Chapter 60: Sources and Confidentiality

This and the previous chapter are on sources of information. In the previous chapter we discussed the ethics of gathering and using information. We suggested ways of judging the reliability of different sources. We examined the use of information given on the record, non-attributable and off the record. In this chapter we discuss the issue of confidentiality in journalism.

As a journalist, you can always decline to accept information from a source unless they agree to be identified. However, once you have made the promise not to identify them, you must never break your word. If you do, people will never talk to you again. This introduces us to the idea of confidentiality, one of the most important areas of journalism ethics.

What is confidentiality?

The words "confidence" and "confidentiality" are based on the Latin word for trust. When you are given information in confidence, this usually means that you promise that you will not tell anyone else where you got it from. Your confidential informant trusts you to keep their identity secret. Agreeing to accept non-attributable information is the most common example of confidentiality.

People usually ask for confidentiality because they are afraid of other people finding out they gave you information. There are all sorts of reasons why they need confidentiality:

- They might fear that their bosses will punish them for giving the information.
- They might be afraid of what other people think about them if certain information is shown to have come from them.
- They might be in a position of power but limited by rules about what they can say officially.

Confidentiality of sources is central to the ethics of journalism. As a journalist, you rely on people telling you things. Sometimes those people do not want their identity revealed to others. Although it is always better to be able to quote someone by name, in certain circumstances you have to quote what your source says without revealing away their identity. If you name a source who has given you information in confidence, you betray their trust. They will probably never give you confidential information again. But more importantly, anyone who knows that you cannot be trusted will probably refuse to give you information in confidence. If people mistrust you, they might carry that mistrust to all journalists. Any journalist who betrays a trust weakens the whole of the profession.

It is important too that you do not give away any clues to the identity of a source who has asked to remain anonymous. This means taking extra care in phrasing the way you describe how your information was obtained. It can also mean leaving out newsworthy pieces of information which would identify the source.

For example, the Prime Minister's secretary may have given you secret information in confidence or off the record. If you write the story attributing the details to "sources on the Prime Minister's personal staff", you risk exposing your source, especially if there are only one or two people on the Prime Minister's personal staff. It might be better to attribute it to "sources in the Prime Minister's department" if it is a big department, or even "Government sources" if you feel that will protect your source better. Of course, your readers or listeners will judge the value of information by how close the source of it is to the event or to the people making decisions. You need to balance the need to show that your sources are close to the centre of the information (and therefore reliable) against the need to protect the identity of a confidential source.

In some cases, your editor will ask who your confidential source is. Editors often want to know so that they can assess how reliable the information is. After all, they too can be sued or sent to jail for what is published or broadcast. You must get approval from your source before you reveal their name even to your editor. Once you do so, your editor must guard that confidentiality as strongly as you do.
This promise of confidentiality is particularly hard to keep in cases where the law may demand that you reveal your sources. In many countries, courts, tribunals, parliamentary committees and royal commissions can order you to reveal your sources of information if they think that this will help them in the administration of justice. If you fail to obey their order you may be fined or imprisoned (or both) for contempt. In some cases, journalists have been jailed for lengthy terms, to be released only when they purge their contempt by revealing the information first demanded by the court. It is more common for journalists to be released from their promise of confidentiality when the source himself comes forward to give his identity.

It is the legal opinion in many countries that journalists have no special protection under law. Lawyers, priests and doctors are often protected by law in their dealings with their clients, parishioners or patients - journalists are not. (See Chapter 68: Contempt.)

The journalist’s position is extremely unpleasant in cases where confidence comes in conflict with the law. On the one hand you will be accused of obstructing the law by refusing to name your sources. On the other, you will betray one of the central ethics of journalism if you reveal the name of someone who spoke to you in strictest confidence (even though they may be criminals).

Although journalists are always encouraged to work within the law, confidentiality is one situation in which you may have to defy the law for a greater good. Revealing a confidential source may assist the law in prosecuting one case, but you must defend a system of confidentiality which encourages the exposure of many future cases.

Journalists are bound by the law; but they believe it is in the best interests of society to have a way in which injustice, abuse and corruption can be made public. It is not in society's best interests to have only one channel (the legal system) through which wrongdoing can be brought to light. The legal system itself has flaws, so there must be other methods of correcting wrongs; journalism can be one of those ways.

You must not see confidentiality only as protecting one source of information; it is also protecting freedom of speech.

Once you have given your word to a source that you will protect their confidentiality, you must stick to that promise all the way, even if that takes you to prison. Unless the source agrees, you cannot tell the police, the judge, your editor or even your mother.

So if you do not feel that you can go to jail to protect a confidential source, do not give your promise to them in the first place. Tell them at the start of any interviews that you will reveal their names if ordered by a court. They will probably then refuse to give you any more information.

**Police requests for media pictures**

It is worth mentioning finally that you may have to defy the law to protect someone who did not even ask for confidentiality. This can happen in particular circumstances when you have evidence such as photographs or video footage which the police need in order to prosecute a case. The most usual example of this is when you take pictures of a mass event such as a protest meeting or demonstration. The police may ask you to give them your pictures because they want to see who was in the crowd. Perhaps they want to prosecute some people but need your pictures to identify them.

You may seem no harm in handing over such pictures, but your action could have a bad effect on the whole of journalism within your society. If people believe that you could be acting for the police in any way, even after the event, they might try to stop you recording the event as a journalist. They might ban you from it or prevent you taking pictures, perhaps by force. Unlike the police, you will have very little protection against such actions. You will not be able to do your job properly. More important, they might ban or attack any journalist they see taking pictures. If they know that you have handed pictures over to the police before, they might distrust all journalists. Again, the profession as a whole will have been harmed.
Eavesdropping

A final word on eavesdropping - the obtaining of information without the consent or knowledge of the people communicating it.

Good journalist should always keep their eyes and ears open for story ideas, even if this occasionally means listening to someone else's conversation on the bus or in an office. If you do this by accident, people may complain, but they cannot usually prosecute you.

However, if you do it deliberately, such as opening private mail or bugging a telephone call, you will probably be breaking the law.

The problem arises most often in broadcast journalism, when reporters try to record someone without their knowledge. Journalism codes of ethics usually state that you must tell people who you are and who you work for before doing any interviews for broadcast. Further, in many countries the law itself states that you must ask the person being interviewed if you can use the recording on air.

If you believe that you may have obtained information by illegal means, you must be especially careful how you use it. A prosecution will not only mean trouble for you and your organisation - it will often distract people's attention from the main issue for which you got the information in the first place.

However, there are many occasions when a good journalist can get confidential information without the need to obtain someone's agreement or break the law.

One enterprising journalism student regularly used to search through waste paper bins next to the university's photocopying machines. He knew that secretaries often threw away poor quality copies of important documents they had photocopied. The photocopies were rubbish to the staff who threw them away, but for the journalism student they were the source of many good stories for the university newspaper.

TO SUMMARISE:

You must assess the reliability of all sources of information; this determines:

- what information you use
- how you present it to your readers or listeners

Avoid agreeing to keep information off the record unless there is no alternative

You must keep any promises you make to protect confidential sources