



INFORMATION  
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# CONFIDENTIALITY AND IT

SAMPLE CONTENT

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# 1. INTRODUCTION

Confidentiality is a developing topic at law and in business practice, and is extremely important in an IT context. This guide will discuss the law relating to confidential information and IT, and provide advice on how to protect confidential information effectively under English law.

## **IT AND INFORMATION**

The volume of information available to businesses, government and other organisations is immense and constantly growing. Technology has transformed the collection, collation, storage, dissemination and use of information. It is very easy to access, store, retrieve, copy, analyse, alter and re-use information. Some of this information is confidential.

## **CONCEPT OF 'CONFIDENTIALITY'**

There are many kinds of information which are important for a business to keep confidential at any time or at particular times, such as financial information, information in connection with a joint business or marketing venture, technical details, for example when a close evaluation of a computer system or any other intellectual property material is being undertaken, or customer details.

The law is one way of protecting confidential information, but must be used along with technical and physical methods.

# 8. THE DEVELOPING LAW OF PRIVACY AND THE MEDIA

A right to privacy of information has now been established in principle, based on development of the law on breach of confidence in relation to human rights legislation<sup>18</sup>. Cases often concern celebrities and the media.

## **RIGHT TO RESPECT FOR PRIVATE LIFE OR RIGHT TO FREEDOM OF EXPRESSION**

The UK was the first country to ratify the European Convention on Human Rights, back in 1951. The Human Rights Act 1998 makes the Convention rights directly enforceable in the UK. Articles 8 and 10 of the Convention are relevant to privacy issues. Article 8 states that everyone has a right to respect for their private and family life, their home and correspondence. Article 10 specifies the right to freedom of expression. Both rights are subject to certain limitations, such as for national security or the prevention of crime.

The first test is whether the claimant has a reasonable expectation of privacy in respect of the disclosed information under Article 8. If there is, a balancing exercise is carried out between the claimant's right to respect for a private life under Article 8, and the defendant's right of freedom of speech and the public interest, under Article 10. The decision is taken according to the facts, case by case.

Two examples are discussed here to demonstrate the tests. The first case illustrates the interaction of breach of confidence and human rights legislation in the circumstances of an employment relationship. The second concerns whether a blogger had the right to remain anonymous when a journalist discovered his identity.

## **CONFIDENTIALITY, EMPLOYMENT RELATIONSHIP AND THE PUBLIC INTEREST**

A case was brought by HRH Prince Charles, Prince of Wales, claiming breach of confidence and copyright against Associated Newspapers<sup>19</sup>. The Prince had kept a handwritten journal of impressions and opinions in the course of a visit to Hong Kong on the occasion of the formal handover to the Republic of China in 1993. He circulated it to a number of people with a signed letter marked 'personal and confidential'.

One of his employees breached the duty of confidentiality in her employment contract, and as a result substantial extracts from the journal were obtained and published by a newspaper, together with editorial comment.

The events described were in the public domain, but the comments made about them were not, and the author had anticipated that they would be kept private.

The court held that the confidential nature of the information, the related confidential relationship, and the claimant's right to respect for his private life under Article 8, outweighed the public interest in disclosure and the right to freedom of expression under Article 10. The public interest lay both in keeping private journals and communications in private offices confidential, and in employees complying with obligations of confidentiality.

## **THE ANONYMOUS BLOGGER**

Social networking is an increasingly common activity, and many people openly share information about themselves and happily air their opinions on Facebook, MySpace and other social networking sites, potentially to hundreds of millions of readers.

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<sup>18</sup> Campbell v Mirror Group Newspapers Ltd [2004] UKHL 22 [2004] 2 All ER 995

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<sup>19</sup> HRH Prince of Wales v Associated Newspapers Ltd [2006] EWCA Civ 1776