



Program Letter 15-4

TO: All Executive Directors
FROM: James J. Sandman, President
DATE: April 15, 2015
SUBJ: Access to Records—*United States v. Cal. Rural Legal Assistance* and Revisions to the Access to Records Protocol

LSC has the statutory responsibility to ensure that LSC recipients comply with the provisions of the LSC Act and regulations and any other laws, including appropriations provisions, that apply to LSC funds or recipients. LSC Act § 1006(b)(1)(A), 42 U.S.C. § 2996e(b)(1)(A). Section 1008(b) of the LSC Act provides explicit authority for LSC “to prescribe the keeping of records with respect to funds provided by grant or contract” and states further that LSC “shall have access to such records at all reasonable times for the purpose of insuring compliance with the grant or contract or the terms and conditions upon which financial assistance was provided.” 42 U.S.C. § 2996g. LSC’s access is limited by the federal attorney-client privilege, but not by state and local law. 42 U.S.C. § 2996h(d). Pub. L. 104-134, title V, § 509(h), 110 Stat. 1321, 1321-59 (1996) (LSC 1996 appropriations provisions incorporated by reference thereafter).

In 2004, LSC adopted an Access to Records protocol (Protocol). The Protocol sets out procedures to avoid disclosure of information protected by state and local laws or rules, such as local rules of professional responsibility, whenever feasible, while providing LSC the information it requires to fulfill its responsibilities. The Protocol does not limit LSC’s right to require disclosure of all information that it is entitled to under law.

In 2013, the United States Court of Appeals for the District of Columbia Circuit determined that “Federal law and not state law governs” access to confidential information under the LSC Act. *United States v. Cal. Rural Legal Assistance*, 722 F.3d 424, 427 (D.C. Cir. 2013). The D.C. Circuit rejected arguments that provisions of the LSC Act regarding state or local rules of professional responsibility created limits on LSC’s access to information.

The LSC grant certifications, signed by all LSC recipients, provide for exclusive jurisdiction in the United States District Court for the District of Columbia for any disputes between LSC and its recipients. The D.C. Circuit’s ruling is thus binding on all LSC recipients.

LSC has revised the 2004 Access to Records Protocol to incorporate the ruling of the D.C. Circuit and to update some of the procedures.

<http://grants.lsc.gov/rin/grantee-guidance/access-records>

LSC will continue to work with grantees on methods of access to information consistent with state or local rules regarding confidential materials, attorney-client privilege, and ethical obligations to maintain client secrets. Nonetheless, LSC may require disclosure of such information as needed, subject to the protections under federal law.

If you have any questions regarding this issue, please contact LSC General Counsel Ronald S. Flagg, at flaggr@lsc.gov.