



# Selling Your Secrets

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*in brief*

<i>Inside</i>	
What Was That Learn From New South Wales	
Privacy Protection and the Public Interest	3
Using Computers to Steal Information	3
Common Law and the Unlawful Release of Information	
Private Sector Responses to Privacy Issues	
Community Concerns	5
A Union View	5
An Academic View	6
The CJC Experience	6
What You Can Do	6

## Who's Selling What?

**H**ow secure is the confidential information that public sector agencies have about you?

Can your secrets be bought and sold?

There has been increasing discussion about the level of security of confidential and sensitive information collected by public sector organisations. A 1992 report by the Independent Commission Against Corruption in New South Wales demonstrated that there was a conflict between the interests of maintaining privacy of personal information held by public sector agencies and the claim made by some commercial organisations that they should have access to some of that information for commercial purposes.

ICAC investigations revealed that there was a massive corrupt trade in information involving public servants, members of the legal profession, police officers, private investigators and members of the banking and insurance industries. The key players were

- *public officials* who sell confidential material to
- *agents* who act as brokers between the sellers and
- *buyers*, such as financial institutions and other enterprises, who provide a ready market.

The Commissioner of the ICAC, Mr Ian Temby QC, has said:

There is absolutely no reason to imagine that the problems revealed by the Commission's report are limited to the state of New South Wales. Indeed there is every reason to imagine that the position here is more or less replicated in other parts of Australia and indeed in similar societies overseas.

In September 1993 the Criminal Justice Commission conducted a seminar in Brisbane called *Selling Your Secrets* to bring this issue to public notice in Queensland. The CJC sees this as a corruption rather than a privacy issue, and we have a responsibility for raising debate on the potential for public sector corruption. We also have a role in pointing out some of the implications for corruption control.

One matter of concern expressed by speakers at the conference is the cultural attitude which affirms that, while it is wrong for public sector officials to sell – and for commercial interests to buy – confidential information, it is permissible if the information is used against criminals and absconding debtors.

Other people believe that, while it is wrong to accept payment for providing confidential information, it is quite acceptable for them to give information to a 'mate' if that information is to be used to catch a crook.

*The issues that follow were raised by speakers at the conference. They do not necessarily represent the views of the CJC.*

## What We Can Learn From New South Wales

In May 1990 NSW police found a substantial amount of personal information on individuals, including their criminal history and driving licence details, at the premises of a private investigator (PI). This PI bought the information from a police Senior Constable who had removed it without authority from police computer files. The PI sold the information to clients, including banks and solicitors. He also used it to gain a drivers licence in the name of a New Zealander who had left Australia.

Under examination, the PI revealed a network of corruption that led ICAC to uncover a multi-million dollar trade in confidential information involving public officials, private investigators, and some of the nation's leading banks. The ICAC named 155 persons and organisations guilty of corruption and a further 101 whose conduct may have led to corrupt conduct. If information was needed, apparently it was just a matter of having the right contacts and enough money.

The ICAC argued that certain factors in NSW actually contributed to the illicit trade:

- the lack of effective laws against bribery and official insubordination
- no set policy among departments and agencies for the handling of personal information
- inadequate security measures to protect confidential information held electronically
- little commitment to improving public sector ethical standards.

Ian Temby argued that the danger goes far beyond the compromising of secrets. Public officials are corrupted, revenue is lost, the integrity of public records is sacrificed, and confidence in our public officials is diminished. The way to combat the trade is by

- putting in place effective and continuing policies and educational programs in our public authorities
- enforcing those policies with penalties for those who release or deal in such information.

## Privacy Protection and the Public Interest

In Queensland, according to Barry Smith, Director-General of the Department of Justice & Attorney General, the distinction between lawful or unlawful release of information is vague.

Public servants can be disciplined if they use official information to gain an advantage for themselves or someone else. However, the Electoral and Administrative Review Committee said in 1992 that threats of discipline or the imposition of rules of conduct would not be enough to guarantee an ethical public sector.

Almost everything we do creates information that can be used to lessen our privacy if it falls into the wrong hands. When Government tries to protect our privacy through legislation, it is often criticised for slowing business development and restricting personal freedom. There is a fine line between confidential information and that to which the community believes it is entitled. People disagree about whether privacy protections should be sacrificed to deal with criminals and other wrong-doers.

We were told that some steps are being taken to address these matters in Queensland. Government departments are researching privacy issues and will recommend legislative controls on the handling of confidential information.

There is still, however, a pressing need to clearly distinguish between information that is lawfully available and that which is not.

Mr Smith noted that Cabinet has agreed in principle that Queensland should participate in a Commonwealth network system that will give law enforcement officers access to a national data base, provided that stringent privacy protections are set in place. The Transport Department is setting up a new database which will make it possible to trace users who access information stored on its system.

