

Final Report

incorporating consultation draft, new sections of the Editorial Policies and Guidance Note:

Sources and Conflicts:

Review of the adequacy of ABC Editorial Policies relating to source protection and to the reporting by journalists of events in which they are participants

July 2008



Editorial Policies

The Editorial Policies of the ABC are its leading standards and a day-to-day reference for makers of ABC content. The Editorial Policies -

- give practical shape to statutory obligations in the ABC Act;
- set out the ABC's self-regulatory standards and how to enforce them; and
- describe and explain to staff and the community the editorial and ethical principles fundamental to the ABC.

The role of Director Editorial Policies was established in 2007 and comprises three main functions: to advise, verify and review.

The review function principally involves a focus on the text of the Editorial Policies to ensure the standards stay up to date in light of technological and other change. Instead of periodic reviews every few years, the Editorial Policies are to be kept under constant review, with the Director identifying areas that may require amendment, consulting and making recommendations to the Managing Director and Board.

Acknowledgements

The Director Editorial Policies acknowledges Michelle Fisher, Manager Research, and Jessica List, Executive Assistant, for their contributions to the work underlying this document. Thanks also to the many people inside and outside the ABC, in Australia and elsewhere, who read and commented on aspects of the Consultation Report, drafts of the new sections of the Editorial Policies and the draft Guidance Note.

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For information about the report, please contact: Director Editorial Policies ABC Southbank Centre GPO Box 9994 Melbourne VIC 3001 Phone: +61 3 9626 1631

Email: editorial.policies@abc.net.au

Final Report Sources and Conflicts

July 2008

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I. Introduction to Final Report

The consultation draft of this report was made public by the ABC Managing Director in November 2007. Responses were sought to the amendments it proposed for the ABC Editorial Policies.

The 'Costello dinner', which gave rise to the report, raised two distinct ethical issues: journalists' dealings with sources; and the reporting by journalists of newsworthy events in which they personally become participants.

The proposed new section of the Editorial Policies addressing the journalist-as-participant issue was well received during the consultation and has been adopted.

The proposed new section of the Editorial Policies on dealing with sources drew the most response, some approving, some doubting, some apparently based on misunderstandings of what had been proposed, and some suggesting changes or additions.

This final report includes a new part 'Responses' to address directly the main points raised during the consultation.

As always in this kind of work, the process of discussing professional practices and the standards that govern them had useful by-products. One was increased awareness. Any group benefits from this, but especially media professionals because deadlines drive them ever into action without much time for reflection.

As always, the recommended amendments to the ABC Editorial Policies were improved by the consultation process.

New sections of the Editorial Policies were adopted by the ABC Board in May and took effect on 1 July 2008. They appear in this Final Report, along with a Guidance Note and further references that together provide a resource for those interested in deepening their knowledge of this complex aspect of media practice, vital as it is to the healthy functioning of a free society and to the maintenance of trust.

PAUL CHADWICK
Director Editorial Policies

July 2008

II. Text of Consultation Report – Sources and conflicts (October 2007)

A. Introduction

In June 2005 Australia's federal Treasurer dined with three journalists, one from the ABC. In August 2007 the media reports of the dinner resulted in the ABC Managing Director initiating this review.

I was asked to examine the adequacy of the ABC's standards for source protection and for handling situations in which a journalist becomes a participant in newsworthy events rather than purely an observer.

At the outset, it is useful to list the core questions in each context.

1. Sources issue

- Is a promise to keep confidential the identity of a source absolute?
- Or are there circumstances in which truth-telling overrides promise-keeping?
- How can this clash of basic values be minimised in practice?
- When a clash is unavoidable, how ought journalists make and explain their decisions?

These are some of the most difficult questions in media ethics. They have created recurring tensions between journalism and the law for many decades in many countries.¹ The relevant literature is vast.²

A recent excerpt from that literature usefully condenses many of the issues relevant to this review. The former editor-in-chief of Time Inc., also a former managing editor of *The Wall Street Journal*, Norman Pearlstine, a lawyer as well as a journalist, was spurred to make a book-length study of the source-protection issue by his involvement in events that led to the criminal conviction of Scooter Libby, chief of staff to the US Vice President, Dick Cheney. This is part of Pearlstine's conclusion –

The agreement with a confidential source is a contract between the reporter, the reporter's employer, and the source. The reporter should protect the source, but the source owns the confidentiality. The source can demand confidential-source status, but the reporter should rarely offer confidentiality to a source. It is, after all, in the reporter's interest to have the source on the record. Reporters must explain that they cannot promise more than the law allows, and they shouldn't make promises that are against the public interest. Journalists aren't above the law, and we have to stop acting as though we are.

That said, there will inevitably be exceptions when reporters and their publications decide they must resist demands after exhausting every avenue of litigation. The consequences of such resistance are so great that journalists must do far more to resist using confidential sources.

Deciding what merits the grant of confidentiality is, again, a balancing act. The source who seeks confidentiality should typically be risking livelihood, life, or reputation, and there should be no other way for the reporter to get the information than from the source. The information the source wishes to impart should be vital to the public interest. *The Washington Post's* stories about CIA detention centers is one example where I

For two examples, oceans and eras apart, see 'No Information Obtained', New York Times, 30 January 1885, page 5, and R. v. McManus and Harvey [2007] VCC 619, County Court of Victoria. Selected references comprise Appendix 1 to this report.

For two recent studies usefully illuminating most aspects of this issue, see: Norman Pearlstine, *Off the Record: the press, the government and the war over anonymous sources* (Farrar, Straus and Giroux, NY 2007); and Lori Robertson, 'Kind of confidential' *American Journalism Review* (June-July 2007) drawing on a wide range of views from US media organisations. Another analysis, briefer and more pungently expressed, is by a former long-serving editor of the *Guardian* (UK), Peter Preston, 'How not to defend your source', *British Journalism Review* (2005) 16:3 pages 47-52. Among academic analyses, Lili Levi's 'Dangerous Liaisons: seduction and betrayal in confidential press-source relations' *Rutgers Law Review* (1991) 43, pp 609-732, has aged well. In Australia, Mark Pearson addresses the issue usefully in Part 4 of *The Journalist's Guide to Media Law: dealing with legal and ethical issues* (Allen & Unwin 2004).

think it would be appropriate to defy contempt findings to protect sources and their testimony. Confidential-source status should never be granted to government officials who are trying to spin a story, especially if they are breaking the law when they do so.

Individuals can engage in civil disobedience, but if the press defies the courts whenever we litigate and lose, then journalists are in fact asserting an absolute privilege for their sources and themselves. It is more complicated for publicly held corporations. But there will no doubt be that rare case where they will conclude that defiance of a court order is their only option.

There is an inevitable tension between the journalism and the law.³

Put more broadly, there is an inevitable tension between promise-keeping and truth-telling.

Pearlstine is dealing with the common confidential-source case, the one in which the journalists want to uphold their promise to maintain the confidentiality of a source even where the law may have ruled that the identity of the source and his or her testimony are necessary in the interests of justice. Pearlstine makes clear how serious is a decision by journalists, after due process, to substitute their judgement for the courts' judgement and defy a lawful order. And he acknowledges that in rare cases that will be their only option.

In another rare category of confidential-source cases we find journalists arguing that their obligation to the truth justifies them in breaching an agreement and disclosing the identity of a source in connection with particular information. Comparatively few media entities' codes expressly mention this discomforting category. The Ethics Guidelines of the *Los Angeles Times* come closer than most –

Promises to a source must be kept except under the most extraordinary circumstances. If a source, acting in bad faith, were to succeed in using the newspaper to spread misinformation, we would consider our promise of anonymity no longer binding. That said, we do not 'burn' sources.⁴

The need for clear, consistent guidance and due care in making binding promises of confidentiality, in deciding whether or not to break them, and in explaining those decisions, is beyond argument. The question is what the guidance should say, and how staff of media organisations ought to go about making decisions by reference to that guidance.

2. Conflict issue

 How might journalists and their supervisors assess when the journalist is so much a participant in newsworthy events that independence, actual or perceived, requires that the journalist stand aside from reporting the events?

Media organisations' codes do not usually address the specific category of conflict raised by the circumstances that prompted this review, the Costello dinner and its aftermath.

Most codes deal with potential conflicts involving journalists' personal outside interests, especially financial interests and the involvements that a journalist or his or her family members might have in entities such as political parties, clubs, associations or religious communities about which the journalist may be called on to report. The journalist may stand aside in such circumstances, although disclosure to the audience of the journalist's interest is commonly regarded as sufficient.

In the journalist-as-participant-in-events category, disclosure is of limited use. The journalist's involvement in such situations may be well known, and it may heighten the perception that independence is in question. Typical phrases from the language encapsulate the issue. We sometimes say a person is 'too close', 'can't stand back from it', 'hasn't got the distance', or has 'lost perspective'. In particular circumstances, responses may be all too human, characterised by the urgency, competitiveness and group loyalty so typical of journalism. But precisely because of those understandable instincts, self-regulatory standards need to give adequate guidance to journalists - and especially to their supervisors – about how to deal with these sorts of circumstances if independence, actual and perceived, is to be preserved.

³ Off the Record, op cit at pages 252-53.

Content section, sub-heading 'Sources' (July 2005 edition).

The issues in this review can bring into play all four of the key values underpinning the ABC's Editorial Policies – honesty, fairness, independence and respect.⁵

I have concluded that the 2007 Editorial Policies are inadequate on both the sources issue and the conflict issue.

This report begins by illustrating the importance of adequate guidance in relation to source protection. For brevity's sake, the vital interests at stake are compressed and all linked to the central notion of trust.

The report then explains the scope of what I was asked to examine, which was limited.

The next section summarises the events that prompted the review. Crucial facts are in dispute among the participants. It was not necessary – nor was there power - to investigate or make findings about those matters of disputed fact.

The report then outlines existing ABC policies and their inadequacies and recommends improvements.

Reasonable people can disagree on ethical issues, and some have been willing to go to prison or otherwise be punished under law for their beliefs about source protection.

The legitimacy of any journalistic entity's standards on source protection depends in part on the rigor, good faith and willingness to explain themselves of those who apply the standards case by case. Transparency is vital to accountability, on which credibility and trust also depend in part. Media often make this point when attempting to make governments or other powerful institutions more transparent. The journalist-source relationship is necessarily opaque. This puts a greater onus on the media to have adequate standards, apply them rigorously and explain openly their decisions in as much detail as circumstances permit.

Journalist-source relationships are also matters of personal trust and confidence. Any media organisation must try to build and administer its standards in consultation with its journalists. The media organisation looks to the journalists to cultivate the relationships that reap reliable information for disclosure. The journalists look to the media organisation to disseminate the information and to help protect confidential sources, particularly from legal action aimed at identifying them.

Accordingly, I recommend that the proposals for amendments to the Editorial Policies made in this report be subject to thorough consultation within the ABC, especially with News and with Legal, and be made public, before the Managing Director formally seeks the Board's endorsement of amendments.

This recommendation has two other practical aims. Exposing the proposals to as much informed scrutiny and comment as possible, both in relation to the underlying policy and the drafting, should lead to a better result. Second, consultation tends to heighten awareness and deepen reflection about difficult ethical issues. On the sources issue, this should also open up for audiences more details about practices that affect the information they receive from media. And it stimulates discussion among the professionals – journalists, lawyers and perhaps even regular sources. It is usually discussion best undertaken at some distance from the specifics of a case, the crush of deadlines and the heat of a flaring controversy. Ethical decision-making takes practice, and one form of practice is the debates that occur when drafting standards. §

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Editorial Policies section 2.1.

This is what the Brennan Committee, on which I served, had in mind when it proposed that the leading Australian journalism code of ethics contain reference to the need for journalists continuously to educate themselves about ethics: Report of the Ethics Review Committee, Media Entertainment and Arts Alliance (Australian Journalists' Association Section) 1995, published in paperback as Ethics in Journalism (Melbourne University Press,1997) page 73. For the Committee's discussion of source protection and recommended clause see pages 55-73.

B. Scope of this review

On 23 August 2007 the Managing Director asked me to review whether the Editorial Policies provide adequate guidance to ABC staff in the following areas –

- 1. Off-the-record and background conversations, and balancing the commitment to confidentiality against the public interest in disclosure of information.
- 2. Appropriate practice when an ABC staff member becomes a participant in a story, rather than purely an observer.

The review did not encompass investigations of specific complaints relating to the events that gave rise to the review. Nor was I asked to investigate and make findings about disputed facts and recollections among the participants.

C. Summary of events prompting this review

On 2 June 2005, the Federal Treasurer Peter Costello dined at a Canberra restaurant with one of his advisers, David Alexander, and three journalists experienced in reporting politics.

