

CMA INTEROFFICE MEMORANDUM

To : Special Programs Project Administrators
From: David F. Zoll *David*
Date: July 23, 1982
Re : Guidelines and Procedures for the Protection of
Confidential Information

The following are suggested topics of discussion for our next meeting.

1. In general, CMA staff should avoid being the recipients of confidential data from our member companies. ~~of the~~ as a practical matter, our advocacy efforts will be improved if we use an independent outside consultant to collect and analyze data based upon the consultant's independent judgment. Secondly, in the event of CMA's receipt of subpoenas or other compulsory process, it is easier to defend against the disclosure of data when the data is in the hand of an independent third party. Thirdly, while we have numerous procedures to guard against the unauthorized disclosure of the data beyond designated staff members, if over time various of our staff are in receipt of confidential information, cynics and persons hostile to our interests may try to characterize CMA as a general repository of competitively sensitive information. Those accusations in turn could lead to harassment investigations or harassment lawsuits. This is not to say, however, that in carefully limited and controlled circumstances it is not appropriate for staff members to receive sensitive information. In fact, it may well be that objectively speaking, technically trained staff may be the most appropriate

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person to receive the data. Decisions on this matter should be made on a case-by-case basis in consultation with the legal department.

2. Raw data which forms the basis for advocacy activities within CMA should remain accessible to CMA staff or a consultant retained by CMA to receive and/or analyze the data, so long as CMA believes that our advocacy conclusions will be challenged in the proceeding in which the data was collected, or the credibility of the project itself may be subject to challenge. There are a number of techniques for maintaining raw data in a sanitized fashion, e.g., in a fashion which does not link the data to particular companies, so long as such sanitization does not itself destroy the utility or credibility of the data.

3. CMA cannot be in the position of collecting data, confidential or otherwise, and then deciding at a later point in time whether or not the data will be disclosed. In other words, CMA cannot be in the position of collecting information to see whether or not the points CMA believes to be true can be supported, and then if the data turns out not to support our conclusion, destroying the data. While we will use all legal means to protect the confidential information submitted to us, once we embark upon a particular project, whether "advocacy" or "research", CMA must be in the position of being able to disclose the essence of that data and the conclusions derived from it. It is important to make this principle clear at the beginning of any advocacy or research project. The legal department can assist in presenting this principle to our members involved in a particular project in a way which does not "scare them off" of a legitimate activity.

4. As a separate but related point, CMA contracts with consultants who are involved in the collection and analysis of data should usually require that the consultant be prepared to testify as to the validity of the basis of the conclusions which he reached during the contract with CMA. The contractor is not required to embrace preconceived or any other CMA beliefs, opinions or conclusions. The point of this requirement is to make sure that a consultant will not give CMA its independent judgment and then fail to support that judgment in an appropriate advocacy forum.

5. It is important to contact the legal department early for suggestions about how to construct confidentiality protections and collection of data in general to minimize unwarranted concerns by our members, provide the maximum amount of protection for the data collected, and to assure the procedures used will pass the so-called "Jack Anderson" test.