CENTRE DE DROIT
BANCAIRE ET FINANCIER

Seizure proceedings

No attorney-client privilege for corporate counsel

Par Katia Villard le 9 November 2026

A corporate lawyer cannot invoke the right to refuse to testify based on professional secrecy within the meaning of Art. 171 of the Code of Criminal Procedure. Consequently, such professional secrecy cannot be invoked to oppose the seizure of documents prepared by the corporate lawyer. In our view, it comes as no great surprise that the Federal Supreme Court reached this conclusion in its decision 7B_544/2026 of October 13, 2026, which is scheduled for publication.

The Federal Department of Finance (FDF) is conducting administrative criminal proceedings against an unknown party for a violation of the duty to disclose committed within a bank.

In this context, the FDF requested that the bank produce numerous documents, which the bank sent in the form of two password-protected USB drives, along with a request to have them placed under seal.

Upon the FDF's motion, the Complaints Chamber of the Federal Criminal Court lifted the seals. The Federal Supreme Court dismissed the bank's appeal.

In its first ground of appeal, the bank alleges a violation of trade secrets. While such secrets are no longer protected under the law governing seals following the 2024 revision of the Criminal Procedure Code (CPC) (ATF 151 IV 30, discussed *in* Villard, cdbf.ch/fr/1389/), the present proceedings are based on the Federal Act on Administrative Criminal Law (DPA). According to Art. 50(1) DPA—whose archaic wording need not be emphasized once again—"a search for documents must be conducted with the utmost respect for private secrets." Trade secrets fall within the concept of private secrets. It should be noted that the Federal Supreme Court is considering the possibility of a change in the interpretation of Art. 50 DPA in this regard following the amendment to the Criminal Procedure Code (CPP). However, it leaves the question open, since the bank in any case failed to fulfill its duty to state reasons by failing to explain how its interest in protecting the secret would outweigh the public interest in criminal prosecution.

In a second ground of appeal, the bank challenges the lower court's refusal to recognize the attorney-client privilege of the in-house counsel. In this regard, the Federal Supreme Court notes that the protection of attorney-client privilege under Art. 50(2) of the Data Protection Act (DPA) overlaps with that provided by the Criminal Procedure Code (CPP). Attorney-client privilege, as defined in Art. 171 of the CPP and Art. 321 of the CP, is intended to protect the

client's trust in their counsel. It applies in all cases to attorneys registered in the registry pursuant to Art. 4 et seq. of the LLCA. The Federal Supreme Court notes that the question of whether independent legal advisors—who hold a Swiss or foreign attorney's license but are not registered in the register—are covered by these provisions has not yet been definitively resolved. This is not the case, however, for in-house counsel, who are not independent. This conclusion is supported by recent legislative history. First, a 2009 preliminary draft bill concerning in-house counsel—which would have granted them, subject to optional registration in a cantonal registry, the right to refuse to testify in criminal proceedings—was abandoned following criticism raised during the consultation process. Second, and most importantly, the reform of the CPC that took effect in 2025 introduced, in Art. 167*a* CPC, a right for corporate lawyers to refuse to cooperate. This provision was deliberately not extended to administrative or criminal proceedings. There is therefore no gap in the law.

Note : This commentary serves as an opportunity to recall that administrative criminal law is currently undergoing a comprehensive revision. The preliminary draft dates from January 2024. The proposed new administrative criminal procedure is largely modeled on the Code of Criminal Procedure (CPP), particularly with regard to the grounds for opposing seizure. On May 13, 2026, a press release from the Confederation informed us that the Federal Council had tasked the Department of Justice and Police with preparing the legislative message. The primary concern evident at this stage is the desire to minimize the costs of this revision as much as possible.

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