One of the journalists was the ABC staff member Michael Brissenden, political editor of the television current affairs program *The 7.30 Report*. The other journalists were Paul Daley of *The Bulletin* magazine and Tony Wright, then of *The Bulletin* but with *The Age* newspaper at the time of the events that prompted this review.

Typically, there are three bases on which a politician and a journalist converse -

- On the record, meaning both parties agree that the information imparted to the journalist may be disclosed and attributed to the source by name.
- **On background**, meaning both parties agree that the information imparted to the journalist may be disclosed but not attributed to the source.
- Off the record, meaning both parties agree that the information imparted is not to be disclosed, with or without attribution.

These terms have no standard definitions. They mean different things to different people, including seasoned sources and experienced journalists.

The basis of the Treasurer's conversation that night at dinner with the journalists is disputed, as are the participants' recollections of the conversation.

Mr Costello has stated publicly that the conversation was off the record. His adviser, Mr Alexander, has supported him. Mr Brissenden understood the conversation was on background. From their published writings, it appears that Mr Daley and Mr Wright had the same understanding as Mr Brissenden.

The day after the dinner, after discussion with Mr Alexander, the journalists did not disclose any of the information, attributed or unattributed.

There are degrees of description of the source, designed to protect identity but give the audience some sense of the source's position in relation to the information. Examples include 'government source', 'source close to the negotiations', 'party room source', 'one shadow minister', 'senior official'. A practice that several media ethics codes note and disapprove is a tendency among journalists to write of 'sources' plural when there is actually only one source, or to cite an unnamed source and in the same report quote the source, by name, as having declined to comment (presumably to throw any witch-hunters off the scent). The term 'on background' has variations. In the US, 'deep background' tends to mean that the journalist may not use any attribution, and must simply assert on the journalist's own authority the information provided by the source. Thus, 'The ACME Network understands...' or 'I believe...'. Sometimes, information will be stated with no preliminary at all, as in 'The Minister told the PM at their meeting that...'

I have used the meanings given to these terms in the report of the Brennan Committee (Ethics in Journalism op cit at 64). References in the Appendix provide further details of the variety of terminology in use.

The available material does not allow me to make a finding about whether all the parties to that arrangement had the same understanding of the duration of the new agreement not to disclose the information. To one or more of them, it may have meant 'not now' or 'not too soon' or 'not until after some fixed time in the future' or 'not ever'.

For the purposes of this review, it is sufficient that it is common ground that the information was held by the journalists on no lesser terms than on background.

More than a year after the dinner, Mr Daley used information in this way, that is, on background. In two pieces for *The Bulletin*, Mr Daley attributed information indirectly to Mr Costello but made no mention of the dinner.⁹

On 14 August 2007, when Mr Costello was asked in public about Mr Daley's 2 August 2007 report, he replied in a way that resulted in the three senior decision-makers at *The 7.30 Report* deciding that Mr Brissenden would disclose on the program that evening information sourced from the dinner conversation and attributed directly to Mr Costello.

That is, *The 7.30 Report* broke an agreement. The program understood the information had been obtained on background but disclosed and directly attributed it to the source.

I asked the three senior decision-makers, Mr Brissenden, Kerry O'Brien, the program's presenter, and Ben Hawke, the executive producer, whether they had referred to the ABC Editorial Policies in making their decisions about the source issue. They said they had relied on their experience.

They were entitled under the current ABC policy of upward referral (section 4.1) to decide the matter themselves and to take responsibility for that decision (section 4.1.2). It was not mandatory under the current upward referral policy for them to consult for decision more senior News Division management, or for News to refer it to the Managing Director as editor-in-chief.

Section 4.1.4 states that if content is controversial or likely to have an extraordinary impact, the most appropriate senior manager should be notified in advance, even where specific editorial guidance is not being sought. More senior staff may be notified if appropriate. Soon before *The 7.30 Report* went to air on 14 August, the program team notified senior management of the News Division by phone of the decision. This was notification only. *The 7.30 Report* team were not referring the matter upwards for guidance or for decision, and were not understood at the time by News Division senior management to be doing so.

In discussion with me, the three senior decision-makers at *The 7.30 Report* made it clear that they accept responsibility for the decisions they together took.

Whether the information reported by Mr Daley, Mr Brissenden and Mr Wright was accurate is not an issue for this review to determine. Nor is the reliability of any notes that the journalists made. I am not asked to find in this review whether the decisions of *The 7.30 Report* team were right or wrong, but rather whether the guidance in the ABC's Editorial Policies is adequate for the purposes of making such decisions.

I enquired about the process by which *The 7.30 Report* team came to their decisions and the usefulness of the Editorial Policies in that process. Had *The 7.30 Report* team consulted the Editorial Policies they would have found little to assist them in dealing with source protection or with the relatively unusual category of conflict of interest that arose in this case. The specific inadequacies of the relevant sections of the Editorial Policies are discussed later in this report.

The contents of Mr Brissenden's 14 August report, and subsequent reports by Mr Daley and Mr Wright, were prominent in the news, in part because the information attributed to Mr Costello was of political significance, and in part because it was a case of journalists attributing information directly to a source by name when the source had conversed with them, as they understood it, on background.

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See 'Costello's delayed reaction', The Bulletin, 15 August 2007, referring to an earlier article by Paul Daley in The Bulletin 18 July 2006. See also pieces by Mr Daley dated 6 February 2007 and 2 August 2007.

Note that Mr Costello said publicly that he regarded the conversation as having been off the record, and that his adviser Mr Alexander has supported him. Notwithstanding that this dispute remains unresolved, it puts the status of the conversation at no less than 'on background'.

The case was also rare in the sense that most cases in which the journalist-source relationship is prominently and controversially in issue involve journalists attempting to protect the identity of a source, usually from being disclosed in court proceedings, official inquiries or during investigations by investigative agencies.

Of significance to this review is the very fact of disputed understandings and recollections, with serious consequences, among five experienced professional participants in a transaction about information and its uses. This type of transaction is routinely made among politicians and journalists.

Uncertainty and confusion and dispute are not uncommon in cases in the literature about journalist-source relationships when, for whatever reason, important consequences flow from the disclosure. Yet it is at precisely these moments that the precise terms of agreements matter most. The cases generally, not just the recent Costello dinner case in Australia, show the need for written guidance and mandatory consultation in media organisations about terminology and about negotiating clear agreements. Given the difficulties that experienced players can encounter, it would seem that the less experienced – journalists and sources – would plainly benefit.

Following the initial broadcast on 14 August, Mr Costello noted in public comments that the program had got the date of the 2005 dinner wrong by three months, referred to the discussion as having been in his view off the record, and raised the issue of journalists' ethics.

Mr Costello declined to appear on the *The 7.30 Report* on 15 August. In that evening's program, the error about the date of the dinner was twice acknowledged but the correct date was not broadcast.

Mr Brissenden again reported on the events of the day and of the dinner and its aftermath, events in which he was a participant.

Mr Brissenden, Mr O'Brien and Mr Hawke told me that they had considered whether Mr Brissenden should continue to report the story on the second evening, 15 August. They had decided that Mr Brissenden was the best-equipped person to report the story. They had not made express reference to the ABC Editorial Policies in coming to the decision. If they had, they would not have found much to guide them in relation to this kind of conflict issue.

On both counts – dealing with sources and assessing the particular type of conflict involved - this case demonstrates that the policies are inadequate.

It also points to a need for the ABC to give greater emphasis to improving its capacity for structured ethical decision-making according to clear standards expressed in language that assists staff to make decisions against the inevitable deadline pressure of media work, and to be able to explain those decisions afterwards by reference to the standards prescribed and the structure provided.

D. Source protection issue

1. Why adequate standards matter

Trust is in play in complex ways in the source protection context.

The trust risks – or, put another way, the investments of trust - listed below illustrate briefly what is at stake in: journalists' day-to-day interactions with sources; decision-making by journalists about disclosure or continued protection of sources; and the approach of the courts and other bodies with enforceable power to order disclosure.

The selected references appended to this report underpin it, but also provide a resource for those who wish to explore further the many permutations of trust risks/investments sketched here, or who will be part of the process by which the ABC improves its standards.

The issues have been compressed in this way because the theme of trust allows us to see that the source protection issue is far more complicated than many journalists, commentators and lawyers typically allow.

The list below is necessarily limited. This is a review of a media organisation's self-regulatory structures, not an inquiry into the appropriate balance to be struck in judge-made law ¹⁰ or in statute ¹¹.

- 1. How much can sources, who may risk various forms of damage¹², trust journalists to protect their identities after the information they provide has been made public and caused its consequences?
- 2. To what extent can journalists trust sources not to abuse anonymity and use the journalists' promise of protection as a shield to spread misinformation for which the source evades responsibility?
- 3. When a person wronged by reports that cite anonymous sources seeks the identity of the source through legal process, or a court wants answers relevant in a trial, how can that potential plaintiff or the accused on trial or those observing the system at work in such cases have confidence in a system that cannot compel the production of all information necessary in the interests of justice, including sometimes the identity of a journalist's source?
- 4. When journalists disclose information of consequence using anonymous sources it is often to ensure the proper workings of the rule of law by, for instance, exposing official corruption in institutions that require public trust in order to provoke reform. On what grounds can journalists then deny access to the same sources of information (assuming it cannot be otherwise obtained) to those with the responsibility of investigating and rectifying what has been exposed? Can the public trust journalists to convey to their sources that disclosure of information of importance in the public interest is usually not the end of a matter, and that the effects of the source's actions and the journalists' actions can when necessary serve the public interest beyond simple disclosure?
- 5. When a journalist asks a court to allow the journalist to shield a source partly so that other sources will not be deterred from giving information to journalists in future, can the journalist trust the court to weigh this abstract public interest against the concrete information needs of a specific party that wants the identity of the source?¹³
- 6. What ought media organisations reasonably do before journalists trust their supervisors and management to support them when they commit to protect a source and then face legal processes in which they may be required to choose between breaking the promise or disobeying a lawful order to disclose and risking punishment for contempt?
- 7. What ought journalists reasonably do before media organisations trust that a journalist who wants a media organisation to carry the risks legal and otherwise of disseminating information obtained from an anonymous source actually has a source¹⁴ and–

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John Fairfax & Sons Ltd v. Cojuangco [1988] 165 CLR 346 and the cases in Appendix 1.

Legislators in Australia and the United States have recently been active in this field: Evidence Amendment (Journalists' Privilege)
Act 2007 (Cth) inserting Division 1A – Professional confidential relationship privilege, with express reference to journalist-source
relationships in the Explanatory Memorandum; Free Flow of Information Act (Bill no. HR2102) passed the US House of Reps on
16 October 2007 and was first read in the Senate on 17 October 2007. The protections in both pieces of legislation are qualified,
not absolute.

Dismissal or demotion, risk of prosecution, legal costs, ostracism, ill-effects on health, and in some cases personal danger - these are the types of damage that may result from a person being identified as the source of a leak to the media, even if the person was not the actual source but is falsely accused.

This aspect of trust, along with some courts' wariness to trust that sources actually exist and are anonymous rather than merely fictitious, can be detected in some of the case law and in the debate about shield laws more generally.

Famously, the Washington Post (Janet Cooke case, 1981) and New York Times (Jayson Blair case, 2003) undertook thorough review and reform of their source protection procedures after learning that a staff journalist had fictitious, not anonymous, sources, but inadequate accountability by editors had allowed publication of the journalist's articles. In Cooke's case, a Pulitzer Prize had to be returned. Such cases, of varying seriousness, recur from time to time: eg 'News Leader reporter fired over fabrications, plagiarism', The News Leader, Staunton, Virginia, US, October 2007.

- the source and the journalist have the same understanding of the terms they are using to make their agreement;
- the source's motives for seeking anonymity have been tested;
- alternative attributable sources have been pursued;
- the information from the source, if there is only one source available, has been independently verified to the extent practicable:
- the agreement is clear about the extent of protection the source is being promised by the journalist and by the media organisation.
- 8. Can the source trust that his or her identity will not be exposed through carelessness by the journalist or media organisation, notwithstanding their intention to protect? ¹⁵
- 9. Having regard to relevant duties and to potential costs¹⁶, can those responsible for the governance of a media organisation trust the journalists, supervisors and executive management to take appropriate steps to ensure, before the disclosure of information obtained with a binding promise, that:
 - the information is of sufficient importance in the public interest to warrant the protection promised and the risks incurred;
 - appropriately senior personnel will follow sufficiently rigorous processes¹⁷ in deciding, if the issue arises, whether to –
 - break the promise so as to obey, after due process, a lawful order to disclose; or
 - disobey a lawful order to disclose and incur punishment so as to keep the promise; or
 - break the promise and disclose so as to serve a value, such as truth-telling, which is believed in good faith to override the value of promise-keeping in the circumstances;
 - appropriately senior personnel will ensure that reasonable steps are taken to minimise the adverse effects of any of these three decisions and to explain them.
- 10. Can the audience, which has an interest in both the flow of information and in the proper administration of justice, trust the media alone, the media supervised by the unfettered discretion of the courts, or the media supervised by courts with discretionary powers structured by Parliament in statutes usually referred to as 'shield laws'?

