

The police have a search warrant for the files of one of my clients. What do I do?

You have a duty to your client to maintain confidentiality and legal professional privilege ('privilege'). This is so even if you no longer act for the client, or you can't contact them for instructions, or even if they are dead (their personal representatives should be consulted for instructions).

Remember that privilege is much more limited in scope than confidentiality. For details of each see the FAQs [What is the rule about confidentiality?](#) and [What is the law on legal professional privilege?](#)

You should first satisfy yourself that the warrant is valid, and take a copy of it.

If it is valid you will then only need to consider privilege, as you will not be able to object to provision of a document on the grounds of confidentiality alone.

Privilege belongs to the client and can only be waived by the client. You should immediately inform the client of the warrant and seek instructions. In the absence of instructions, you still have a duty to preserve privilege. If you are unsure about a particular document, you should claim privilege and let the court decide (disputed claims of privilege will ultimately be referred to the court) as an error by you may leave you liable to your client.

If your client or former client has separate legal representation in relation to the matter, perhaps for related criminal charges, then time permitting, you may seek instructions about waiver or assertion of privilege by the client through those other solicitors. You may of course provide those solicitors with a copy of the relevant file on receipt of authority.

Queensland Police Service

Guidance on the procedures to be followed by the QPS when executing search warrants on solicitors' premises can be found [here](#). The Search Warrant Guidelines took effect on **28 February 2017**. Prior to this date the guidelines were found in section 2.8.5 of the Queensland Police Service (QPS) Operational Procedures Manual. Those guidelines can be found [here](#).

For the current law on legal professional privilege see the FAQ [What is the law on legal professional privilege?](#)

Australian Federal Police

Guidelines have been agreed between the AFP and the Law Council of Australia dealing with the execution of search warrants on lawyers' premises where a claim of legal professional privilege is made. These guidelines - [Execution of AFP Search Warrants on Lawyers' Premises](#) – were effective from 3 March 1997. Accordingly, they contain out of date details of the law relating to legal professional privilege, in particular they refer to the 'sole purpose' test rather than the 'dominant purpose' test. For the current law on legal professional privilege see the FAQ [What is the law on legal professional privilege?](#)

Where an application to the Supreme Court is necessary, see [Supreme Court Practice Direction No. 25 of 1995 'Execution of search warrants on solicitors' offices and barristers' chambers'](#).

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