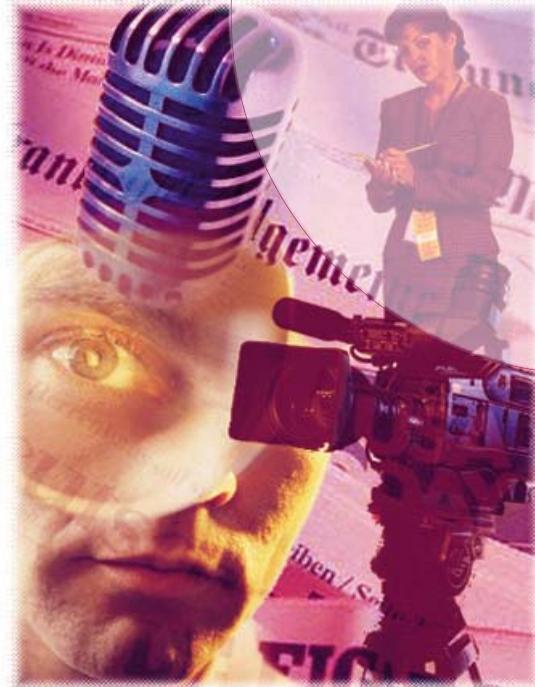


## LIBEL AND SLANDER

Libel and slander are legal claims for false statements of fact about a person that are printed, broadcast, spoken or otherwise communicated to others. Libel generally refers to statements or visual depictions in written or other permanent form, while slander refers to oral statements and gestures. The term “defamation” is often used to encompass both libel and slander. It usually occurs from news stories that allege crime, fraud, dishonesty, or immoral or dishonorable conduct. Defense against libel includes:

- **Truth** — The primary defense against libel is that the facts are “provably” true.
- **Privilege** — Certain people under certain circumstances can state, without fear of being sued, material that may be false, malicious or damaging. In such cases, the statement is considered “privileged” (and thus not public). Judges, legislators, doctors, lawyers, psychologists or individuals (chiefly a spouse) can maintain that privilege. Privilege also includes public officials and public figures while talking about public issues. Public and official proceedings and the contents of most public records are also privileged.
- **Qualified** — Courts have held that when applied to the media, privilege is not “absolute.” Protection from libel action may be lost or diluted by how a journalist handles the material. This includes errors in reporting and proof of malice.



## CRISIS COMMUNICATION LEGAL GUIDE

## IGNORANCE OF THE LAW IS NO DEFENSE

This reference guide is designed to increase your awareness of some of the laws that may affect you as a crisis communication professional. Knowledge of the law can help prevent you and your agency from facing future legal problems, which can be costly and time consuming. Laws often vary from state to state — know what your state’s laws are. *Anytime* you are faced with a legal question or issue, you should immediately seek the opinion of your agency’s legal counsel.

## SURREPTITIOUS RECORDING

The vast majority of states allow you to record a conversation to which you are a party without informing the other parties you are doing so. Most of these states have copied the federal law; some expand on the language of the federal law and prohibit all surreptitious recording or filming without the consent of all parties. Some state statutes go even further, prohibiting unauthorized filming, observing and broadcasting in addition to recording and eavesdropping, and prescribing additional penalties for divulging or using unlawfully acquired information, and for trespassing to acquire it. In most states, the laws allow for civil as well as criminal liability. Most state statutes do permit the recording of speeches and conversations that take place where the parties may reasonably expect to be recorded.

## FREEDOM OF INFORMATION ACT (FOIA)

The Freedom of Information Act provides public access to federal files. Federal agencies have ten working days to respond to FOIA requests. Most states have similar laws. Standard fees can apply for search and copying costs.

A FOIA request for records may be denied if the requested record contains information that falls into one or more of the nine categories listed below.

### Categories of Exempt Information

1. National defense or foreign policy.
2. Internal personnel rules and practices.
3. Records specifically exempt from disclosure by statute, provided that such statute requires that the matters be withheld from the public or establishes particular criteria for withholding or refers to particular types of matters to be withheld.
4. Trade secrets and commercial or financial information that is privileged or confidential.
5. Interagency or intra-agency memoranda or letters that would not be available by law to a private party in litigation.
6. Personnel, medical and similar files (including financial files) that constitute a clearly unwarranted invasion of personal privacy.
7. Records compiled for law enforcement purposes that interfere with enforcement proceedings, deprive the right to a fair trial, are an unwarranted invasion of privacy, disclose the identity of a confidential source, disclose techniques and procedures for law enforcement to facilitate circumvention of the law, or endanger the life or physical safety of any individual.
8. Records for regulation or supervision of financial institutions.
9. Information, including maps, concerning the placement of wells.