Carelessness, or a failure to appreciate the sophistication of various investigative techniques available to government and private investigators, have in some cases resulted in journalists unintentionally failing to deliver to sources the protection they promised and intended to maintain. The ways in which exposure of a source's identity can occur include: the tracing of photocopies back to the photocopier on which they were made; data-matching phone records between the journalists' numbers and the suspected sources' numbers; aligning the times of relevant calls with the CCTV footage from cameras trained on the desk phone from which the relevant call is known to have been made; and references in media organisations' emails or drafts of notes or stories which linger in computer systems.

¹⁶ For example in legal proceedings, resources, reputation, stakeholder confidence (including staff), and credibility among audiences.

Such processes include, but are not limited to: seeking appropriate advice and negotiating with a source for a waiver or any other variation of the agreement that may be appropriate in the circumstances. The recommendations in this report deal further with decision-making processes. For useful, practical advice on specific approaches, see especially the policies of the New York Times, Washington Post, Los Angeles Times and the hybrid policy recommended by Norman Pearlstine in Off the Record: the press, the government and the war over anonymous sources (Farrar, Straus and Giroux, NY 2007) page 257. For advice directed separately to reporters and to their editorial supervisors, see 'A Guide to Evaluation Sources' by Joann Byrd, former Washington Post Ombudsman and Pulitzer Prize judge, Poynter Online, 1 March 2000. For some insights into the methods of specific practitioners, see Lori Robertson, 'Kind of confidential' American Journalism Review (June-July 2007). For an example of a formal model, see David E. Boeyink 'Anonymous Sources in News Stories: Justifying Exemptions and Limiting Abuses' Journal of Mass Media Ethics (1990) 5:4 pages 233-245.

Section 5.2.2 (i) of the 2007 Editorial Policies states -

The ABC supports employees' ethical obligations in protecting confidential sources, subject to requirements under the law.

The content of the 'ethical obligations' is not elaborated anywhere in the Editorial Policies.

Following the circulation of a draft of this report for comment, the News Division advised that several entries in its Style Guide were relevant. Although not a single substantive statement of ethical obligations relating to confidential sources, some of the entries (reproduced at Appendix 2 to this report) contain guidance similar to that found in the standards in other media organisations' codes and in this report. The Style Guide entries will be useful references in finalising amendments to the Editorial Policies on dealing with sources. In this as in all other policy matters, care should be taken by the ABC to ensure consistency in the guidance to staff in the all-of-ABC Editorial Policies and the guidance in any Divisional documents such as the News' Style Guide. The Editorial Policies should prevail to the extent of any inconsistency.

I have concluded that the content of the 'ethical obligations' referred to in section 5.2.2 (i) is to be found in the Code of Ethics of the Media Entertainment and Arts Alliance (Australian Journalists' Association section).

Dating from 1944 (revised 1984 and 1995), the MEAA-AJA code is the leading statement of journalism ethics in Australia. Although enforceable only in relation to MEAA-AJA members, the Code of Ethics is generally treated in the relevant literature and case law as the prime reference.

The ABC Code of Practice 2007¹⁸, which is derived from the Editorial Policies, relevantly states at section 2.18 –

Confidential Sources. ABC staff will not be obliged to disclose confidential sources which they are entitled to protect at all times.

The Code of Practice uses absolute terms. Section 5.2.2 (i) of the Editorial Policies qualifies the protection, making it subject to the requirements of the law. I recommend that the Code of Practice be made consistent with the Editorial Policies, whatever amendments to the Editorial Policies result from this review.

Section 5.2.2 (j) of the Editorial Policies states -

Take responsibility for editorial decisions and refer upwards as required.

Section 4.1 of the Editorial Policies is headed 'Editorial responsibility and "upward referral" and begins –

- 4.1.1 The ABC's output through its radio, television and online networks and other outlets is vast. It is the responsibility of staff to ensure that the provisions of the ABC Act, the ABC Code of Practice, laws relating to broadcasting and the philosophies and policies of the Corporation are observed.
- 4.1.2 Subject to normal editorial management and controls, staff are responsible for making the content and for exercising editorial judgement. If a problem arises, or there is any doubt, staff must consult the next higher level of editorial management for guidance. This process, known as 'upward referral', can extend, through the relevant director, to as far as the Managing Director as Editor-in-Chief. If staff do not refer the issue upward, he or she will be responsible for the editorial decision made.
- 4.1.3 Any matter with legal implications must be referred to ABC Legal Services for advice.
- 4.1.4 If content is controversial or likely to have an extraordinary impact, the most appropriate senior manager should be notified in advance, even where specific editorial guidance is not being sought. More senior staff may be notified if appropriate.

ABC Act section 8 (1) (e) and Broadcasting Services Act Part II, Division 2.

Section 4.2 of the Editorial Policies is headed 'Legal responsibility'. Broadly summarised, the section describes some of the complex legal issues that can arise for the media and encourages staff to gain a working knowledge of how the law does or might apply to their work. Staff are to refer to ABC Legal Services for advice all content matters with legal implications. Editorial staff have the final decision whether to broadcast, but if they propose to act contrary to legal advice, the staff and Legal Services must upwardly refer the matter to relevant Executive Directors. The implications – ethical and legal - of the ABC making a binding promise to keep a source confidential, or of breaking such a promise, are such that, in my view, no such promise should be made or broken without the relevant staff first referring upward the decision to a level of executive responsibility commensurate with the seriousness of the decision.

I recommend that such decisions be made the subject of mandatory upward referral and that the Editorial Policies be amended accordingly.

3. Relevant ethical obligations

The content of the 'ethical obligations' referred to in section 5.2.2 (i) of the ABC's Editorial Policies is found in the Code of Ethics of the MEAA (AJA Section). Relevantly, that Code states –

MEAA members engaged in journalism commit themselves to

- Honesty
- Fairness
- Independence
- Respect for the rights of others
 - 1. Report and interpret honestly, striving for accuracy, fairness and disclosure of all essential facts. Do not suppress relevant available facts, or give distorting emphasis. Do your utmost to give a fair opportunity for reply.

. . .

3. Aim to attribute information to its source. Where a source seeks anonymity, do not agree without first considering the source's motives and any alternative attributable source. Where confidences are accepted, respect them in all circumstances.

Guidance Clause

Basic values often need interpretation and sometimes come into conflict. Ethical journalism requires conscientious decision-making in context. Only substantial advancement of the public interest or risk of substantial harm to people allows any standard to be overridden.

As the Guidance Clause notes, there are times when a standard can be overridden.

The value, promise-keeping, is expressed in the third sentence of Clause 3 of the Code of Ethics — 'where confidences are accepted, respect them in all circumstances'. When confidences are protected, the truth-telling value expressed in Clause 1 is, in effect, taking second place to promise-keeping. The identity of the source of information is being suppressed. A relevant and available fact, the source's identity, which in some cases may be essential to assessing the truth of a matter, is suppressed in favor of upholding a promise to a source.

This is what is happening when journalists omit from their reports the names and affiliations of the sources of some of the information. This is what is happening in cases in which journalists decline to give the legal system the identity of a source. In effect, the journalists have judged that the value of promise-keeping trumps the truth-telling that, in its own way, the legal process is pursuing. The legal process wants to obtain and examine the source and his or her information directly because a court has ruled that this is necessary in the interests of justice. Appendix 1 contains cases that illustrate this ethical choice in action.

Less common in the literature, but also ethical decisions in which the truth-telling value overrides the promise-keeping value, are the cases in which journalists have decided themselves, without compulsion or

any external pressure, to reveal their sources. It would appear that where confidences are accepted, in practice they may not be respected in all circumstances.

Despite a commitment not to attribute information to its source, journalists have broken the commitment to serve what in the circumstances they regard as a higher ethical duty. The decision of *The 7.30 Report* in the Costello matter appears to be one such case.

Examples from the literature illustrate how the promise of confidentiality made by a journalist to a source may not be absolute, why the decision-making implicit in the Guidance Clause in the Code of Ethics may be necessary in particular circumstances, and why media professionals need to practise how to make such decisions well, then explain them. By citing these examples, I should not be understood to be endorsing the decisions in each.

Example 1 – A journalist had given a promise of confidentiality to a man who told the journalist how three years prior to their meetings he, the source, had shot dead at close range another man during the era of violence in Northern Ireland. The journalist, Nick Martin-Clark, later wrote: 'Later I got the full story from him, and even though the piece by me that appeared in *The Sunday Times* that year kept back some crucial forensic detail, it got the full attention of the police.' The source was charged with the murder, the journalist gave evidence at his trial about their conversations, and the source was convicted and jailed for a minimum of 24 years.

The journalist's decision drew some criticism, including that he had compromised the neutrality that journalists needed to show in order to get access to both sides of a conflict. Martin-Clark responded, in part, as follows –

There was a clear public interest in solving a murder. An absolutist stance on confidentiality is akin to total pacifism or to not telling a lie even to save a life. It is an eccentricity that has little to offer real-world journalism. What if someone told you about a murder he or she was going to commit? What if an egregious paedophile revealed all? Odd then to find absolutism championed in Northern Ireland, where the journalism is often as messy as the politics. But it is not just in Northern Ireland that the chimera of neutrality is cruelly exposed. The embeds in Iraq similarly compromised some of their independence in return for privileged access. The answer is not to take a black and white view, but to face up to the difficult balances we have to strike as journalists with values, and be prepared to defend those values. In exceptional cases, and this was one, striking the right balance can involve overriding the principle of extending confidentiality to sources...The principle of confidentiality, important though it is, is not an end in itself but ultimately a means to disclosure which must remain for journalists...our primary purpose. ¹⁹

Example 2 – Oliver North was a US Marine colonel who worked in the White House during the Reagan Administration. He was involved in dealings with Iran at a time when relations between the US and Iran were strained. This is an excerpt from an article by journalist, Jonathan Alter, in *Newsweek* –

Can I tell a quick leak story? The year was 1987 and Oliver North was testifying before a congressional committee investigating the Iran-contra affair. As I sat listening to him in the Senate Caucus Room, I couldn't believe my ears. North was talking about the 1985 apprehension of Arab terrorists who had tossed an elderly man in a wheelchair, Leon Klinghoffer, over the side of the cruise ship *Achille Lauro*. The already famous Marine colonel was accusing members of Congress of being untrustworthy because they revealed the military details of that capture. I knew that North was shamelessly accusing other people of leaking something that he, in fact, had leaked himself – not to me, but to other reporters. He was using confidentiality as a weapon. I decided to blow the whistle in Newsweek and identify him as the source. It didn't exactly make me Mr Popularity with my colleagues or with North, who threatened to sue. But I would do it all over again.

Example 3 – Dan Cohen was a public relations specialist and political activist with ties to the Republicans during the 1982 election campaign for governor of Minnesota. He sued because his identity as a source was disclosed by media organisations. The Cohen case reached the US Supreme Court and the following excerpt is from a summary by an academic who based it on records from the litigation –

As part of an orchestrated effort by Republican supporters and campaign officials shortly before the election, when polls indicated that the Republican slate was far behind the Democrats, Cohen disclosed to four media organizations that the Democratic candidate for Lieutenant Governor had an arrest record [for involvement in

¹⁹ 'When a journalist must tell' *British Journalism Review* (2003) 14:2 pages 35-39.

²⁰ 'Hey, rat out that source – Reporters shouldn't fear leaking sometimes if it's in the public interest', *Newsweek*, 13 October 2003.

protests and for shoplifting \$US6 worth of sewing material at a time when she was emotionally distraught]. He requested confidentiality from the reporters so that the information would hurt the Democratic campaign without reflecting badly on the Republicans. Despite the objections of the reporters who had granted Cohen confidentiality, the editorial staffs of the defendant newspapers determined that it would be inappropriate to conceal the identity of the source of the news and ran stories identifying Cohen. The newspaper stories included claims by the Democratic camp that the news had been leaked by the Republican campaign as a 'last-minute smear campaign'.

