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To Privilege or Not to Privilege

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Where does the compliance department sit in your company?

- Independent
- Legal
- Finance
- Other Department

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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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