However, people disagree about what information needs to be protected as opposed to that which should be released in the public interest. Some say that investigating serious crime is more important than protecting the privacy of suspects. They argue that we should be protecting those who disclose information crucial to the cases against those accused of wrong-doing.

what privacy means to the community, and define how confidential information can be protected.

The future will bring exponential growth in the collection of information by government and business organisations. Collectors will be tempted to draw ever longer data shadows behind us. This may make privacy one of the major civil rights issues in the 21st Century.

### **Whistleblowers and Information Leaks – a Union View**

While many leaks are motivated by profit and politics, others, according to the Queensland Public Services Federation, are the result of people who, unable to make themselves heard within an organisation, decide to go public.

While such leaks may justifiably lead to disciplinary action, organisations that are regularly subjected to leaks should seriously consider why this might be happening:

- is debate on policy being stifled?
- is discussion of policy at appropriate levels encouraged?
- are officers who dissent valued for their views?

### **Confidentiality and Freedom of Information – an Academic View**

Chris Gilbert, a Professor of Commercial Law at Queensland University of Technology, in a paper entitled “Government Confidentiality and Freedom of Information” indicated that there have been three phases in the development of freedom of information:

- *public interest paternalism* in which government was left to decide what and when information could be released in the public interest
- *governmental authoritarianism* which allowed governments to raise their interests over all others by equating them with the ‘public interest’ and then forcing their officials to comply with secrecy provisions

- *liberal democratic* in which freedom of information and privacy legislation are now being set into place.

He pointed out that the prevailing attitude in law seems to be that the public interest is best served by open and accountable government. This underlies the principles behind the *Freedom of Information Act*.

There are still many categories of exemption available to government in the Act. Those most relevant include matters

- affecting personal affairs (s. 44)
- relating to trade secrets, business affairs and research (s. 45)
- communicated to the government in confidence (s. 46)
- covered by secrecy provisions in enactments (s. 48).

The latter exemption allows information covered by certain secrecy clauses covering government employees to be withheld from the public, but only until August 1994, when the section expires.

In any case the exemption clauses in the Act do not *compel* the government to withhold information, though, in practice, they usually do.

Despite these exemption categories, many officials still consider FOI legislation to be dangerously radical and subversive. More and more agencies and statutory authorities are seeking to be added to the list of exempted bodies.

Increasingly, Professor Gilbert noted, the law is recognising that governments hold information in trust for the public. Disclosing information will more likely be in the public interest than concealing it. Sadly, FOI legislation seems to be too much of a reform for many agencies and authorities, and education toward access and openness is apparently going to take much longer than originally hoped.

Yet, says Professor Gilbert, some form of public access and government accountability is necessary, especially given the death of a neutral and apolitical public service. As senior public servants come under increased pressure to ‘tow the line’, it is crucial that the public have some means of scrutinising the work of government. This, in Professor Gilbert’s view, is best guaranteed through FOI laws.

## Information breaches – the CJC Experience

Over the past four years, the CJC has received a number of complaints alleging that public sector employees have misused confidential information.

Here are some examples:

- a former employee of a services club claimed that he lost his job because a police officer, also a club member, released details of the complainant's criminal history to the management.
- an unsuccessful candidate for a public sector position alleged that the successful candidate obtained notice of questions to be used in the interview from a friend who was on the selection panel.
- a carpet contractor said a competitor gained an advantage in tendering for work with a local government authority by receiving advice from a Council employee about the prices submitted by other tenderers.
- a complainant alleged that an employee leaked confidential memos to the press detailing management problems and staff unrest within a public sector department.

## What You Can Do About Unlawful Release of Confidential Information

All serious matters that involve an unlawful release of confidential information held by public sector organisations should be reported to the CJC.

While the matter should be of substance, proof is not necessary.

You may not be certain that what you have witnessed is actually corrupt conduct. If so, you should still give us a call. Our complaints officers will be happy to advise you.

If you report to us on a matter that may help us carry out our functions, you are protected by law from prosecution for breaching workplace restrictions. This applies to any duty you might have to maintain confidentiality or any other organisational restriction.

## How to Report

Call the CJC's Complaints Unit, or send us a letter or a fax.

If you work in the public sector, you can contact us directly or advise your Director-General or Principal Officer. They, in turn, are legally required to report the matter to us.

Complaints can be made anonymously, but we prefer the full details since anonymous complaints are harder to investigate.

Here are the details:

Criminal Justice Commission  
557 Coronation Drive  
Toowong

PO Box 137  
Albert Street  
Brisbane 4002

Telephone: (07) 360 6060  
Toll Free: 008 06 1611  
Facsimile: (07) 360 6333

## When to Report

Report the matter as soon as possible.

If you think the matter is serious and urgent, telephone us at any time. Our telephones are staffed 24 hours.

## What Details Should You Include?

- name(s) and address(es) of person(s) involved
- full details of events, dates and places
- names and addresses of others people who may have witnessed or have information on the corrupt conduct.