With the identification of Cohen and his relationship to the Republican campaign, the stories were no longer simple revelations of misdeeds in the Democratic candidate's past. They became part of a controversy concerning unattributed 'smear tactics' in political campaigns that was later to assume national prominence in our most recent Presidential contest. But the editors' decision to disclose Cohen's identity did not merely affect the editorial pages of newspapers. Cohen was fired from his job the day after the public revelation of his name as the newspapers' source. 21

Cohen sued the press, in short, for breach of the contract or promise that a source has with a journalist. The US Supreme Court ruled in his favor - on the key issue, although his victory was not complete²² - and a Minnesota court, when it reconsidered the matter, found that the newspapers had made a legally enforceable promise.

Apart from further illustrating the complexity of the source protection issue, these three examples demonstrate that, even among journalists, source protection is not absolute.

But if promise-keeping, or any other basic value, is to be overridden in particular circumstances, it is necessary to be able to discern and articulate, as the MEAA-AJA Code of Ethics puts it, the 'substantial advancement of the public interest or risk of substantial harm to people' that justifies the decision in the context in which it is made.

Put broadly, the steps in such a decision-making process include –

- 1 Identify the applicable standards.²³
- Verify relevant facts and consider whether there are facts missing that are necessary to a proper decision-making process.²⁴
- 3 Be clear about the values that underpin the applicable standards.
- Apply the standards to the facts in light of the values, having weighed in good faith the public interest and any foreseeable harms.
- 5 Be prepared to account for the decision.

Reasonable people may differ about whether a particular ethical decision was right or wrong. But the adequacy of standards and of decision-making processes can be judged.

Lili Levi, 'Dangerous Liaisons: seduction and betrayal in confidential press-source relations' Rutgers Law Review (1991) vol 43, p 609 at 642-44. For several other examples of journalists' decisions to reveal sources, see Section C of the Levi article headed 'The Occasions of Voluntary Disclosure' and associated footnotes.

Cohen v Cowles Media Co. 501 US 663 (1991). In his book, Anonymous Source: At War Against the Media (Oliver Press, 2005), Cohen states that the candidate was elected and served two terms as Lieutenant Governor. Cohen writes: 'Providing that stale, trivial record to the press was mean-spirited. I regret what I did.' For one of the reporters' reminiscences about the case nine years after the story was first published, see: Bill Salisbury, "Burning the source" (September 1991) American Journalism Review, http://air.org/article.asp?id=1553.

²³ These should be in the Editorial Policies or, if located elsewhere, referred to in the Editorial Policies.

In circumstances in which the facts are in dispute, yet the decision will rest on one or more of those facts, it is necessary to take particular care. Significant values are being weighed in the balance against each other on the basis of a factual foundation. The natural urgency of journalism may have to be tempered so that this checking can occur (unless any delay, in the particular circumstances of the case, would itself lead to substantial harm).

4. The importance of terminology

In Australian journalism there are no standard definitions of the terms 'on the record', 'on background', or 'off the record'. It is common to hear people use 'off the record', 'not for attribution', and sometimes even 'in confidence' to mean what, for the purposes of this review, I have defined 'on background' to mean.

Unless terminology is clearly understood during the negotiation of agreements between sources and journalists, misunderstandings develop, with potentially serious consequences for the source, the journalist, and others.

The Editorial Policies should be amended to include definitions of the three key terms. ABC staff should be required by the policies to negotiate agreements with sources on the basis of these definitions.

5. The implications of 'deniability'

The primary benefit to a source of a journalist's promise of confidentiality is that the source can deny that he or she is the source. 'Deniability' is the essence of the protection the journalist has promised to provide. It results routinely when journalists decline to reveal their sources.

This fact has implications, both for drafting standards and for decision-making in specific cases.

Pared to essentials, a routine agreement between journalist and source may work like this -

Journalist and Source converse.

Source provides information 'on background'.

Journalist discloses information, unattributed.

Consequences follow for others, possibly adverse.

The adversely affected enquire who leaked, and Source denies it along with other potential sources.

Leak is investigated, formally or, more commonly, informally.

Journalist, if asked, declines to reveal Source.

If one of the routine benefits to sources of 'on background' agreements is deniability, it would seem to require more than mere denial by the source to justify the journalist breaching the agreement. Something more, which involves, as the MEAA-AJA Guidance Clause puts it, 'substantial advancement of the public interest or risk of substantial harm to people', is necessary before promise-keeping can be overridden by some other value such as truth-telling.

It may be that the source's mere denial, in the circumstances, would have such consequences. But it is in these consequences, not in the bare fact of denial by the source, that justification for breaching the agreement must be found. A source's denial, by itself, would seem to be nothing more than an implied term of an agreement to accept information on background. Absent some other factor, when the source takes the benefit of deniability, the journalist's continuing silence is simply his or her end of the bargain.

If this result discomforts, it should. It is unavoidable that in upholding promises of confidentiality for sources journalists are complicit in suppression of a piece of the truth. Recognition of this fact is one of the reasons why the majority of self-regulatory standards make attribution the rule and promises of anonymity the exception.

At minimum, a decision whether to give such a promise requires an assessment by the journalist of the value of the information and the motives of the source.

6. Motives

From the outset, an 'on background' agreement is a compromise by the journalist. Information may be disclosed, but without attribution to its source. This may suit the source, but it does not serve the audience as well as full attribution would serve. For the audience, knowing the origins of information is part of weighing up how much credence to give it and how much 'axe grinding' to allow for.

Long experience has taught journalists that sometimes the only way to get information of public interest into the public domain in a timely way is to compromise truth-telling in favor of promise-keeping. Agreements to accept information on background may have strong justification in the circumstances. The journalist may have concluded that it is better to obtain and to disclose the information in this way than to wait until the source is comfortable with attribution, or until the information can be obtained from an alternative attributable source.

The agreement may reflect the reality of the relationship: the journalist may believe that the source will provide a valuable continuing supply of information beneficial over time to the journalist and his or her audience, and that the price of continuation of supply is conditions set by the source, including the condition of anonymity.

When the Brennan Committee recommended reform of the source-protection clause of the MEAA-AJA Code of Ethics to remove the absolutism conveyed by the phrase 'in all circumstances', it stated in part –

The journalist and the 'whistleblowing' source have a relationship based on mutual dependence. The journalist needs the information in order to fulfil public responsibilities; the source needs a way to disseminate information of public importance. But this description is based on the notion of a source as classic 'whistleblower', an altruist moved by frustration or conscience to reveal information of substantial public interest in order to get something done about it. Altruistic sources are vital and fundamental to an analysis of source protection, ethics and the law. But an altruistic source is rare among anonymous sources commonly cited in Australian media.

Most confidential sources are not seeking anonymity in order to ensure that their job or safety is protected after the journalist disseminates information of high public interest that would not have been disclosed in any other way. Most journalist-source relationships are not of mutual dependence but of mutual convenience.²⁵

In its final report, the Committee urged greater consideration be given by journalists to the motives of sources before journalists granted anonymity -

...One study of confidential sources identified the following motives among those who leak information:

- to satisfy a sense of self-importance
- to earn 'credit' with the journalist that can be 'spent' at a later date
- to reveal a contemplated proposal in order to test public response to it before adopting it officially ('kite flying')
- to try to build support for or opposition to a policy proposal
- to try to discredit another official or faction (especially during leadership struggles in political parties)
- to correct perceived wrongs that the source believes cannot be remedied through proper channels.

The altruist fits the last category. The others give a sense of the variety of relationships between journalists and sources.²⁶

The risk of manipulation by sources of journalists and their audiences is obvious. It is regularly noted in the relevant policies of media organisations. The *Washington Post*, for instance –

Ethics in Journalism, op cit page 56.

²⁶ Ibid p 65.

Sources often insist that we agree not to name them in the newspaper before they agree to talk with us. We must be reluctant to grant their wish. When we use an unnamed source, we are asking our readers to take an extra step to trust the credibility of the information we are providing. We must be certain in our own minds that the benefit to readers is worth the cost in credibility.

The London *Guardian*'s guidelines state that 'if used lazily or indiscriminately anonymous quotes become a menace'. ²⁷

The New York Times' policy contains valuable guidance aimed at minimising the risk of manipulation, and the harm to credibility that can follow –

Whenever anonymity is granted, it should be the subject of energetic negotiation to arrive at phrasing that will tell the reader as much as possible about the placement and motivation of the source – in particular, whether the source has firsthand knowledge of the facts.

In any situation when we cite anonymous sources, at least some readers may suspect that the newspaper is being used to convey tainted information or special pleading. If the impetus for anonymity has originated with the source, further reporting is essential to satisfy the reporter and the reader that the paper has sought the whole story.

We will not use anonymous sourcing when sources we can name are readily available.

Confidential sources must have direct knowledge of the information they are giving us — or they must be the authorized representatives of an authority, known to us, who has such knowledge.

We do not grant anonymity to people who are engaged in speculation, unless the very act of speculating is newsworthy and can be clearly labeled for what it is.

We do not grant anonymity to people who use it as cover for a personal or partisan attack. If pejorative opinions are worth reporting and cannot be specifically attributed, they may be paraphrased or described after thorough discussion between writer and editor. The vivid language of direct quotation confers an unfair advantage on a speaker or writer who hides behind the newspaper, and turns of phrase are valueless to a reader who cannot assess the source.

Anonymity should not be invoked for a trivial comment, or to make an unremarkable comment appear portentous.

We do not promise sources that we will refrain from additional reporting or efforts to verify the information being reported.

We do not promise sources that we will refrain from seeking comment from others on the subject of the story. (We may, however, agree to a limited delay in further inquiries – until the close of stock trading, for example.)²⁸

The NYT policy is similarly detailed about methods of attribution short of naming a source –

When we agree to anonymity, the reporter's duty is to obtain terms that conceal as little as possible of what the reader needs to gauge reliability. We should distinguish conscientiously between high-level and lower-level executives or officials. We should not use blind attribution – "sources said," for example – which is more a tease than a signpost. Attribution should never amount to a truism: since "source" merely means a provider of information, "one source said" is equivalent to "somebody said." And "informed" or "reliable source" is no improvement. (Would The Times quote an uninformed or unreliable one?) The objection is not to the word "source," but to its emptiness without a meaningful modifier: "a Senate source," for example, may be acceptable – unless, of course, it is possible to tell the reader still more. The word "official" is overused, and cries out for greater specificity.

Trail markers should be as detailed as possible. "United States diplomat" is better than "Western diplomat," which is better than "diplomat." Still better is "a United States diplomat who took part in the meeting." And "a lawyer who has read the brief" or "an executive close to the XYZ Company" is far better than "a person familiar with the case," a phrase so vague that it could even mean the reporter.

²⁷ Editorial Code, updated April 2007, section 1.

Confidential News Sources Policy, February 2004. See Appendix 1

Readers value signs of candor: "The report was provided by a Senate staff member working to defeat the bill." ²⁹

From time to time in Australia, the source protection issue flares into prominence. Two recent examples are the Harvey/McManus case and the Costello dinner case. Although the cases sometimes generate media attention to the merits of legislative protection for journalists and their sources, or the courts' approach to the issue, there is less often a focus on the sophistication of the approach that media organisations habitually take to what is, as this review has shown, an issue of significant ethical complexity.

Perhaps a lack of journalistic introspection is what the first public editor of the *New York Times* had in mind when he wrote to his colleagues (as much as to their shared readership) –

Since I've been in this job, use of anonymous sources has been the substantive issue raised most often by readers. They challenge the authenticity of quotations....Credibility is also why many reporters will now acknowledge that the profession's worst habits must be broken – the vague descriptions of phantom sources, the readiness to disregard their 'motivations', the willingness to let them say what they wish without public accountability.

...But getting to the point where journalists incorporate this awareness into their work isn't easy. The psychic rewards a newspaper can bestow still go to the reporter who publishes something the competition doesn't have. Valuable sources, insisting on anonymity, continue to dangle tantalizing details as if they were biscuits offered to hungry dogs. Even background briefings have their appeal, where the alternative is a two-dimensional view of policy.

...There are good reasons to use information provided by unidentified sources. The best is that it can lead you to someone who will confirm it on the record, so readers can learn something valuable. But the burden of proof is enormous when no one will stand publicly behind a bold assertion. So should be the barrier to publication. ³⁰

7. Amendment to the Editorial Policies recommended – proposed new section on dealing with sources

Subject to improvements resulting from the consultation recommended in the Introduction, the following is proposed for incorporation into Section 5 of the Editorial Policies –

Dealing with sources

When the ABC carries unattributed information it is vouching for it to the audience and risking the ABC's own credibility.

Sometimes, disclosure by journalists to the public of unattributed information and protection by journalists of the identity of sources of that information are necessary to the free flow of information in a democratic society.

Sometimes, journalists grant sources anonymity too readily, sources misuse anonymity, and as a result the flow of information is tainted.

Very rarely, the value that journalists uphold when they protect sources, promise-keeping, may justifiably be overridden in order to uphold another value, such as truth-telling.

