

Examples of state protections for draft audit reports and workpapers

The **California** State Auditor has a strict policy where confidentiality of audit work is concerned. This policy is outlined in our Manual of Policies and Procedures, and reads as follows:

All staff are required to preserve the confidentiality of audit findings, information obtained during an audit, information not used in audit reports, or information pertaining to an investigation. Until a report is publicly issued, audit information may be disclosed only to other appropriate staff members or to the appropriate agency staff subject to the audit.

California Government Code - Section 8545.1.

Colorado has a statute that requires workpapers to remain confidential unless released by a majority vote of the Legislative Audit Committee (this is made up of legislators). Historically the Committee has never voted to release workpapers because they understand the need to protect confidentiality. Our office has policies that ensure workpapers, drafts, and all other audit related materials are kept confidential.

Below are excerpts from the **Florida** Statutes related to the Auditor General, Section 11.45, Florida Statutes:

(4)(c) The audit report when final shall be a public record. The audit workpapers and notes are not a public record; however, those workpapers necessary to support the computations in the final audit report may be made available by a majority vote of the Legislative Auditing Committee after a public hearing showing proper cause.

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0011/SEC45.HTM&Title=->2005->Ch0011->Section%2045#0011.45

In 1979 the Florida Attorney General opined that our preliminary and tentative audit findings (referred to as "adverse findings" by the Attorney General) are a public record in the hands of the auditee. Below is a link to that opinion.

<http://myfloridalegal.com/ago.nsf/Opinions/9511192E3DF39D8F8525658E0063BEF5>

The types of things referenced in Item 1. in your e-mail would be included in our audit workpapers (see Florida Statutes excerpt (4)(c) above), and therefore not public records. Also, our record of the preliminary and tentative audit findings (see Florida Statutes excerpt (4)(d) above) is not a public record. On occasion, the news media and other persons become aware that our preliminary and tentative audit findings have been delivered to the auditee, and the person will acquire a copy from the auditee. We will not provide the requester a copy, nor will we discuss the audit findings until after the final audit report has been published. The final audit report contains the auditee's response to the preliminary and tentative findings.

Kansas

1. All audit working papers are confidential until the audit is made public. Certain materials (personnel records, taxpayer or patient records, etc.) remain confidential. As of the 2005 legislative session, our returned survey documents also are confidential.
2. Draft reports are confidential by law; when we transmit a draft report, our cover letter reminds officials of that fact.
3. Here's the law:

K.S.A. 46-1128. Confidentiality of audit reports, when; exceptions. (a) Except as provided by subsections (b) and (c) of this section and by subsections (d), (e) and (g) of K.S.A. 46-1106 and amendments thereto, each audit report prepared by the division of post audit or by a firm under the legislative post audit act, and each finding, conclusion, opinion or recommendation contained in the audit report, shall be confidential and shall not be disclosed pursuant to the provisions of the open records act or under any other law until: (1) The time of the next scheduled meeting of the legislative post audit committee held after distribution of the report to members of such committee; or (2) the time of the next scheduled meeting of another legislative committee held after distribution of the report to the members of such committee as authorized by the legislative post audit committee.

The post auditor, or the post auditor's designee may make a limited distribution of preliminary audit findings, conclusions or recommendations to any person affected by the audit as part of the process of conducting the audit. Such preliminary audit findings, conclusions, opinions or recommendations shall be confidential and shall not be subject to disclosure pursuant to the provisions of the open records act or any other law, except as provided in subsections (d), (e) and (g) of K.S.A. 46-1106 and amendments thereto.

As used in this section, "audit report" means the written report of any financial compliance audit, performance audit, or any other audit or audit work conducted under the legislative post audit act by the division of post audit or by a firm under the legislative post audit act; and any other words and phrases used in this section shall have the meanings respectively ascribed thereto by K.S.A. 46-1112 and amendments thereto.

Louisiana

The following statement is included in our request for a response to findings: "Please note that the enclosed finding is considered a draft and will not become a matter of public record until the audit is complete. Likewise, your response to this finding is considered to be a part of our working papers and will not become a matter of public record until the audit is complete. We consider our draft finding and your response to be a confidential record comprising a part of our working papers, until the audit is complete, at which time both items of information will become a matter of public record in accordance with Louisiana Revised Statutes 44:4(6) and 44:6."

Draft reports are stamped on each page with the following: "PRELIMINARY DRAFT - Report/Statements are subject to further review and revision. They are the results of preliminary observations and judgments. As such, they are not for publication and are considered confidential information until made public by the Legislative Auditor."

Minnesota

Minnesota Statutes 3.979. Data classification and disclosure.

Subd. 3. Audit data. (a) "Audit" as used in this subdivision means a financial audit, review, program evaluation, best practices review, or investigation. Data relating to an audit are not public or with respect to data on individuals are confidential until the final report of the audit has been released by the legislative auditor or the audit is no longer being actively pursued. Upon release of a final audit report by the legislative auditor, data relating to an audit are public except data otherwise classified as not public.

Missouri

In reply to your recent inquiry that we received through the NASACT, we direct you to Sections 29.070-29.080 of the Missouri Revised Statutes

As a result of these statutory requirements, all audit documentation (including draft versions of audit reports) is considered confidential. The paragraph below, taken from Chapter 2 of our General and State Audit Manual, further deals with the issue of report drafts:

"Because the report to be discussed at the exit conference is still subject to change, copies must be tightly controlled to ensure that auditee management is indeed the first to know the audit results and has an opportunity to respond to the report before it becomes public. Thus, copies of the draft report are not to be distributed to anyone outside the SAO, other than the auditee's top-level management, without the approval of the deputy state auditor or the state auditor. However, to enable and encourage appropriate preparation by management before the exit conference, providing a limited number of advance copies of the draft report to management is permissible. As an additional safeguard, each page of the exit draft should include the watermark 'DRAFT Not for Public Release.'"

NEBRASKA REVISED STATUTES OF 1943 **CHAPTER 84. STATE OFFICERS** **ARTICLE 3. AUDITOR OF PUBLIC ACCOUNTS**

§ 84-311. Reports and working papers; disclosure status; penalty. (1) All final audit reports issued by the Auditor of Public Accounts shall be maintained permanently as a public record in the office of the Auditor of Public Accounts. Working papers and other audit files maintained by the Auditor of Public Accounts are not public records and are exempt from sections 84-712 to 84-712.05.

North Dakota

54-10-26. State auditor's working papers. Working papers of the state auditor are not public records and are exempt from section 44-04-18. Working papers include records kept by the auditor of the procedures applied, the tests performed, the information obtained, draft audit reports, and the pertinent conclusions reached in the engagement. Working papers may be, at the discretion of the state auditor and unless otherwise prohibited by law, made available for inspection. A draft audit report released to the governing body or management of the audited entity is confidential until the final audit report is issued or work ceases on the audit.

The South Carolina Legislative Audit Council has the following policies and statutes in place to ensure confidentiality of preliminary audit information.

As part of the exit procedures which are given to auditees at the exit for the preliminary draft audit, the following sections are included: Section 2-15-120 of the South Carolina Code of Laws makes records of the LAC confidential, including any drafts of the audit report. Only the final audit report is public, and only after its official release to the General Assembly. The public release by anyone of any council record, is a misdemeanor with penalties prescribed by law.

Washington

RCW 44.28.088

Preliminary reports shared with audited agencies for technical review shall be stamped CONFIDENTIAL. Preliminary report transmittal letters/memos shall contain the following statement: "Consistent with our statute and policies, JLARC's interim report is not public information until it is presented to our Committee, and should be treated as "confidential" until such time as it is presented to the Committee."