

Understanding REPORTER'S PRIVILEGE

in Colorado

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Should you use confidential sources?

Consider legal AND ethical concerns. You are protected by Colorado's state shield law under **qualified reporter's privilege**. Meaning, if you are **subpoenaed** by the court to reveal your **news information**, you may have protection.

BUT promises of confidentiality should never be taken lightly.
Consider the following questions always...

- 1 Is the story of overwhelming public concern?
- 2 Is there any other way to get the information on the record?
- 3 Is the information from the confidential source verifiable?
- 4 Are you willing to reveal to the public why the source cannot be named (without accidentally revealing the identity of the source) and what, if any, promises you made to get the information?
- 5 How would your audience evaluate the same information if they knew the source's identity?

The Branzburg Balancing Test Qualified Reporter's Privilege

reporters can only be forced to testify if the party issuing the subpoena can establish that the information sought is:

- (1) highly material and relevant to the underlying claim,
- (2) necessary and critical to the maintenance of the claim and
- (3) unavailable from alternative sources

KEY TERMS

A **subpoena** / is a writ by a government agency, most often a court, that has authority to compel testimony by a witness or production of evidence under a penalty for failure.

News information / "any knowledge, observation, notes, documents, photographs, films, recordings, videotapes, audiotapes, and reports . . . obtained by a newsperson." C.R.S. § 13-90-119(1)(b).

Scope of protection / The Colorado Press Shield Law protects non-published information, but does not provide a privilege regarding information that has been published.

Qualified privilege / The law states that "no newsperson shall, without such newsperson's express consent, be compelled to disclose, be examined concerning refusal to disclose, be subject to any legal presumption of any kind, or be cited, held in contempt punished, or subjected to any sanction" for refusing to disclose information obtained while "acting in the capacity of a newsperson." C.R.S. § 13-90-119(2).