In applying this section of the Editorial Policies, bear in mind that any decision

to use information unattributed,

to disclose the identity of a source in breach of the terms of an agreement with that source, to refuse to disclose the identity of a source,

²⁹ Ibid

Daniel Okrent, Public Editor #1 (Public Affairs, NY, 2006) pages 254-55, 257-8.

has potential effects on the source, the persons affected by the source's information and its disclosure, you, your colleagues, the profession of journalism, audiences and the ABC.

The purpose of this section of the Editorial Policies is to ensure the ABC deals honorably with sources, in ways that serve the public well and maintain the independence and integrity of the ABC.

The following standards are to be followed -

Aim to attribute information to its source.

When sources seek anonymity, always consider their motive and any alternative attributable source.

Test whether the source has first-hand knowledge of the matters he or she is conveying.

Seek to confirm the information through independent sources (persons or documents).

Exchanges routinely occur between journalists and their sources on the basis of understandings between them about the degree of protection the individual journalist will provide. Much of the information gleaned in such exchanges is of value to journalists in obtaining leads or a fuller understanding of events and issues. Such information informs journalists' work but is not necessarily broadcast or published by the ABC without attribution.

The upward referral mandated in this section of the Editorial Policies applies to those situations in which the journalist judges that information supplied by an anonymous source ought to be disclosed and, having regard to these standards and the circumstances of the case, can be disclosed only on the basis of a binding promise to protect the identity of the source.

It is mandatory to refer upwards to an appropriately senior person designated for the purpose prior to making an agreement that would bind the ABC to protect the identity of a source after the ABC disclosed information supplied by the source.

Prior to disclosure of information obtained under a binding agreement to protect the identity of a source, the source's identity must, if sought, be made known to an appropriately senior person designated for the purpose, who will become bound by the agreement on the same terms as the journalist who obtained the information.

At the sole discretion of the Managing Director, the requirement that a source's identity must be disclosed to an appropriately senior person may be waived in exceptional circumstances, such as when information from the source reveals serious high-level failure of the checks and balances of the Executive, Judiciary or Legislature.

In deciding whether to make a binding agreement, consult Legal and consider -

- Whether the disclosure of the information unattributed would serve a sufficiently important public interest.
- Whether the information can be obtained from an attributable source of comparable reliability for disclosure within a time period that would allow the important public interest involved to be adequately served.
- Terms appropriate to the circumstances of the case, such as agreed limitations to the promised protection, as appropriate. Limitations may include an understanding that if the disclosure of the information supplied by the source causes certain consequences the source waives the obligation of confidentiality. Relevant consequences may include: legal proceedings in which the journalist and/or the ABC are lawfully compelled to provide information; or the establishment of a process under law by an authority with the capacity to protect the source from adverse effects.

• The extent to which disclosure of the information unattributed would amount to a personal attack under cover of anonymity.

In negotiating an agreement with a source, be clear about the precise elements of the agreement, especially key terms including –

- On the record, meaning both parties agree that the information imparted to the journalist may be disclosed and attributed to the source by name.
- On background, meaning both parties agree that the information imparted to the journalist may be disclosed but not attributed to the source.
- Off the record, meaning both parties agree that the information imparted is not to be disclosed, with or without attribution.

Honoring good faith agreements with sources is a basic rule of journalism. Only in the rarest of cases and for exceptional reasons can the rule be overridden. The potential cost in loss of trust and reduced information flow is serious. Every effort must be made to try to avoid such situations and, if they occur, to minimise harm.

When a commitment is made to protect a source, take care to make the protection effective in a practical sense. For instance –

- avoid exposing the source when cross-checking the information the source supplied;
- minimise and keep secure any notes, email exchanges, phone records, drafts and other material which may expose the source's identity;
- be aware of the risks to the source arising from original documents, photocopies, disks, USB data storage devices and other items supplied by the source;
- for vision of the source, blur rather than pixelate (which can be reversed);
- for voiceovers of the source use another person's voice rather than distort by technological means the actual source's voice:
- consider the potential for details other than face or voice to identify a source for example, clothing, location, vehicle registration number;
- be vigilant to maintain the security of a source even when the source is geographically remote from the place in which the report based on the source's information is first broadcast or published.

In rare circumstances basic values such as promise-keeping come into conflict with other basic values such as truth-telling or fidelity to the rule of law. If circumstances arise in which a decision needs to be made about whether to honor an agreement with a source –

- it is mandatory to refer upwards to the Director News;
- consult Legal;
- consider whether a waiver or partial release from the terms of the agreement can be negotiated
 with the source in light of circumstances that have developed since the original agreement was
 made;
- gather and verify the facts needed to make the decision;
- identify the competing values;

- analyse the impact of the various options and how to minimise foreseeable harms;
- decide whether, in the circumstances, substantial advancement of the public interest or the risk
 of substantial harm to people justifies overriding promise-keeping and breaking the agreement
 in order to serve another basic value.

Give an honest public account of the decision and the way it was made.

E. Journalist-as-participant issue

At the outset, it is necessary to distinguish between the level of a journalist's participation in the newsworthy events that can raise a conflict, and the inevitable 'participation' by journalists in every event they cover.

We are not concerned here with the debate about objectivity, in which it is sometimes argued that no person, journalist or otherwise, can be objective. Similarly, it is recognised as unavoidable that journalists participate in every story to the extent that they make decisions about: what to report, the angle they take, the people they contact, interviewing styles, methods of presentation, editing and how to introduce a report. The objectivity debate is a different debate to the simpler point being considered here.

By 'journalist-as-participant', I mean that the journalist's participation - by action or inaction, alone or in combination with other participants in the events - is integral to what makes the matter newsworthy. This makes it probable that the coverage of the matter will affect the journalist personally. A potential conflict here is grounded in the journalist's work interests, not his or her outside interests. His or her personal honor or reputation may be at stake, as distinct from the journalist's outside financial or family interests.

1. ABC Editorial Policies

Section 2.1 of the 2007 Editorial Policies lists the key values of the ABC as honesty, fairness, independence and respect.

Section 3.5.6 notes that independence, which the ABC has a statutory duty to maintain³¹, 'carries with it a high degree of responsibility'.

Section 4.4 addresses conflicts of interest, which in practice have the potential to compromise independence, and states in part that there should be no conflicts between the private interests of ABC staff and their official duties.

Although 'private interests' are not comprehensively defined, section 4.4.1 turns the focus on 'outside activities' and financial, personal and political relationships.³² Section 4.4.2 draws in the ABC Workplace Values and Code of Conduct³³ which, apart from general statements³⁴, makes no reference to the issue raised by the facts of the matter that prompted this review.

I have concluded that neither the Editorial Policies nor the Workplace Values and Code of Conduct are adequate to deal with the issues raised in this case. Certain inconsistencies in language aside, they both lack guidance for journalists and their supervisors in resolving the unusual category of conflict that arises when a journalist becomes a participant, as defined above, in the events he or she is reporting.

One of the most common methods of dealing with conflicts in journalism, as in other fields such as corporate governance, is to require that they be declared. But disclosure will not readily deal with the category of conflict relevant here. Typically, the journalist's participation in the newsworthy events will be well known. It is part of the story. Even if it is not, simply to disclose that participation does not deal with

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³¹ ABC Act, section 8 (1) (b).

In this respect, the ABC Editorial Policies are similar to most media organisations' codes. See, for instance, the relevant sections of the codes of the *Washington Post, Wall Street Journal* and *New York Times*.

³³ Adopted in 2000 - see Appendix 6, ABC Editorial Policies.

For example, Code of Conduct sections 2.1 a., 3.1 dot points 4 and 8, and, broadly, 9.1.3.

the core problem – the threat to independence – of having the journalist continue to report events in which he or she is a participant.

The other participants in the events are simultaneously dealing with the journalist as both a co-participant and as the reporter of the events. The journalist is, as always, under an obligation to report accurately, fairly and impartially on all participants. Even if the journalist achieves this in reality, the audience may wonder, and the co-participants may question. If the events have put the journalist and co-participants at loggerheads, this wondering and questioning intensifies.

It is natural that a journalist-participant may still feel able to provide proper coverage, and for the journalist-participant's supervisors to be inclined towards allowing him or her to continue to report the story. For the journalist, the fact of a personal stake compounds the usual sense among reporters that they 'own' particular stories. For the supervisors, the journalist's special position as a participant in newsworthy events can give their outlet's coverage a competitive advantage. And it may well be that the journalist-participant is the best-equipped to undertake the coverage.

Add to these factors another natural phenomenon, one which a former public editor of the *New York Times*, Daniel Okrent, identified when dealing with a variation on the conflicts-of-interest theme –

When a news subject tries to get a reporter removed from a story, a challenge has been issued to the core of a newspaper's self-image: its integrity. Unless editors see a clear case of bias or conflict, they tend to respond the way you or I would respond to, say, an insult to a family member. They stiffen with indignation. They try at the same time to support the wounded loved one. Were they to concede, the humiliation could hurt more than the charge itself.³⁵

Against these factors, which because they are so natural can predominate and stay unexamined, must be considered other factors that, depending on the context, may weigh in favor of the journalist standing aside. Those factors include –

- The importance of audiences receiving independent coverage.
- The potential for inaccuracies and for unfairness towards other participants in the events.
- The risk that, as events unfold, the journalist-participant may become unable to gain access to other participants, with consequent ill-effects on coverage.
- The risk to the credibility and reputation of the organisation, the program and the journalist-participant caused by the wondering and questioning that is likely to result from coverage of the events by the journalist-participant.

Given that a journalist-participant in such cases is understandably likely to have clear views but clouded judgement, it is essential that editorial guidelines prescribe a role for supervisors. The journalist-participant's views are of course relevant, but they ought not be determinative.

Section 4 of the Editorial Policies is adequate to deal with the upward referral implicit in such cases, so long as staff and supervisors recognise the journalist-as-participant issue is a category of conflict of interest. Section 4.4.4 states –

Declarations: To prevent conflict of interest, supervisors must be told about any associations or interests which an individual has that may conflict with editorial responsibilities. Individuals have a duty to declare an actual or potential conflict of interest at the earliest opportunity. They also must declare in advance any proposed activity that might conflict with editorial responsibilities.

Compared with the source-protection issue, the journalism ethics literature is sparse on this category of conflict of interest. ³⁶ The BBC Guidelines address a related category – coverage of stories in which the BBC itself is a participant – as follows –

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Public Editor No. 1 (Public Affairs, New York, 2006) page 38 reproducing a column published in the NYT 21 December 2003 'You can stand on principle and still stub a toe'.

Most codes address outside interests, financial or familial and sometimes political: see, for example, New York Times' *Ethical Journalism: a handbook of values and practices for the news and editorial departments*, September 2004, discussing recusal in the

Our reporting must remain accurate, impartial and fair even when our content, or the BBC itself, becomes the story. We need to ensure that our impartiality is not brought into question and presenters or reporters are not placed in potential conflict of interest. It will be inappropriate to refer to either the BBC as 'we' or the content as 'our'. There should also be clear editorial separation between those reporting the story and those responsible for presenting the BBC's case. 37

A version of the journalist-as-participant issue arose recently for several US journalists covering the multinational company Hewlett Packard. The journalists were targets of covert and unlawful surveillance by private investigators trying to identify the source of leaks of company information. The journalists became victims and potential plaintiffs, not purely observers, of Hewlett Packard.

The journalists' supervisors responded in varied ways. One stopped its employee from covering Hewlett Packard at all. Another allowed its journalist to report unrelated matters involving Hewlett Packard, but not to cover the spying and associated legal issues affecting the company. A third published its employee's personal account of her experience as a target of surveillance, with her article clearly signposted as a personal account.

Kelly McBride, an ethicist at a leading media ethics centre, the Poynter Institute, has suggested that it is not sufficient to base a decision to disqualify a journalist from covering a story on the basis of his or her identity alone. For instance, it would be wrong to disqualify –

- Journalists of particular ethnicities from reporting on discrimination issues;
- Gay journalists from covering the same-sex marriage debate;
- · Catholic journalists from investigating child abuse by clergy; or
- Journalists who have been victims of violent crime from reporting violent crime.

Some extra factor must ordinarily be involved before recusal is required. McBride writes -

There is no arbitrary test by which a conflict can be judged to determine if it rises to the level that precludes a journalist from covering particular stories. Instead, what becomes important is the process by which conflicts – all conflicts – are examined in newsrooms...

