

Preamble	- Code of Ethics
Section I.1.	- Code of Ethics
Section II.1.a.	- Code of Ethics
Section II.1.c.	- Code of Ethics
Section II.2.	- Code of Ethics
Section III.4.	- Code of Ethics

AGREEMENT NOT TO DISCLOSE DATA, FINDINGS, CONCLUSIONS

FACTS:

Engineer A, an environmental engineer, is retained by a major industrial owner to examine certain lands adjacent to an abandoned industrial facility formerly owned and operated by the owner. Owner's attorney, Attorney X requests that as a condition of the retention agreement that Engineer A sign a secrecy provision whereby Engineer A would agree not to disclose any data, findings, conclusions or other information relating to his examination of the owner's land to any other party unless ordered by a court. Engineer A signs the secrecy provision.

QUESTION:

Would it be ethical for Engineer A to agree not to disclose any of his data, findings, conclusions or other information to any other party unless ordered by a court?

REFERENCES:

Preamble	-Engineering is an important and learned profession. The members of the profession recognize that their work has a direct and vital impact on the quality of life for all people. Accordingly, the services provided by engineers require honesty, impartiality, fairness and equity, and must be dedicated to the protection of the public health, safety and welfare. In the practice of their profession, engineers must perform under a standard of professional behavior which requires adherence to the highest principles of ethical conduct on behalf of the public, clients, employers and the profession.
Section II.1.	-Engineers shall hold paramount the safety, health and welfare of the public in the performance of their professional duties.

- Section II.1.a. -Engineers shall at all times recognize that their primary obligation is to protect the safety, health, property and welfare of the public. If their professional judgment is overruled under circumstances where the safety, health, property or welfare of the public are endangered, they shall notify their employer or client and such other authority as may be appropriate.
- Section II.1.c. -Engineers shall not reveal facts, data or information obtained in a professional capacity without the prior consent of the client or employer except as authorized or required by law or this Code.
- Section II.2. -Engineers shall perform services only in the areas of their competence.
- Section III.4. -Engineers shall not disclose confidential information concerning the business affairs or technical processes of any present or former client or employer without his consent.

DISCUSSION:

The duty of the engineer to maintain the confidence of his client is well established in the context of engineering ethics. Engineers are frequently called upon by their clients to perform services in areas that involve restricted or undisclosed material or information. Sometimes that information is provided by the client or third party on behalf of the client. Other times the information is developed through the efforts of the engineer and the engineer agrees to refrain from making the information public or available to others. Occasionally, the information is developed through the joint efforts of the engineers and others involved in providing services to the client.

The obligation to maintain the confidences of the client is based upon the general view that certain information about the business interests or technical affairs of the client are proprietary in nature or, if disclosed could harm the business interests of the client. As a professional, the engineer has a duty to his client to make reasonable efforts not to intentionally or negligently disclose the information to third parties.

The Board in the past had occasion to examine this ethical obligation. In BER Case 87-2, the Board considered a case involving the disclosure of previous work by a consultant. After being terminated by one client, the engineer agreed to provide services to a second client. As part of those services, the engineer divulged specific information unique to the product designed for the first client. In ruling that it was unethical for the engineer to divulge the specific information unique to the product designed earlier by him for the first client, the Board interpreted the language of Section III.4. and determined that the Code section applied to the consulting engineer as well as the employed engineer. As this case involves a consulting engineer, we agree with the Board's determination on this issue in Case 87-2.

In three recent opinions, the Board has had occasion to consider fact situations in light of Code Section III.4. In BER Case 89-7, in a case involving an engineer's failure to report safety violations by a client, the Board ruled that it was unethical for the engineer not to report the violations to the appropriate public authorities. The Board noted that while the obligation of the engineer to refrain from revealing confidential information concerning the business affairs of the client without consent is significant, matters of public health and safety must take precedence. Later in BER Case 92-6, the Board ruled that it was unethical for an engineer to fail to advise his client that he suspected hazardous material and provide a recommendation concerning removal and disposal in accordance with federal, state and local laws. In that opinion, the Board noted that the engineer made no oral or written promise to maintain the client's confidentiality.

While these cases raise important issues for consideration by the Board, we must clearly state as we have in the past that the provisions of the Code must be interpreted in a balanced and measured way. In this contest, we should note that Section III.4. must be read in light of other sections of the Code. particularly Sections II.1.a. and II.1.c. Those sections read together, remind the engineer that while he has a duty not to reveal facts, data or information obtained in a professional capacity without prior consent of the client or employer, the engineer's primary obligation is to protect the safety, health, property and welfare to the public. Therefore, in the event that the engineer's obligation of nondisclosure to his client conflicts with his obligation to protect the safety, health, property and welfare to the public, we believe the former obligation must yield. In support of this position, we would note that the first "Fundamental Canon" (Section I.1.) and Rules of Practice (Section II.1.) contained in the Code of Ethics for Engineer requires the engineer to "hold paramount the safety, health and welfare of the public in the performance of professional duties".

In the case before the Board, we believe that Engineer A's decision to sign a secrecy provision whereby he would agree not to disclose any data, findings, conclusions or other information relating to his examination of the owner's land to any other party unless ordered by a court was a breach of his ethical obligation under Section II.1.c. In essence, Engineer A, agreed to withhold any information in relation to his services in connection with his clients property even if, following the execution of the contract, Engineer learned that certain conditions existed on his clients property that endangered the public health and safety. We do not believe an engineer should ever agree, either by contract or other means, to relinquish his right to exercise professional judgment in such matters. By doing so, the engineer has compromised the essence of his professional integrity.

Most, if not all, state licensing laws or rules of professional conduct have provisions mirroring the language contained in the NSPE Code of Ethics regarding the engineer's obligation to protect the public health and safety. Thus, we believe a legal as well as an ethical proscription would make it improper for an engineer to entertain such a provision in a contract with a client.

CONCLUSION:

It would be unethical for Engineer A to agree not to disclose any of his data, findings, conclusions or other information to any other party unless ordered by a court.

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Note: In regard to the question of application of the Code to corporations vis-a-vis real persons, business form or type should not negate nor influence conformance of individuals to the Code. The Code deals with professional services, which services must be performed by real persons. Real persons in turn establish and implement policies within business structures. The Code is clearly written to apply to the Engineer and it is incumbent on a member of NSPE to endeavor to live up to its provisions. This applies to all pertinent sections of the Code.