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Donald Trump's Accountant Likely Violated Confidentiality Rules

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Donald Trump's accountant, Jack Mitnick, was the lynchpin to confirming the validity of the presidential candidate's 1995 tax returns, leaked to the *New York Times*. But in doing so, he may have violated client confidentiality rules. You shouldn't expect your accountant to do the same, though.

The *Times* on Sunday published a story, based on state tax returns, showing that Trump claimed a \$916 million loss in 1995, which could have permitted him to avoid paying income tax for 18 years.

Mitnick, who hasn't worked for the Trump family in about 20 years, handled taxes for Trump, as well as Trump's late father. While the 80-year-old, semiretired accountant told the *Times* he couldn't divulge any financial information on his former clients, he did confirm that the tax documents — anonymously sent to one of the newspaper's reporters — were legitimate, and he also described Trump's approach to taxes.

"He recalled, for example, that when Donald and Ivana Trump came in each year to sign their tax forms, it was almost always Ivana who asked more questions," according to the *Times* piece. Ivana was his first wife, from 1977 to 1992. Trump and his allies have been swift in their denunciation of the story. But did Mitnick break the rules in talking so candidly with the media? The short answer is likely yes.

A certified public accountant (CPA) generally must obtain client consent before making any disclosures if the information is not in the public domain, says Debbie Cutler, a former chair of the New York State Society of CPAs Ethics Committee.

Mitnick potentially could be open to a challenge to his professional licenses — he is a CPA and a tax attorney, although it is unclear what his professional

status is now. And of course, the ever-litigious Trump could take legal action. Mitnick did not respond to an email requesting further comment. He told his local paper, the *Sun Sentinel*, that the *Times* article “implies things that were not discussed,” but he did not elaborate.

“A hallmark of the CPA profession is client confidentiality,” accountant Cutler says. In addition to ethical responsibilities, two sections of the Internal Revenue Code prohibit sharing clients’ confidential information when it comes to federal tax returns, says Brian Harris, a Florida-based tax attorney with Ackerman LLP.

One section makes it a federal crime for a return preparer to knowingly disclose information acquired during the course of preparing a federal income tax return. Another imposes civil penalties. “There are some nuances to these provisions but generally they cast a broad net,” Harris says.

Most states also have laws on the books that prohibit CPAs from disclosing confidential information (including tax information), says Dallas-based CPA Jason Tyra. There are limited exceptions to the rules, such as if a CPA is subpoenaed or there’s a criminal or regulatory investigation.

“Aside from the fact that it’s bad business and likely to cause loss of the CPA license, talking to the media would probably also be begging for a lawsuit,” he says.

Merely the act of confirming the validity of documents, as happened in Mitnick’s case with the *New York Times*, is a violation of privilege, Tyra says. “I consider the mere fact of my present or former association with a client to be confidential, especially in the area of tax,” Tyra says. “I certainly don’t feel like I have any obligation to confirm the authenticity of workpapers or other documents that are obviously stolen.”

And the fact that Mitnick is semi-retired is no defense. Client confidentiality doesn’t just expire, says Philip Wilson, partner-in-charge of the California region for Marcum LLP, one of the nation’s largest accounting practices.

Accountants have an ongoing responsibility to protect client confidentiality, Wilson says. “This is not business as usual for CPAs,” he says, referring to Mitnick’s disclosure. “If it were, sensitive information would be everywhere.”