Rather than searching for analogies, journalists must find the threshold where individuals are disqualified from reporting, editing or influencing a particular story. One threshold should be when fairness cannot be achieved. Another threshold involves public perception. When a journalist enters into the public debate, he gives the public cause to doubt his ability to report the news fairly...³⁸

Among their nine *Elements of Journalism*, Bill Kovach and Tom Rosenteil include independence. They analyse independence in various contexts, but conclude that no rigid prohibition guarantees that a journalist remains independent. They prefer to rely on good judgement and 'an abiding commitment to the principle of first allegiance to citizens'.³⁹

That notion of the primacy of the audience also guides the recommended amendments to the Editorial Policies relevant to this section of the review.

context of romantic relationships (para 24) and the outside interests of journalists' spouses, family members, companions (para 67, political activity, paras 117-119). In summary, the *NYT* policy is that:

the staff members must be sensitive to the creation of conflicts or the appearance of conflicts;

they should advise their supervisor and the standards editor when the possibility arises; and

'[d]epending on the circumstances, the staff member may have to recuse himself or herself from certain coverage or even move to a job unrelated to the activities [of the spouse etc] in question.'

- ³⁷ BBC Editorial Guidelines, Section 4, Impartiality and Diversity of Opinion.
- ³⁸ 'Searching for the threshold', *Poynter Online*, 14 March 2004.
- The Elements of Journalism: what newspeople should know and the public should expect (Three Rivers Press, New York, 2001) page 109.

2. Amendment to the Editorial Policies recommended – proposed new section dealing specifically with this type of conflict of interest

Subject to improvements resulting from the consultation recommended in the Introduction, the following is proposed to be incorporated into Section 4 of the Editorial Policies –

Journalist-as-participant

This section relates to the type of conflict of interest that arises when a journalist's participation - by action or inaction, alone or in combination with other participants in the events - is integral to what makes a matter newsworthy.

Circumstances will vary from case to case, but the needs of audiences and the independence and integrity of the ABC are prime considerations in every case.

In assessing whether a journalist should cover, or continue to cover, a story in which he or she is or is likely to become a participant, the journalist and supervisors should consider factors including –

- the extent to which the essential elements of the story relate to the journalist's own actions or inaction;
- the nature of the personal interests involved;
- the relationship between those personal interests and the organisation, individuals, issues
 and events required to be covered by the ABC, in particular the extent to which the
 journalist's personal honor or reputation has or is likely to be pitted against the honor or
 reputation of other participants;
- whether disclosure of the personal interests would be sufficient in all the circumstances of the case;
- whether, if the journalist were to cover the story, audience members with knowledge of the facts giving rise to the conflict could reasonably doubt the fairness and accuracy of the story;
- whether, if the journalist stands aside, audience members will lose any element of substance from the ABC's coverage which could not be provided through other means (for example, by having another journalist interview the journalist-participant in the same way as any other participant).

As the consultation proceeds, it may be that other amendments to the 2007 Editorial Policies and/or 2007 Code of Practice, consequential on the proposed amendments, become necessary or desirable.

III. Responses

Main questions and answers

During the months that followed the release of the Consultation Draft, several questions were raised about the recommended amendments to the Editorial Policies on dealing with sources. What follows is a summary of the main questions and how they have been answered.

Why define 'on the record', 'on background' and 'off the record?' Don't these expressions mean different things to different journalists and different sources?

The short answer is that it is precisely the variety of meanings that tends to cause confusion and lead to trouble, particularly in hard cases, as demonstrated by many of the cases referred to in this report. To reduce the risks that varied understandings produce, the ABC has formally adopted clear definitions (new section 4.7.5). These reflect common (but not universal) understandings of these key terms which, by being formalised, should now become increasingly common over time. 40

What about sources who try to change an agreement to be on the record?

Staff asked that it be made clear that staff are not bound to agree to a request/demand to change retrospectively the terms of an agreement when the agreement was that comments would be on the record. This led to the new section 4.7.6 and related material in the Guidance Note.

What of the dilemma that accepting information in strict confidence can lock the media into silence?

The dilemma arises if a source tries to convey information to an ABC staff member *and* bind the media professional to keep silent and do nothing about the information, not even try to corroborate it through other sources. During the consultation, experienced editors advised that the policies should cover this kind of situation. The new section 4.7.7 and related material in the Guidance Note are the result.

Why mandatory upward referral, and how?

When the consultation draft was released, this aspect of the recommended amendments was misunderstood by some to mean that staff would have to refer upward to a manager before engaging with sources at all. This was never intended. It is plainly impracticable. The potential for misunderstanding was addressed by the new section 4.7.9.

The new section 4.7.10 makes clear that the requirement to refer upward does not apply until the ABC is to disclose information:

- that forms the basis of a report;
- that is to be disclosed without attribution; and
- the ABC is to be committed to protect the identity of the source.

The Guidance Note elaborates.

Why require of staff that, if asked, they identify their sources to an appropriately senior ABC person before the source's information is disclosed unattributed?

In putting this question during the consultation, some referred to the coverage by the *Washington Post* of Watergate. 'Watergate' is shorthand for events which led to the resignation of US President Richard Nixon

⁴⁰ It was decided to leave to a future time guidance about handling information conveyed in studio environments in which media professionals and interviewees often talk with microphones off, then on, then off again.

in 1974. Some assert that the *Post* reporter, Bob Woodward, kept all to himself the identity of the key source famously nicknamed 'Deep Throat'. 41

New section 4.7.11 does require that staff identify sources, if asked, to an appropriately senior ABC person. It does so essentially because the substantial risks inherent in unattributed disclosure of information supplied by sources are risks shared by the ABC as an organisation.

Staff may feel that sources 'belong' to them in the sense that it is they who cultivate the relationships and they who are personally trusting of sources and trusted by them. But to disclose information obtained from a source, and to invest the information with the authority of the ABC's reputation so that it has the impact that most journalists hope for their work, a staff member needs the ABC as an organisation. In this sense, the source is shared by the staff member and the ABC. The ABC is investing trust too.

And the ABC has responsibilities, which go beyond the individual source and staff member, and which require it to assess risks and exercise judgement.

The text of the consultation report explains the risks in some detail. They are not theoretical. The resources section is replete with examples of how the risks manifest in practice.

In April 2008, the longest-serving journalist in the ABC's renowned investigative reporting program *Four Corners*, Chris Masters, contributed the following to a staff workshop on dealing with sources –

The practical reality is I do not expect my employer to commit major resources to defending my reporting on my word alone. The scenario of a reporter telling an editor that under no circumstances can he or she reveal a source is not realistic in my experience.

In the famous Watergate case, if the *Washington Post* editors did not know the precise identity of Deep Throat they did have, as far as I can tell, a strong understanding of the provenance and veracity of the information.

I tend to be in close negotiation with my editor – and the lawyers.

Within the inner sanctum there has to be a testing of the facts and an appreciation of the principles and issues at play. If shield laws are ever to apply I imagine we would equally be expected to meet criteria – to pass a similar test.

The good side of this is to be able to say we are not and never should be on our own.

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Amongst the sprawling literature on Watergate, Woodward's *The Secret Man – the story of Watergate's Deep Throat* (Simon and Schuster, 2005) is a useful reference on this case and more broadly on dealing with sources. Woodward says (page 4) that six people knew that Mark Felt, deputy director of the FBI, was Deep Throat before Felt's identity became public in 2005. In January 1973, Woodward told the publisher of the *Washington Post*, Katherine Graham, that he was prepared to give her the name if she really wanted it, but he was praying she wouldn't press him. She didn't press him – 'I didn't want to carry that burden around': Katherine Graham, *Personal History*, Knopf 1997, page 483. Ben Bradlee, executive editor of the *Washington Post* (1968-91), tells it like this: 'The quality of Deep Throat's information was such that I had accepted Woodward's desire to identify him to me only by job, experience, access and expertise. That amazes me now, given the high stakes. I don't see how I settled for that, and I would not settle for that now. And it was only after Nixon's resignation, and after Woodward and Bernstein's second book, *The Final Days*, that I felt the need for Deep Throat's name. I got it one spring day during lunch break on a bench in MacPherson Square': Ben Bradlee, *A Good Life – newspapering and other adventures*, Simon and Schuster, 1995, page 365. The second-last sentence of that excerpt seems to contain a private joke that can now be enjoyed by more than Bradlee: the word 'felt'.

ABC Editorial Policies

Appendix 1: New sections of ABC Editorial Policies (effective 1 July 2008)

Sources

- 4.7 Dealing with sources
- **4.7.1 Presumption of attribution:** Aim to attribute information to its source.
- **4.7.2** Attribution serves audiences best by providing relevant information.
- **4.7.3** Attribution reduces the risk to reputation that can result from the abuse of anonymity.
- **4.7.4 Negotiating exceptions to the presumption of attribution:** The public interest in the free flow of information can justify exceptions to the presumption of attribution.
- **4.7.5** In negotiating with sources, be clear with them about key terms including
 - (a) On the record, meaning both parties agree that the information conveyed may be disclosed and attributed to the source by name.
 - **(b)** On background, meaning both parties agree that the information conveyed may be disclosed but not attributed in a way that would be likely to identify the source.
 - **(c)** Off the record, meaning both parties agree that the information conveyed is not to be disclosed, with or without attribution.
- **4.7.6** Once you have clearly identified yourself as working for the ABC, the information a source conveys is on the record unless agreed otherwise.
- **4.7.7** When sources seek to convey information off the record, tell them beforehand that if the information warrants disclosure in the public interest you will try to confirm it through other sources and disclose if
- **4.7.8** When sources seek to convey information on background, consider their motive and any alternative attributable source.
- **4.7.9** It is not mandatory to refer upwards before approaching sources and obtaining information from sources.
- **4.7.10** Commitments to protect sources after disclosure of unattributed information: It is mandatory to refer upwards (Section 4.1) before the ABC discloses information obtained from a source where
 - (a) the information forms the basis of the report;
 - (b) the information is not to be attributed; and
 - (c) the ABC is to be committed to protect the identity of the source.
- **4.7.11** Before unattributed disclosure by the ABC of information obtained from a source, the source's identity must, if sought, be made known to an appropriately senior ABC person designated for the purpose.
- **4.7.12** When committed to protect a source, take care with the precautions necessary to make the protection effective in practice.
- **4.7.13 Resolving clashes of basic values:** In some circumstances basic values such as promise-keeping come into conflict with other basic values such as truth-telling.

- **4.7.14** Where circumstances arise in which a decision needs to be made about whether to maintain a commitment to a source
 - (a) it is mandatory to refer upwards to the Division's Director;
 - (b) consult Legal;
 - (c) consider whether a release from some or all of the commitment can be negotiated with the source in light of circumstances that have developed since the original commitment was made;
 - (d) gather and verify the facts needed to make the decision;
 - (e) identify the competing values;
 - (f) analyse the impact of the various options and how to minimise foreseeable harm.

Having taken these steps, decide whether, in the circumstances, substantial advancement of the public interest or the risk of substantial harm to people justifies overriding promise-keeping in order to serve another basic value.

- 4.7.15 Explain the decision publicly.
- **4.7.16 Further guidance:** In applying this section of the Editorial Policies, consult the Editorial Policies Guidance Note *Dealing with sources*.

Conflicts

- **4.4.13 Participant in newsworthy event:** This section relates to the type of conflict of interest that arises when a staff member's participation by action or inaction, alone or in combination with other participants in the events is integral to what makes a matter newsworthy.
- **4.4.14** Circumstances will vary from case to case, but the needs of audiences and the independence and integrity of the ABC are prime considerations in every case.
- 4.4.15 In assessing whether a staff member should cover, or continue to cover, a story in which he or she is or is likely to become a participant, the staff member and supervisors should consider factors including
 - (a) the extent to which the essential elements of the story relate to the staff member's own actions or inaction:
 - **(b)** the nature of the personal interests involved;
 - (c) the relationship between those personal interests and the organisation, individuals, issues and events required to be covered by the ABC, in particular the extent to which the staff member's personal honor or reputation has or is likely to be pitted against the honor or reputation of other participants;
 - (d) whether disclosure of the personal interests would be sufficient in all the circumstances of the case;
 - (e) whether, if the staff member were to cover the story, audience members with knowledge of the facts giving rise to the conflict could reasonably doubt the fairness and accuracy of the story;
 - (f) whether, if the staff member stands aside, audience members will lose any element of substance from the ABC's coverage which could not be provided through other means (for example, by having another journalist interview the staff member-participant in the same way as any other participant).

ABC Editorial Policies

Appendix 2: Guidance Note – *Dealing with sources* (issued 1 July 2008)





Guidance Note

Dealing with Sources

Status of Guidance Note

This Guidance Note, authorised by the Managing Director, is referred to in section 4.7.16 of the Editorial Policies. This Guidance Note is non-binding and assists staff to interpret and apply the sections of the Editorial Policies to which it relates.

