



School Administrators Association of New York State

**SAANYS**  
LEGAL DEPARTMENT

8 Airport Park Boulevard | Latham, New York 12110

Phone: (518) 782-0600 | [www.saanys.org](http://www.saanys.org)

## **Confidentiality and its Importance**

“The Importance of Maintaining Confidentiality in Communications Between Unit Members and also with SAANYS Counsel”

This article is intended to be a friendly reminder as to the importance of maintaining confidentiality in communications between unit members and also with SAANYS counsel. While we recognize confidentiality is a bit of a broad concept, we want to point out some reasons for maintaining confidentiality, and also some tips for going about doing so. Ultimately, the confidentiality in communications we speak of deals with those which we transmit by e-mail or text message.

As our members understand, oftentimes unit issues must be discussed between unit leadership and the membership as a whole, and sometimes also with SAANYS counsel. Oftentimes we notice that these communications can relate to unit negotiations, grievance issues, improper practices by the district, complaints by unit members related to working conditions, or employment defense issues involving interrogations of unit members, counseling memos or disciplinary actions. The list of confidential matters that must be discussed is quite expansive. Oftentimes, due to the situation at hand, the time-sensitive nature of the issue, or the need to loop multiple parties in on the matter, these matters are communicated by e-mail, text message or by phone call.

While we recognize the time-sensitive nature of the issues our units deal with, and we also recognize that maintaining confidentiality can present its own difficulties, we want to remind our membership of some important concerns and offer some guidance.

First and foremost, please note that if our units communicate using their district e-mail or district provided cell phones, these e-mails may be accessible by the district and/or may be subject to FOIL. While we believe that it would likely be improper for a district to scan employee e-mails for confidential collective bargaining unit communications and access those communications for their review and/or benefit it is not illegal. We also believe that such communications which are of a confidential nature among a collective bargaining unit should not be allowed to be retrieved by the public pursuant to FOIL, there is always the risk of such happening, whether intentionally or unintentionally.

As a reminder, FOIL, or the Freedom of Information Law, is a New York State statute which outlines the public’s ability to access government-controlled documents and communications, including public school documents and records.

Some reasoning behind ensuring that our communications among unit members regarding unit issues, as well as with SAANYS counsel are understood by everyone, but to reiterate, we should be cognizant of maintaining confidentiality for reasons from a privacy perspective, especially when complaining of district practices, ethical reasons, to preserve the integrity of our unit and unit members, and also from a legal perspective,

to ensure attorney-client confidentiality is preserved. Failing to maintain confidentiality can result in altered negotiating positions, embarrassment, or even “opening-the-door” to protected attorney-client communications being susceptible to subpoenas.

So, to help ensure confidentiality to the best of our abilities, we have some recommendations and advice.

First, we recommend, if possible, that our unit members avoid communicating through the use of their district provided e-mail addresses, or cell phones (understanding this may be more difficult). In order to go about doing this, we recommend considering starting new email addresses for unit business, this can be done by preserving your own unit domain for email addresses (though this may not be feasible for smaller units due to the costs involved), or we recommend considering a free e-mail service such as g-mail. Of course, even if we are unable to create new standalone unit e-mail addresses, best practices would be to use some personal e-mail address account. With regard to cell phone use, if your cell phone is provided to you by the district, we would recommend that you avoid using text message to communicate about unit or member issues, and instead to resort to telephone calls to communicate.

Second, we recommend that we stay cognizant of who we are communicating with, and including in communications, when dealing with confidential issues. For instance, when discussing unit issues among the unit, keep in mind not to CC (carbon-copy) non-unit members or SAANYS counsel/negotiators/regional reps, unless the communication is intended to be disseminated more broadly. This same concern should be kept in mind when forwarding e-mail communications, or when replying/replying all. Keep in mind that with many e-mail systems, forwarding e-mails, or replying to e-mails can carry with the newly sent e-mail, the chain of preceding e-mails. Best practice is usually to form a new e-mail chain or send a distinct e-mail should you need to loop someone new in the communication that may or should be included in the prior communications.

It is also paramount to understand that when a unit member is communicating with an attorney at SAANYS, especially when seeking individualized legal advice, those communications should often be solely between the individual unit member and the SAANYS counsel, or between unit leadership and SAANYS counsel. We understand that in most situations, our unit leadership may alert SAANYS counsel to issues that an individual unit member may be dealing with, or they may introduce the unit member to SAANYS counsel, but in such situations, with regard to individualized legal advice, those communications should transition to direct communications with counsel to preserve the attorney-client communication. Unless the unit leadership is equally seeking unit advice, or advice for themselves, inclusion of anyone other than the one seeking legal advice can void the attorney-client confidentiality protection. Of course, if the unit is the party seeking the legal advice, say with regard to potential impact bargaining, or a grievance matter, the parties involved in seeking the legal advice is much larger and a wider net is cast as to preserving confidentiality.

Third, when negotiating unit contracts, we should consider and keep in mind what language may be helpful to add to our agreements that can help ensure privacy in our communications, and at the very least keep us informed if communications are ever accessed or disseminated. What comes to mind are provisions that may do one of a number of things: (i) a provision that prevents the district from accessing, reviewing or disseminating communications among unit members and/or SAANYS counsel/negotiators/regional representatives; (ii) a provision that outlines the duty for the district to inform the unit and/or unit members when they have received a FOIL request or subpoena that may impact communications sent or received by our unit and/or unit members; and (iii) a provision that provides notice and opportunity to be heard as to whether or not the district should disseminated said communications in response to a FOIL request or subpoena.

Finally, we recommend that with all e-mail communications, our membership consider including an appropriate confidentiality notice that touches on matters such as intended recipients, that such communications are intended to be confidential and pertain to confidential and private collective bargaining unit issues, private employee matters and attorney-client communications.

Please note we are happy to review this information, best practices, and any strategies discussed above with you individually or as a unit to help assist you with maintaining confidentiality in communications among our units, unit members, and SAANYs counsel and staff.