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# To Privilege or Not to Privilege

Kris Watts

Suzanne Montgomery

Altresha Burchett-Williams

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**Kris Watts**

Director-Compliance



**Suzanne  
Montgomery**

VP-Compliance



**Altresha  
Burchett-Williams**

AVP-Senior Legal Counsel

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### Where does the compliance department sit in your company?

Independent

Legal

Finance

Other  
Department

**Where does the compliance department sit in your company?**

Yes

No

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**Who conducts your risk assessments?**

Compliance

Legal

Compliance with input from legal

Legal with input from compliance

Other

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# Attorney-Client Privilege: What is it?

## Attorney-Client Privilege

**Confidential** communication between **privileged persons** for the purpose of seeking **legal advice**.

## Rationale

Legal advice should be based on a complete and accurate factual picture.

Attorney can only give informed legal advice when information is provided in confidence.

## The elements:

- Client – individual or company – is the holder of the privilege;
- Communication between client and attorney;
- Communication is limited to “need to know” audience (in confidence); and
- Purpose is to obtain legal advice.

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# Attorney-Client Privilege: What is it not?

The following communications are not privileged by default:

- Between an attorney and their client
- Between clients, with “cc” to the attorney
- Based primarily on business or technical advice, not legal advice
- Describing the underlying facts
- Containing “confidential” or “proprietary” information
- With an “ATTORNEY-CLIENT PRIVILEGED” designation
- Involving third parties

***The privilege can be waived, so preserve it with care!***

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**Who conducts your risk assessments?**

All

More than half

Less than half

None

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**What criteria do you use when invoking privilege in risk assessments?**

A. Risk assessments are privileged by default

B. Pending litigation on the topic

C. High risk of litigation on the topic

D. Both B and C

E. Other

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