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Decision and Information Sciences Division  
Risk Communication Program  
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A ready reference to help  
increase your awareness of  
potential laws affecting crisis  
communication professionals



U.S. Army



CSEPP



Homeland  
Security

# “CONGRESS SHALL MAKE NO LAW...ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS”

## SUNSHINE LAWS

All states have some form of “sunshine law” on the books. Generally, sunshine laws require formal public notice of government meetings, that all government meetings where formal action is taken or discussed be open to the public, and that meeting minutes be maintained. Sunshine laws typically allow for executive session under certain circumstances, including:

- **Personnel matters**, particularly when the agency is firing, hiring or disciplining an individual employee (in some cases, the employee has the right to request a public hearing);
- **Collective bargaining sessions**;
- **Discussions with agency attorneys** regarding pending or imminent litigation involving the agency; and
- **Acquisition or sale of public property.**

## HOMELAND SECURITY ACT—PROTECTION OF CRITICAL INFRASTRUCTURE INFORMATION

Critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered federal agency for use regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution or other informational purpose shall be exempt from disclosure under the Freedom of Information Act.

## TEMPORARY FLIGHT RESTRICTIONS (TFRs)

At the request of various entities, including military commands, civil authorities and law enforcement agencies, the Federal Aviation Administration (FAA) can temporarily close down a volume of airspace, including a defined ceiling. A TFR may be issued for the following reasons:

- Toxic gas leaks or fumes from flammable agents that could endanger persons or property on the surface or in other aircraft;
- Hijacking incidents that could endanger persons or property on the surface, or airborne aircraft and occupants;
- Aircraft accident/incident sites;
- Aviation or ground resources engaged in wildfire suppression;
- Aircraft relief activities at a disaster;
- Aerial demonstrations or major sporting events; or
- National security.

Exemption to a TFR may be granted to aircraft carrying “properly accredited news representatives” if a flight plan is filed and the aircraft flies above the altitude used by disaster relief aircraft. This exemption can be removed at the discretion of the official in charge of on-scene emergency response activities. Permanent flight restrictions are in place over military installations.

## HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

HIPAA guarantees the privacy of individuals’ medical records and applies to any health care provider, including emergency medical service and hospital personnel. Patient information, including the patient’s name:

- May NOT be released to the media without the patient’s written consent;
- Should be treated as proprietary information;
- May be shared *among medical personnel only* to support treatment; and
- May be shared with emergency responders to help locate family.

## PRIVACY ACT

Almost every state recognizes some right of privacy, either by statute or under common law:

- Citizens are permitted to see their own files.
- Government is prohibited from keeping files on exercising the right of free speech.
- “False light” — This occurs when information is published about a person that is false or places the person in a false light, is highly offensive to a reasonable person, and is published with knowledge or in reckless disregard of whether the information is false or would place the person in a false light.
- Misappropriation — The use of a person's name or likeness for commercial purposes without consent is misappropriation. The law protects an individual from being exploited by others for their exclusive benefit. Use of a photograph to illustrate a newsworthy story is not misappropriation. Even if a photo is used to sell a magazine on a newsstand, courts usually will not consider that a trade or commercial purpose.

## SARA TITLE III — RIGHT TO KNOW ACT

Created in response to the Bhopal, India, chemical disaster, this legislation was passed in 1986 with staggered implementation beginning in 1987.

It provides that each emergency response plan, material safety data sheet, inventory form, toxic chemical release form and follow-up emergency notice shall be made available to the public upon request.

Each local emergency planning committee is required to annually publish a notice that the materials have been submitted and are available for review.

## FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

FERPA gives parents rights to their child’s education records. Parents can inspect a student’s education record maintained by the school, and schools must have written permission from parents to release any information from a student’s education record. However, FERPA allows schools to disclose records, without consent, to certain parties under certain conditions, such as:

- School officials with legitimate interest;
- To comply with judicial orders or subpoenas;
- Appropriate officials in health and safety emergencies; and
- State and local authorities within a juvenile justice system.

Schools also may disclose, without consent, “directory” information, such as a student’s name, address, telephone number, and date and place of birth. However, schools must inform parents about directory information and allow them a reasonable amount of time to request that the information not be disclosed.