

SECURITY GUIDANCE FOR REPRESENTATIVES

What is a Limited Security Approval (LSA)?

An LSA is a narrow approval for you to verbally receive specific classified information, up to the SECRET-level, from your client. An LSA is not a security clearance. A security clearance permits broader access to classified information, and therefore has more rigorous standards for eligibility.

Your LSA is for you alone and is limited to your representation of one client in this one matter. *It is not transferable* to other cases or matters involving your client, to other cases involving other individuals, or to matters involving other United States Government (USG) organizations. If you are retained to represent other similarly-situated individuals, you will need to be granted an LSA and complete a separate Secrecy/Non-Disclosure Agreement for each client.

Your LSA does not allow you to access USG facilities, interview other USG personnel, acknowledge classified information to anyone other than your client (including persons in your office), or create and/or store any classified material in any form.

Why do I need a LSA?

A current client has requested permission to verbally inform you of a classified affiliation that he or she has or had with an entity of the USG, as it may be relevant to a legal matter for which you have been retained. The LSA is an accommodation for this individual, so that he or she can make you aware of specific classified information without violating his or her Secrecy/Non-Disclosure Agreement.

What if I want to discuss this case with others in my office?

You may not discuss or otherwise share classified information with another person in your office unless and until the Area Security Officer (ASO) advises you that the individual has also received a LSA and signed a Secrecy/Non-Disclosure Agreement. You may discuss this case in an unclassified manner with others in your office, i.e., without informing them that your client has or had a classified affiliation with the USG. If you believe that others in your office need to be made aware of the classified information, please have your client contact the ASO and request that those requiring access also receive LSAs. The USG determines who has a need-to-know classified information and who will be approved for an LSA, and these determinations are made on a case-by-case basis. If you have questions about whether you may discuss or otherwise share classified information with someone, please contact the ASO.

How do I know when information is classified?

In most cases your client has only been approved to acknowledge his or her classified affiliation with an entity of the USG, and beyond that your client will have to describe any related information in an unclassified manner. In some cases your client may also have been granted permission to verbally inform you of other classified information, and in those cases your client has been informed to tell you specifically what information at issue is classified, to assist you in complying with your Secrecy/Non-Disclosure Agreement. If you are in doubt as to whether information you have received from your client is classified, you should consult with your client, and/or the ASO. Generally, if your client provides you with identifying information concerning other individuals who are similarly situated; site names or specific locations of USG installations; summaries or details of activities and/or technologies related to the classified affiliation; or information pertaining to organizational structures, the information may be classified.

What rules must I follow when working with information that may be classified?

You may only acknowledge the classified information at issue (usually only the client's classified affiliation) with your client.

You should not memorialize any classified information, either in handwritten notes, typed documents, tape recordings, etc., as you do not have the authority to create or store classified documents.

Classified information cannot be included in the text of motions, briefs, correspondence, or any material related to any representation or proceeding.

If you take notes or draft documents that you think are unclassified but you are not sure, you should consult with your client and/or seek a classification review through the ASO as soon as possible. Before filing with any court and/or serving or providing to any party, pleadings or other documents on behalf of your client that relate to your client's classified affiliation, or that could reasonably be believed to contain classified information, you must submit such material to the ASO for classification review to ensure no classified information is erroneously included in the document. If the USG is an adversarial party in a civil matter, the government attorneys working on the civil matter will not be privy to the contents of the material submitted for classification review prior to their filing or public use or dissemination.

Although the USG has approved you to be verbally informed of specific classified information, this approval does not constitute a waiver of any privilege and does not permit you to use the classified information in any manner.

What restrictions are there on how I handle my client's information at my office?

As your client has or had a classified affiliation with the USG, you should not have any documents or material that would reveal that classified affiliation. For example, this document should not be in your client's case file, but should rather be maintained in a separate file not linked to a particular client. As a general matter you should create and store unclassified documents or notes referring to your client separately (i.e., in separate documents in separate hardcopy or electronic case files, at a minimum) from any documents or notes that, while unclassified when standing alone (such as this document), would reveal a classified association if linked to your client.

If you need to speak with the ASO on the phone, you should not use your client's last name on the phone in any conversation as that would divulge your client's classified affiliation in a non-secure manner.

If you mistakenly create classified material, or mistakenly relate classified information to a person who is not entitled to receive such information, please contact the ASO to report the incident and seek guidance as to what can be done to minimize any damage to national security.

What procedures do I follow prior to submitting a court filing or otherwise promulgating anything related to or based upon my client's case, regardless of the classification?

Prior to submitting a court filing or otherwise disseminating anything related to your client's case that relates to your client's classified affiliation, or that reasonably could be expected to contain classified information, provide a copy of the proposed filing or other document or material to the ASO, who will facilitate a classification review. If the USG is an adversarial party in a civil matter, the government attorneys working on

the civil matter will not be privy to the contents of the material submitted for classification review prior to their filing or public use or dissemination.

What are the penalties for failing to adhere to this guidance?

Violation of the Secrecy/Non-Disclosure Agreement may result in the USG withdrawing your LSA, and serious violations may merit referral to the Department of Justice.

Can you provide examples of mistakes in dealing with classified information other attorneys have made in the past?

Using identifying information of a client on the phone with the ASO, when the client's affiliation with the USG is classified.

Sending to the ASO a facsimile that includes the case caption with the client's name, when the client's affiliation with the USG is classified.

Not seeking a classification review for a filing or other case-related material, when that document or material contained classified information.