Introduction

The purpose of section 4.7 of the Editorial Policies and this Guidance Note is to ensure that the ABC deals honourably with sources, in ways that serve the public well and maintain the independence and integrity of the ABC.

For ease of reference, the numbered sub-sections of section 4.7 of the Editorial Policies are reproduced in this Guidance Note.

Presumption of attribution

- **4.7.1 Presumption of attribution:** Aim to attribute information to its source.
- **4.7.2** Attribution serves audiences best by providing relevant information.
- **4.7.3** Attribution reduces the risk to reputation that can result from the abuse of anonymity.

When media provide information without attribution, audience members are denied an opportunity to consider the source for themselves and to decide how much weight to give to the information in light of who the source is.

Through agreements with media professionals, anonymous sources exercise the power of widespread disclosure of information without having to share responsibility for its reliability and for consequences of its disclosure. That responsibility lies solely with the media professionals and the outlet through which their work is disseminated.

When the ABC carries unattributed information it is, in effect, vouching for the information to the audience. The ABC is asking its audience to take the information on trust and in that way the ABC is investing some of its own credibility in the material.

Guidance Note: Dealing with Sources Date issued: 1 July 2008

Negotiating exceptions to the presumption of attribution

4.7.4 Negotiating exceptions to the presumption of attribution: The public interest in the free flow of information can justify exceptions to the presumption of attribution.

A democratic society protects itself through the free flow of information. Timely public disclosure of information nourishes the formal and informal checks and balances by which such societies hold the powerful to account and debate matters affecting the common good.

There are circumstances in which the public interest is served by media disclosure of information that is not attributed to its source. An example of such a circumstance is the disclosure of official corruption. Disclosure serves the public interest in at least two ways. It can prevent specific consequences harmful to the public interest, such as planning or environmental harms resulting from approvals obtained by bribes. More generally, disclosure serves the public interest because when corrupted official processes are exposed they are more likely to be addressed, and perhaps remedied. Disclosure, by itself or in combination with resulting public opinion, may cause more formal checks and balances to come into operation, such as police, commissions of inquiry, statutory regulators, prosecutors and parliaments.

In some circumstances, if the identity of the source of significant information were to be revealed, the source would be at risk of various types of harm to reputation, livelihood, property or person. Those close to the source, such as family members, may also be at risk. If those who reveal information that serves a significant public interest suffer unjustly, they and other actual or potential sources may be deterred from providing information in future. In this way, the free flow of information may be impeded beyond the context of a specific case.

While anonymity for sources is justifiable in some cases, it should be the exception not the rule. Circumstances in which a source is given a commitment that his or her identity will be protected should involve the public interest in the free flow of information. It is not enough that anonymity merely serves the source's convenience. The information the source is conveying should have genuine public interest value.

Timeliness may also be a factor. In each case, consider whether it is in the public interest that the information, unattributed but corroborated, be disclosed sooner rather than later, even though it may be possible later to disclose with attribution.

- **4.7.5** In negotiating with sources, be clear with them about key terms including
 - (a) On the record, meaning both parties agree that the information conveyed may be disclosed and attributed to the source by name.
 - **(b)** On background, meaning both parties agree that the information conveyed may be disclosed but not attributed in a way that would be likely to identify the source.
 - **(c)** Off the record, meaning both parties agree that the information conveyed is not to be disclosed, with or without attribution.

Harm can result from sources and media professionals having different understandings of what they have agreed to. Misunderstandings may damage mutual trust and confidence between the two individuals involved. The source's attitude to media professionals in general may be adversely affected. Other sources (actual and potential) who observe the consequences of such misunderstandings may be deterred from future dealings. Clarity about the terms of agreements is of heightened importance when controversies develop, the stakes rise and scrutiny intensifies. Confusion about the terms of an agreement can affect reputations of individuals and media organisations.

Individual staff members will have established and continuing relationships with their own sources. They may use particular terms that are clearly understood between them. Certain terms may be understood by both parties to be synonymous with the definitions in Section 4.7.5 of the

Guidance Note: Dealing with Sources Date issued: 1 July 2008

Editorial Policies. Whatever language is used with particular sources when obtaining information, staff should be clear with sources about the terms of agreement prior to disclosure by the ABC of information obtained from the source.

In its own decision-making, the ABC will apply the definitions in section 4.7.5 and will reasonably expect that staff have communicated clearly with sources.

4.7.6 Once you have clearly identified yourself as working for the ABC, the information a source conveys is on the record unless agreed otherwise.

Sometimes, a source will attempt retrospectively to place on-background or off-the-record information which he or she conveyed after you identified yourself as working for the ABC. This can be an awkward discussion, especially for the inexperienced. Section 4.7.6 makes it clear that you are not obliged to agree to such requests.

Having identified yourself and your employer, you are entitled to report what the person says. A person may, on reflection, wish to resile from taking responsibility in public for what they have told a media professional. But attribution serves the public best, and you may often need to remain firm and explain that the information is properly on the record.

However, in some circumstances it may be appropriate to negotiate. In making a judgement, factors to consider include –

- The circumstances prevailing at the time the information was conveyed. The on-the-record nature of the exchange may not have been sufficiently clear from the outset. Circumstances may be that the source has been drinking or has recently woken from sleep, is reeling from serious news just conveyed, or is otherwise vulnerable or incapacitated.
- The nature of the information. For example, in the course of an on-the-record exchange the source may convey sensitive information that has low public interest value but may unreasonably affect others if disclosed with attribution. For example it may infringe the privacy of a member of the source's family and neither the information nor its disclosure may be material to the story.
- The nature of the source. It may be appropriate to negotiate retrospectively with people who are inexperienced in dealing with media, especially young people, to ensure they are treated fairly. A different type of source, usually highly experienced with media, may be such a significant ongoing source of information of value in serving the public interest that retrospective negotiation may be judged to be a necessary aspect of maintaining the relationship.
 - **4.7.7** When sources seek to convey information off the record, tell them beforehand that if the information warrants disclosure in the public interest you will try to confirm it through other sources and disclose it

When a source is told this in advance, it is then up to the source to decide how much to convey. This approach is straightforward and conducive to maintaining trust between you and your source.

Agreements to accept information off the record may include time limits, or be conditional on certain other factors. For instance, you may negotiate that the information that the source wants to convey off the record may change status to 'on background' or even 'on the record' for you if it becomes public through circumstances beyond your control. It may be agreed that the change of status would be automatic, or the agreement may require that you and the source have another conversation if circumstances change.

It can be tempting to agree in advance to receive information off the record in order to become 'in the know'. But it is necessary to be cautious about going into an agreement not to disclose information before you know the precise information. It may be that, having learned what the information is and considering prevailing circumstances, it is in the public interest for the ABC to disclose the information as promptly as possible.

Guidance Note: Dealing with Sources Date issued: 1 July 2008

Faced with an offer of information conditional on you being unable to do anything with it, test the source's reasons for wanting to lock you – and through you the ABC – into silence, even temporary silence. In considering the proffered reasons, weigh the seriousness, likelihood and imminence of any harms that could flow from independent efforts by you to corroborate and disclose the information.

Keep in mind that your professional purpose is, at its core, to disclose reliable information in the public interest. Others may have different professional purposes which may be easier for them to accomplish by controlling what information is disclosed to the public. Those purposes may be legitimate, but they are not your purpose.

4.7.8 When sources seek to convey information on background, consider their motive and any alternative attributable source.

A source's motives need not be pure. Long experience teaches that the public interest in the disclosure of information can be served by media professionals cultivating sources who may have mixed motives for seeing the information they provide made public.

Some sources are genuinely altruistic whistleblowers at risk of various types and degrees of harm if their identity as a source is disclosed. The mixed motives of sources who seek anonymity may include: spinning, kite-flying, strewing red herrings, undermining rivals, salvaging prestige, dampening/heating expectations, avenging defeats, and trading favours.

Acknowledging that sources may have mixed motives does not change the media's need to cultivate sources and gather information, but it does underscore the importance of journalists giving careful consideration to the motives of a source before granting anonymity.

Test whether the source has first-hand knowledge of the matters he or she is conveying.

Seek to confirm the information through independent sources (persons or documents).

Avoid reliance solely on sources to which you are referred by the original source. In negotiating with sources, also consider the following factors –

- **The public interest:** Whether the disclosure of the information unattributed would serve a sufficiently important public interest.
- **Personal attack only?:** Whether disclosure of the information unattributed would amount only to a personal attack made on another person by the source under cover of anonymity provided by you.
- **Timeliness:** Whether the information can be obtained from an attributable source of comparable reliability for disclosure to occur within a time period that would allow the public interest to be adequately served.
- Form of attribution: A form of attribution which, while preserving anonymity, would give the audience an opportunity to weigh the reliability of the information, at least to some extent. Phrases like 'sources said' are unhelpful. The following advice adapts the New York Times' guidance on this point to the Australian context:
 - 'Australian diplomat' is better than 'Western diplomat', which is better than 'diplomat'. Still better is 'an Australian diplomat who took part in the meeting'. The phrase 'a person familiar with the case' is vague enough to include the reporter. Better are 'an executive from the plaintiff company' and 'a staff member who has read the draft'.
- **No misleading descriptors:** Anonymity for the source requires an investment of trust in you by the audience (and your colleagues) as well as by the source. Do not say 'sources', plural, if there is only one source. Do not give false forms of attribution in order to throw people off the scent of the real source: for example, 'a parliamentary source'

when actually the source works in a department of executive government. Such actions can undermine the story as a whole and may affect the subsequent willingness of others to invest trust.

Agreed limitations that take effect if circumstances change: Terms of agreement
appropriate to the circumstances of the case, such as agreed limitations to the anonymity.
Limitations may include an express understanding between you and the source that if the
disclosure of the information supplied by the source causes certain consequences, then
the source waives the commitment to maintain anonymity.

Consequences that may lead to a source agreeing to come forward and be identified as the source may include:

- legal proceedings in which you and/or the ABC are lawfully compelled to provide information; or
- the establishment of a process under law, such as a royal commission or parliamentary inquiry, with the capacity to address the issue that the source was trying to bring to light through the media; or
- o an investigation under law by an authority, such as a statutory anti-corruption body, with the capacity to protect the source from adverse effects of being identified as the source.
- **4.7.9** It is not mandatory to refer upwards before approaching sources and obtaining information from sources.

It is obviously impracticable to refer upwards before contacting sources, cultivating them, obtaining information from them and sharing information with them. Multiple such exchanges are desirable and routine in the practice of journalism.

Information gleaned this way may provide leads for further investigation, allow media professionals to acquire fuller background knowledge of events and issues, confirm information obtained elsewhere, and reinforce relationships of trust and confidence.

Individual staff members have broad discretion in dealings with their sources up to the point that the staff member proposes that the ABC disclose, without attribution, information obtained.

The act of disclosure on an ABC platform creates risks and responsibilities for the ABC as well as for the staff member and the source in relation to potential consequences of disclosure.

Among those responsibilities are:

- the support you may expect from the ABC for yourself and your source after the disclosure; and
- the support the ABC may expect from you and your source to prepare and to respond should the ABC be called to account for the disclosure and its consequences.

Shared risks and responsibilities are the basis for the requirements of this section of the Editorial Policies.

- **4.7.10** Commitments to protect sources after disclosure of unattributed information: It is mandatory to refer upwards (Section 4.1) before the ABC discloses information obtained from a source where
 - (a) the information forms the basis of the report;
 - (b) the information is not to be attributed; and
 - (c) the ABC is to be committed to protect the identity of the source.

This part attempts to ensure that the work of the staff member with the direct relationship with a source is tested through consultation with colleagues before the source's information is disclosed by the ABC without attribution.

Upward referral before an anonymous source is used as the basis of a story has been a requirement of the News Division's Style Guide for some years. It is a common feature of the published standards of many respected media outlets.

The practical effect of this section is to compel consultation that should, and often does, occur as a matter of course when disclosures of significance are being contemplated on the basis of information from an anonymous source.

First, the consultation among colleagues is a check on the natural tendency for journalists to get close to their contacts. They may develop an empathy that clouds their judgement. Colleagues, being at arm's-length, can be more dispassionate. They bring their own knowledge and experience to methods of negotiation, analysis of sources' motives, forms of attribution, reasonable limitations on commitments, and practical protection of sources.

4.7.11 Before unattributed disclosure by the ABC of information obtained from a source, the source's identity must, if sought, be made known to an appropriately senior ABC person designated for the purpose.

Mandatory disclosure of an anonymous source's identity to a more senior person has been a requirement of the News Division's Style Guide for several years. The phrase 'designated for the purpose' is intended to give flexibility to the different Divisions of the ABC, each of which will have various organisational structures and reporting lines.

