

David A. Paterson
Governor



Deborah VanAmerongen
Commissioner

New York State Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza
92-31 Union Hall Street
Jamaica, NY 11433

January 23, 2009

This is in response to your letter in which you inquire as follows: "If an attorney obtains unfavorable information for his case from a subpoena duces tecum is he duty bound to produce the information provided to the DHCR and his adversary."

The answer is yes. This letter opinion results from the confluence of two strands of thought: 1) An attorney has that status whether in a court or an administrative proceeding and is bound by the norms of legal ethics, which, for instance, require disclosure of contrary precedent, and 2) generally, evidence is disclosable unless there is a privilege. See Sands v. Whitnall School Dist., ___ Wis. ___, 754 N.W.2d 439 (2008) (copy attached for your convenience) (rejecting judicially created "deliberative process privilege," analogous to your situation of keeping cards close to one's vest).

We trust that we have fully answered your inquiry.

Please note that this letter is not a substitute for an adjudicatory proceeding, in which all parties receive notice and have an opportunity to be heard.

Sincerely,

Gregory C. Fewer, Esq.
Director of Policy

A handwritten signature in cursive script, appearing to read "Erik Strangeways".

by: Erik Strangeways
Senior Attorney

GCF:ES

Encl.

cc: Dep. Com'r. Torres
(COL-2403)