

KNOW YOUR RIGHTS:

Confidentiality & shield laws

The student press law center answers your most frequently asked questions about protecting sources and information

Q Are student journalists allowed
 to claim “reporter’s privilege” to protect the identity of sources?

A: State reporter’s privilege laws (a/k/a “reporter shield”) allow journalists to withhold confidential newsgathering materials from the parties in a criminal investigation or a civil lawsuit. In most states, the shield applies to anyone who regularly gathers and distributes news to the public, even unpaid students. In a minority of states, the shield covers only paid professionals.

Q Does the reporter’s privilege
 protect anything besides confidential sources?

A: In many states, the privilege covers not just confidential sources but any type of unpublished newsgathering material, such as notes and tapes of interviews. But that privilege normally is not absolute, and a court can override it if the evidence is urgently needed.

Q Can the police or campus security search our newsroom
 to get unpublished photos, notes or videos?

A: Almost never. Congress passed the Privacy Protection Act in 1980, making it illegal for law enforcement officers to search a newsroom (or anywhere else that newsgathering materials are kept, such as the trunk of a reporter’s car). If police or prosecutors want to see unpublished materials, they must issue a subpoena and give the journalist a chance to oppose the subpoena in court.

Q What if the search is done by an administrator,
 not by the police?

A: The Privacy Protection Act applies to any search by a government official – but it applies only in a criminal investigation. So it’s unclear whether the PPA would be of any help if, for instance, the dean searches the newsroom computers for evidence of a disciplinary violation. This is why it’s advisable to store extra-sensitive interviews and documents off-site, not on school computers or servers.

Q What kind of protection
 do journalists have in high schools?

A: Shield laws and the PPA haven’t been tested in the high-school setting, so there’s no telling. The more common concern for a high-school journalist is not a demand by police, but by the principal. A promise of confidentiality is legally binding, and a person who gets harmed – *i.e.*, kicked out of school – because you broke your promise might have a breach-of-contract claim against you. So if you are confronted with a demand to turn over notes or sources, don’t comply without first consulting an attorney to protect yourself. And if you are a student using a confidential source, avoid disclosing the source’s identity even to a trusted journalism teacher, who may be more easily threatened into giving up the information.

