counsel attorneys are directed to make "early" decisions regarding the feasibility of developing their cases with evidence that will not necessitate the disclosure of the identity of the confidential source. Where the case cannot be developed with evidence that will not necessitate a disclosure of the identity of the confidential source, attorneys should elevate the issue through their management chain.

Additionally, when a Chief Counsel employee is asked to identify a confidential source over the objection of Counsel, the Deputy Chief Counsel (Operations) must be apprised of the request through the employee's management chain prior to disclosure. This notification requirement applies whether the request is made by another Service function, another government agency, including the Departments of Justice and Treasury, a court, or a person requesting the information under the Freedom of Information Act or as part of an administrative or judicial proceeding.

Questions concerning this Notice should be directed to Richard Goldstein, Special Counsel, Administrative Provisions and Judicial Practice, 202-622-7820.

/s/ B. JOHN WILLIAMS, JR. Chief Counsel