

**REFERENCES:**

- II.1.c. - Code of Ethics: Engineers shall not reveal facts, data or information without the prior consent of the client or employer except as authorized or required by law or this Code.*
- II.3.a. - Code of Ethics: Engineers shall be objective and truthful in professional reports, statements or testimony. They shall include all relevant and pertinent information in such reports, statements or testimony, which should bear the date indicating when it was current.*
- III.1.a. - Code of Ethics: Engineers shall acknowledge their errors and shall not distort or alter the facts.*
- III.2.b. - Code of Ethics: Engineers shall not complete, sign or seal plans and/or specifications that are not in conformity with applicable engineering standards. If the client or employer insists on such unprofessional conduct, they shall notify the proper authorities and withdraw from further service on the project.*

**DUTY TO REPORT UNRELATED INFORMATION  
OBSERVED DURING RENDERING OF SERVICES**

**FACTS**

A public agency retains the services of VWX Architects and Engineers to perform a major scheduled overhaul of a bridge. VWX Architects and Engineers retains the services of Engineer A, a civil engineer, as its subconsultant to perform bridge inspection services on the bridge. Engineer A's scope of work is solely to identify any pavement damage on the bridge and report the damage to VWX for further review and repair.

Three months prior to the beginning of the scheduled overhaul of the bridge, while traveling across the bridge, Police Officer B loses control of his patrol car. The vehicle crashed into the bridge wall. The wall failed to restrain the vehicle, which fell to the river below, killing Police Officer B.

While conducting the bridge inspection, and although not part of the scope of services for which he was retained, Engineer A notices an apparent pre-existing defective condition in the wall close to where the accident involving Police Officer B occurred. Engineer A surmises that the defective condition may have been a contributing factor in the wall failure and notes this in his engineering notes. Engineer A verbally reports this information to his client, which then verbally reports the information to the public agency. The public agency contacts VWX Architects and Engineers which then contacts Engineer A and asks Engineer A not to include this additional information in his final report since it was not part of his scope of work. Engineer A states that he will retain the information from his engineering notes but not include it in the final report, as requested. Engineer A does not report this information to any other public agency or authority.

**QUESTIONS:**

Question 1: Was it ethical for Engineer A to retain the information in his engineering notes but not include it in the final report as requested?

Question 2: Was it ethical for Engineer A not to report this information to any other public agency or authority?

**DISCUSSION:**

Engineers play a vital role in society in providing a higher degree of assurance that the products, systems, facilities, and structures used by the public are safe and effective. Engineers are frequently placed in situations where they must balance the extent of their obligations to their employer or client with their obligations to protect the public health and safety.

An example of this basic ethical dichotomy was considered by the NSPE Board of Ethical Review in Case No. 89-7 (which the Board also applied in Case No. 97-5). In that case, an engineer, Engineer A, was retained to investigate the structural integrity of a 60-year-old occupied apartment building, which his client was planning to sell. Under the terms of the agreement with the client, the structural report written by Engineer A was to remain confidential. In addition, the client made clear to Engineer A that the building was being sold "as is" and that the client was not planning to take any remedial action to repair or renovate any system within the building prior to its sale. Engineer A performed several structural tests on the building and determined that the building was structurally sound. However, during the course of providing services, the client confided in Engineer A and inform him that the building contained deficiencies in the electrical and mechanical systems, which violated applicable codes and standards. While Engineer A is not an electrical or mechanical engineer, he does realize those deficiencies could cause injury to the occupants of the building and so informs the client. Specifically, in his report, Engineer A made a brief mention of his conversation with the client concerning the deficiencies; however, in view of the terms of the agreement, Engineer A did not report the safety violations to any third party.

In deciding it was unethical for Engineer A not to report the safety violations to the appropriate public authorities, the Board noted that the facts presented in the case raised a conflict between two basic ethical obligations of an engineer: The obligation of the engineer to be faithful to the client and not to disclose confidential information concerning the business affairs of a client without that client's consent, and the obligation of the engineer to hold paramount the public health and safety.

