CLAUSE 14

# Confidential sources

**JOURNALISTS** must protect their confidential sources if the press is to safeguard the interests of society.

On-the-record sources are best when you write stories – the reader can assess their credibility, motivation and actual existence – but sometimes informants will only speak about secret or confidential matters if their anonymity is preserved. They may be whistle-blowers who are acting in the best interests of society but fear reprisals if their names are made public.

That is why there were protests when it was revealed that the police had used – perhaps abused – their powers under the Regulation of Investigatory Powers Act 2000 to obtain journalists' phone records to reveal their sources.

And the law recognises the importance of confidential sources. Clause 10 of the 1981 Contempt of Court Act says: "No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it be established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime."

Even so, courts do attempt to force journalists to reveal their sources. In one such case, trainee journalist Bill Goodwin of the Engineer magazine took a landmark case to the European Court of Human Rights. It ruled that an attempt to force him to reveal his source for a news story violated his right to freedom of expression and warned that forcing journalists to reveal their sources could seriously undermine the role of the press as public watchdog because of the chilling effect such disclosure would have on the free flow of information.

So journalists jealously guard their sources although, as we live increasingly in a surveillance society, protecting their identities goes much further than not revealing their names – particularly when mobile phones can be tracked and CCTV can record meetings.

At the same time, the obligation of confidence should not be used by journalists as a shield to defend inaccurate reporting. Wherever possible, efforts should be made to obtain on-the-record corroboration of a story from unnamed sources. Where a journalist is making use of material from confidential sources, they should have special regard for how they will demonstrate that they have

## WHAT THE CODE SAYS

**Journalists have a moral obligation to protect confidential sources of information.**

taken care over the accuracy of the coverage, should it be challenged. In most instances there are various means of doing so, for example by obtaining corroborative material to substantiate the allegations fully or partly, or by providing the subject with a suitable opportunity to comment on them.

There would be a particular responsibility on editors to give a reasonable opportunity of reply to complainants who felt they were victims of allegations from an unnamed source.

A columnist in The Times relied on a confidential source in an article that criticised the Parliamentary Assembly for the Organisation for Security and Co-Operation in Europe (OSCE PA). The newspaper was found to have breached Clause 1 (Accuracy).

IPSO said the newspaper was entitled to make use of information provided by a confidential source. However, it had relied on this source without taking additional steps to investigate or corroborate the information on which the article's characterisation was based, which might include obtaining additional on-the-record information or contacting the complainant to obtain his comment before publication.

As the newspaper considered itself prevented by Clause 14 from disclosing the information provided by its source, it was unable to demonstrate that it had taken care not to publish inaccurate information.

Solash v The Times:
www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04036-15

There are very few complaints under Clause 14 – and often breaches are the result of carelessness or inexperience.

The PCC laid down useful guidelines for reporting "off the record" information. It said it would generally distinguish between cases involving people who regularly deal with the media and cases involving people with little or no knowledge of how the press operates.

The PCC said: "When an interviewee has a lot of experience, he or she will probably be well aware that they should make clear at the beginning of an interview that certain information is to remain private – or, if published, is not to be attributed to them. If their instructions are ignored there may be grounds for making a complaint either under Clause 3 (Privacy) or Clause 14 (Confidential sources) of the Code of Practice.

"For those unused to dealing with the press, there may be grounds for complaint if a journalist has deliberately enticed (perhaps by false assurances of confidentiality) information from someone who does not understand that the details – which are private in nature – may actually be published."

And the PCC warned: "People should be aware that if they speak to a journalist and do not categorically state that the conversion is 'off the record', it may well be regarded as 'on the record'."

A professor of ocean physics complained to IPSO when The Times ran a story headlined: "Climate scientist fears murder by hitman." The article was based on an interview with the complainant, in which he expressed concern that

several scientists researching the impact of global warming on Arctic ice might have been assassinated.

It reported that the complainant said there were only four people in Britain, including himself, who were "really leaders" on ice thickness in the Arctic, and three of these individuals had died in 2013. It quoted the professor as saying: "It seems to me to be too bizarre to be accidental but each individual incident looks accidental, which may mean it's been made to look accidental."

The complainant said the article misrepresented comments he had made to the journalist, and his conversation with the reporter was "off the record" and not intended for publication.

The newspaper did not accept a breach of the Code. It provided a recording of the journalist's conversation with the complainant, in which the complainant made all the statements attributed to him in the article. The newspaper denied that any confidentiality agreement was in place in relation to the interview. It said the complainant was practised at dealing with the media, spoke freely and at length to the reporter and had introduced to the conversation his concern that fellow scientists might have been assassinated.

It noted that at one point the complainant requested that the conversation go "off the record", making clear that he was aware the conversation prior to that point was "on the record" and intended for publication.

The newspaper had not published material provided by the complainant during the "off the record" part of the conversation. At the end of this section, the journalist had told the complainant that he was "switching back to 'on the record'".

*Even if a confidential source is not named, there is a risk that details in the story might reveal their identity.*

IPSO rejected the complaint. It said Clause 14 imposes a moral obligation on journalists to protect the identity of sources who provide information on a confidential basis. In this instance, the complainant had not requested during the interview that he be treated as a confidential source, nor had he made reference to any such request in the course of his complaint.

Rather, his concern related to the question of whether information he provided in the course of an interview with a journalist was intended for publication. The complainant had requested that one section of his interview, from which no details were published, should take place "off the record". This demonstrated his awareness that the rest of the conversation had taken place "on the record", and that any comments he had made might be published.

Wadhams v The Times:
www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04762-15

A woman who was concerned about conditions in her employer's shop during the pandemic complained to IPSO that a newspaper had revealed her identity to her employer. The woman was later dismissed.

The publication accepted that an email had been sent to the complainant's employer, but it was unable to provide a copy for consideration by IPSO to demonstrate that it had not identified the complainant because it had been deleted in error.

IPSO found that the publication had been unable to establish that it protected the complainant as a confidential source and there was a breach of Clause 14.

It expressed its serious concern over the breach of Clause 14, which represented a breach of a moral obligation and had resulted in serious consequences for the complainant.

A woman v the Halifax Courier
www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=05823-20

If a publication agrees that someone will be treated as a confidential source, it must ensure that all staff working on the story are aware of the arrangement.

A man who complained about noise from a dairy was treated as a confidential source by a reporter – but the journalist failed to point this out to another reporter who took the story over to do a follow-up. The man was named when the story was published.

The newspaper said the reporter who agreed that the complainant would not be named was on leave at the time the article was published and had not told the new reporter about the confidentiality agreement.

IPSO said the incident exposed shortcomings in the newspaper's systems for handling staff absences, which had led to a significant breach of the Code.

A man v Central Fife Times & Advertiser
www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=10508-20

Even if a confidential source is not named, there is a risk that details in the story might reveal their identity.

A man talked to a newspaper about the proposed closure of Burnley's mortuary on condition that he was not identified.However, the article referred to him as "a worker at Burnley's mortuary". Because he was one of only two people who worked at the mortuary – the other was his boss – his employers were able to identify him as the source of the information. He was subsequently dismissed on grounds of gross misconduct for making his remarks to the newspaper.

The PCC said the newspaper had gone some way to protecting the complainant as a source of information, and his identification appeared to have been unintentional. But given that the need for confidentiality had been agreed between the parties, the onus was on the newspaper to establish whether the form of words it proposed to use would have effectively identified the complainant.

A man v Lancashire Telegraph:
www.pcc.org.uk/cases/adjudicated.html?article=NDgyNQ