

MEMORANDUM

TO: ALL ATTORNEYS

FROM: G. FOSTER MILLS

DATE: JULY 3, 2008

SUBJECT: ILLEGAL ACTIVITIES LEARNED OF DURING LITIGATION

In response to a question that occasionally arises we thought you would find the following helpful:

QUESTION: If during the course of litigating a case, an Assistant Corporation Counsel discovers that a plaintiff engaged in illegal activities, e.g. failed to pay income tax, engaged welfare fraud, or identity theft, is the ACC obligated to report such illegal activities?

ANSWER: Law Department Office policy requires an Assistant Corporation Counsel to report such information discovered during the course of Law Department work to their Division Chief or designee. The Division Chief will then report the illegal activity to the Division's Executive who will refer the matter to law-enforcement authority as appropriate. Immigration status (like the other forms of confidential information identified in Executive Order No. 41 of 2003, see NOTE on page 2) need not be reported to the Division Chief.

NOTE: Under Executive Order No. 41 of 2003, no City officer or employee shall disclose confidential information¹, including immigration status:

- (a) unless such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual's parent or legal guardian; or
- (b) such disclosure is required by law; or
- (c) such disclosure is to another City officer or employee and is necessary to fulfill the purpose or achieve the mission of any City agency; or
- (d) in the case of confidential information other than information relating to immigration status, such disclosure is necessary to fulfill the purpose or achieve the mission of any City agency; or
- (e) in the case of information relating to immigration status, (i) the individual to whom such information pertains is suspected by such officer or employee or such officer's or employees agency of engaging in illegal activity, other than mere status as undocumented alien or (ii) the dissemination of such information is necessary to apprehend a person suspected of engaging in illegal activity, other than mere status as an undocumented alien or (iii) such disclosure is necessary in furtherance of an investigation of potential terrorist activity.

Executive Order No. 41 at Section 2.

¹ "Confidential information" means any information obtained and maintained by a City agency relating to an individual's sexual orientation, status as a victim of domestic violence, status as a victim of sexual assault, status as a crime witness, receipt of public assistance, or immigration status, and shall include all information contained in any individual's income tax records. Executive Order No. 41 at Section 1.