As noted in Case No. 89-7, there are various rationales for the nondisclosure language contained in the NSPE Code. Engineers, in the performance of their professional services, act as "agents" or "trustees" to their clients. They are privy to a great deal of information and background concerning the business affairs of their client. The disclosure of confidential information could be quite detrimental to the interests of their client and, therefore, engineers as "agents" or "trustees" are expected to maintain the confidential nature of the information revealed to them in the course of rendering their professional services.

Turning to the facts in this case, it is the Board's position that the facts and circumstances in Case No. 89-7, while somewhat similar in nature, are significantly different than the facts in the present case. First, it is clear that, unlike Case No. 89-7, which involved facts and circumstances that were openly conveyed directly to Engineer A from a client, in the present case, the circumstances bearing on the public safety were revealed to the engineer as part of the engineer's inspection and professional observations. Presumably, the manner in which information is conveyed to an engineer will have some bearing on the client's expectation of the engineer's maintaining the confidentiality of the particular information. In the present case, it is difficult for this Board to conclude that the client or the public agency could have had a genuine expectation of confidentiality, since nothing of a confidential nature was directly conveyed by the client or the public agency to Engineer A.

Another difference between the two cases is that in Case No. 89-7, there was a specific agreement between the engineer and the client to maintain the confidentiality of the information contained in the engineer's report. In contrast, in the present case, there is nothing to indicate under the facts that an agreement exists between any of the parties to maintain the confidentiality of all or part of any reports prepared by the engineer.

Also in Case No. 89-7, there was the possibility of a dangerous condition developing at some point in the future, while in the present case, loss of life had already occurred. Importantly however, this circumstance needs to be contrasted with the circumstances in Case No. 89-7, where the client had essentially admitted serious code violations, while, in the present case, the possibility of a defect is merely a matter of speculation and surmise.

It is on this last point that the Board believes this case must hinge. Looking at the facts and circumstances in their totality, the Board is convinced that Engineer A acted reasonably under the circumstances by properly balancing the obligation of the engineer to be faithful to the client and not to disclose what might be considered by the client to be confidential information concerning the business affairs of a client without that client's consent, and the obligation of the engineer to hold paramount the public health and safety.

The Board says this because there is nothing under the facts to indicate anything more than Engineer A's general surmise and speculation about the cause of the structural failure of the wall. Engineer A's observation appears to be based upon a visual inspection without anything more. There is nothing noted in the facts to indicate that Engineer A had expertise in structural engineering. While it may be appropriate for Engineer A to note such information in his field notes, to place this information in a final report would not be responsible and could unnecessarily inflame the situation. However, under no circumstance would it be appropriate for Engineer A to alter his field notes.

Also, while it might be appropriate for Engineer A to verbally report this information to Engineer A's client, and for the client to report this information to the public agency, it is clear that Engineer A was retained to perform a specific task for which he was presumably competent. Clearly the prime consultant, which has overall responsibility for the project, is in a far better position than Engineer A to understand the interrelationships between various elements of the projects, including the history of previous work performed on the bridge, prior consultants, contractors, etc., in order to make an informed evaluation.

Therefore, the Board concludes that Engineer A did the appropriate thing in coming forward to his client with the information and also by documenting the information for possible future reference as appropriate. Under the circumstances it would have been improper for Engineer A to include reference to the information in his final report, particularly since it would have been based upon mere speculation and not careful testing or evaluation by a competent individual or firm. At the same time, the Board is of the opinion that Engineer A has an obligation to follow through to see that correct follow-up action is taken by the public agency. Only if the public agency does not take corrective action should Engineer A consider alternatives. Finally, for Engineer A to have reported this information to a public authority under the circumstances as outlined in the facts, before determining whether corrective action is taken, would have been an overreaction and could easily have risked jeopardizing the professional reputations of his client and the public agency.

#### **CONCLUSIONS:**

Question 1: It was ethical for Engineer A to retain the information in his engineering notes but not include it in the final written report as requested.

Question 2: It was ethical for Engineer A not to report this information to any other public agency or authority as long as corrective action is taken by the public agency within a relatively short period of time.

**BOARD OF ETHICAL REVIEW**

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