A risk that has caused some media outlets very serious harm in the past and would gravely harm the ABC if it eventuated is the risk that a staff member fabricates information, claims the identity of the 'source' can be known to the staff member alone, and claims the 'source' must stay anonymous after disclosure of the information.

Identities of sources may not be sought on every occasion. The requirement relates to disclosures of unattributed information that forms the basis of reports, and to cases in which the ABC is to be committed to protect the identity of the source. It is a matter for the judgement of the designated senior person whether he or she seeks to be told the name of the anonymous source, or is satisfied about the existence and reliability of the source on the basis of other factors including: the particular staff member's reputation; corroboration from independent alternative sources; and the terms of the agreement negotiated with the source in the specific circumstances.

Staff members should ensure that their sources understand that the identity of a source may be required to be shared by the staff member with an appropriately senior ABC person before information is disclosed by the ABC without attribution.

4.7.12 When committed to protect a source, take care with the precautions necessary to make the protection effective in practice.

A basic rule of journalism is to protect the identity of sources when committed to do so.

Any failure to uphold the rule can result in serious potential costs in loss of trust and reduced information flow, both from the source affected and from potential sources who may be deterred.

Generally speaking, the more significant the information provided by an anonymous source, the greater the risk to the source of retribution or other adverse consequences, and the more intense the efforts by others to discover the source's identity. Some sources may risk reputation, livelihood or even personal safety to provide information for public disclosure in the media.

In striving to maintain protection in practice -

- avoid exposing the source when cross-checking the information the source supplied;
- minimise and keep secure any notes, email exchanges, phone records, drafts and other material which may expose the source's identity;
- consider whether any retained notes can be written in ways that do not identify sources;
- be aware of the risks to the source arising from original documents, photocopies, disks,
 USB data storage devices and other items supplied by the source;
- be aware that some taxi-payment records show GPS-derived location data about pick-up and drop-off addresses;
- be aware that date/time-stamped CCTV footage in offices may be aligned with dated/timed phone records to indicate who was using a particular phone at the time of a particular call;
- if using vision of the source in the report that is broadcast, blur rather than pixelate (which can be reversed);
- for voiceovers of the source, use another person's voice rather than distort by technological means the actual source's voice;
- consider the potential for details other than face or voice to identify a source for example, clothing, landmarks, street names, vehicle registration number; and
- be vigilant to maintain the security of a source even when the source is geographically remote from the place in which the report based on the source's information is first broadcast or published.
- **4.7.13** Resolving clashes of basic values: In some circumstances basic values such as promise-keeping come into conflict with other basic values such as truth-telling.
- **4.7.14** Where circumstances arise in which a decision needs to be made about whether to maintain a commitment to a source
 - (a) it is mandatory to refer upwards to the Division's Director;
 - (b) consult Legal;
 - (c) consider whether a release from some or all of the commitment can be negotiated with the source in light of circumstances that have developed since the original commitment was made:
 - (d) gather and verify the facts needed to make the decision;
 - (e) identify the competing values;
 - (f) analyse the impact of the various options and how to minimise foreseeable harm.

Having taken these steps, decide whether, in the circumstances, substantial advancement of the public interest or the risk of substantial harm to people justifies overriding promise-keeping in order to serve another basic value.

4.7.15 Explain the decision publicly.

Experience shows that in this context of source protection, 'hard cases' can and do happen from time to time. In such cases, basic values can clash and choices must be made. Dilemmas arise in two very distinct settings.

Setting 1

Following a commitment to protect the identity of the source, the information from the source is disclosed but not attributed. Among the consequences of disclosure is a legal process – e.g., defamation action, royal commission, statutory regulator's corruption investigation – in

which an enforceable demand is made for the identity of the source to be provided, notwithstanding the source's continuing wish to remain anonymous and the media professionals' objection to identifying the source.

Setting 2

Following a commitment to protect the identity of the source, the information from the source is disclosed but not attributed. Among the consequences of disclosure is a change in circumstances which suggests to the media professionals that the identity of the source ought to be made public, notwithstanding the source's continuing wish to remain anonymous.

Decision-making in either setting requires great care. The steps in section 4.7.13-15 of the Editorial Policies set out a binding structure for making such decisions. The structure does not pre-determine the outcome of any particular case. The facts of every case will be different. Note that in every case upward referral is mandatory.

By including the decision-making structure in the Editorial Policies, and by being willing to explain decisions publicly, the ABC demonstrates that it:

- understands the gravity of each such decision;
- has prepared itself for dealing with such cases responsibly; and
- accepts for itself the public accountability that the ABC's staff routinely require of others.

Further guidance

This document is the Guidance Note referred to in section 4.7.16 of the Editorial Policies. It will be updated from time to time. For further details and reference materials about source protection issues, see the report *Sources and Conflicts* and the resources listed in it. See also the ABC News Division Style Guide.

Appendix	3: Selected	d Resources

Excerpts from selected media organisations' policies

(links last revised 27 June 2008)

Journalism organisations

1. CAJ – Canadian Association of Journalists (2004)

CAJ Statement of Principles for Investigative Journalism and Guidelines for Investigative Journalism, 2004, extracts, http://www.caj.ca/principles/principles-statement-investigative-2004.htm:

[STATEMENT OF PRINCIPLES FOR INVESTIGATIVE JOURNALISM]

Truthfulness

....We will use confidential sources who are in a position to know and whose evidence is verified by other independent sources. We will be wary of sources who may be motivated by malice or bias....

Accountability

We will be accountable for our actions. We will explain to the public the nature and reasons for our investigations. We will explain why we used confidential sources, or hidden recording devices, or why we misrepresented ourselves....

[GUIDELINES FOR INVESTIGATIVE JOURNALISM]

Use of confidential and anonymous sources

A. When is it appropriate to use them:

We should strive to fully identify the sources in our stories – for credibility and accountability. When sources are secret, the reader or audience has less information on which to judge the reliability of the source's comments. Also, anonymity might encourage the source to make irresponsible statements.

However, confidential sources can be a vital tool in the free flow of information. There can be clear and pressing reasons to protect anonymity. In print media, we may conceal the identity of interview subjects by changing their names or by not naming the source. In broadcast, we may protect identities through digital or other technical methods, such as concealing an interviewee's face or distorting their voice.

We should use such methods only when the participation of the subject puts them at risk of harm or personal hardship (i.e., a whistleblower who might lose his/her job, or a mole within organized crime.)

B. How they should be identified:

We will explain the need for anonymity to our readers and audiences. Confidential sources should be identified as accurately as possible by affiliation or status. (For example, a "senior military source" must be both senior and in the military.)

We will identify a source from a critical or opposing side of a controversy as such. Any vested interest or potential bias on the part of a source must be revealed.

C. How they should be checked:

Use of anonymous sources requires the prior approval of at least one senior editorial person (or manager) who knows the full identity of the source. This ensures editorial control, verification and honesty. The

disclosure of sources among journalists within a news organization is not the same as the public disclosure of sources.

We must know the full identity of the anonymous source (e.g., full name, phone number, method of contact, history and background). "Anonymous" does not mean we know little about the person. It means we know everything, and are offering an agreed-upon level of protection.

More than one source should be used to verify a story or fact. If only one source is available, we must say so.

We will not allow anonymous sources to take cheap shots at individuals or organizations. We will independently corroborate facts, if we get them from a source we do not name.

D. How they should be protected:

Promising sources that we will keep their identities confidential is not enough. We must spell out, precisely, two things:

- what the level of confidentiality is
- · how far you are willing to go to protect the source

There are three levels of confidentiality:

Not for attribution: We may quote statements directly but the source may not be named, although a general description of his or her position may be given ("a government official," or "a party insider"). In TV and radio, the identity may be shielded by changing the voice or appearance.

On background: We may use the thrust of statements and generally describe the source, but we may not use direct quotes.

Off the record: We may not report the information, which can be used solely to help our own understanding or perspective. There is not much point in knowing something if it can't be reported, so this undertaking should be used sparingly, if at all.

We will make it clear from the start how far we are willing to go in protecting a source.

We may be ordered by a court or judicial inquiry to divulge confidential sources upon threat of jail. If you are willing to go to jail to protect a source, say so. Otherwise, spell out the conditions. To protect your credibility or your company's finances, you may tell the source you will have to reveal their identity in order to win a damaging lawsuit.

Make it clear that if a source lies or misleads you, all agreements are off.

We should not make any commitments to anonymous sources without consultation with senior management. Journalists should be wary about entering into arrangements that they cannot fulfill. Sometimes sources request additional protection. For example, they may ask for legal assistance or protection if they are revealed or endangered. If you and your employer agree this is reasonable, spell out the terms.

When promising confidentiality we should bear in mind that Canadian journalists are not protected by "shield laws," as in the United States. However, an Ontario Superior Court judge has recognized that forcing journalists to break promises of confidentiality would seriously harm the media's constitutional right to gather and disseminate information.

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2. Radio Television News Directors Association & Foundation (US) (2000)

See respectively:

- 1. RTNDA Code of Ethics and Professional Conduct, September 2000, extract on "Integrity", http://www.rtnda.org/pages/media_items/code-of-ethics-and-professional-conduct48.php?g=36?id=48 (or via RTNDA's Best Practices > Ethics pages, http://www.rtnda.org/pages/best-practices/ethics.php).
- RTNDF Ethics Guidelines, September 2000, extract in "Guidelines for Using Confidential Sources", http://www.rtnda.org/pages/media_items/guidelines-for-using-confidential-sources167.php?p=20?id=167 (or via RTNDA Best Practices > Ethics pages, http://www.rtnda.org/pages/best-practices/ethics.php).

[RTNDA CODE OF ETHICS AND PROFESSIONAL CONDUCT]

Professional electronic journalists should:

 Identify sources whenever possible. Confidential sources should be used only when it is clearly in the public interest to gather or convey important information or when a person providing information might be harmed. Journalists should keep all commitments to protect a confidential source.

[RTNDF ETHICS GUIDELINES]

USING CONFIDENTIAL SOURCES

GUIDELINES

Be especially careful in the use of confidential sources. The reporter's job should be, as fully as possible, to conduct interviews and seek information on the record. The news managers' job should be to ensure confidential sources are used only when absolutely essential to an important story.

Fulfill all of the following four criteria, then consider the other questions listed below.

- A story that uses confidential sources should be of overwhelming public concern.
- Before offering a source anonymity, you and your news managers must be convinced there is no other way to get the essential information on the record.
- You and your news managers must be convinced the unnamed source has verifiable knowledge of the story. Even if the source cannot be named, the information must be proven true.
- You and your news managers must be willing to publicly describe the source in as detailed a
 manner as anonymity permits, reveal to the public why the source cannot be named and what, if
 any, promises the news organization made in order to get the information.

Consider these questions:

- What does the use of a confidential source mean to the factual accuracy and contextual authenticity of your story?
- Does this source deserve the protection of his/her identity?
- What legal obligations do you incur by promising not to reveal this source's name? If you are sued, are you willing to go to jail to protect this source? If you are sued, will the source come forward and be named? Is the reluctance justifiable?
- How would viewers/listeners evaluate the same information if they knew the source's name and motivations?

- If you promised to protect a source's identity, are you using production techniques that will insure the protection you promised? What if a lawyer subpoenas the raw tapes? Would the person be identifiable in the tape outtakes?
- Do you understand your newsroom's policy on confidentiality before you promise it to sources?
 Consider a policy that requires you to obtain the consent of your news managers before agreeing to
 anonymity, and a related policy requiring you reveal the source's identity to news managers before
 the story involved airs. You should inform your source of this policy and that you might have to
 identity them to others in your newsroom.

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Public broadcasters

1. BBC – British Broadcasting Corporation (2005)

BBC Editorial Guidelines, June 2005, extracts from section 3 on "Accuracy", http://www.bbc.co.uk/guidelines/editorialguidelines/assets/guidelinedocs/chapter_three.pdf:

NOTE TAKING

We must take accurate, reliable and contemporaneous notes of all significant research conversations and other relevant information.

We must keep records of research including written and electronic correspondence, background notes and documents. It should be kept in a way that allows double checking, particularly at the scripting stage, and if necessary by another member of the team.

We must keep accurate notes of conversations with sources and contributors about anonymity. A recording is preferable where possible.

When we broadcast serious allegations made by an anonymous source, full notes of interviews, conversations and information which provide the basis for the story must be kept.

When anonymity is essential no document, computer file, or other record should identify a source. This includes notebooks and administrative paperwork as well as video and audio tapes.

FACT CHECKING

We must check and verify information, facts and documents, particularly those researched on the internet. This may include confirming with an individual or organisation that they posted material and that it is accurate. Even the most convincing material on the web may not be what it seems.

IDENTIFYING SOURCES

We should normally identify on air and online sources of information and significant contributors, as well as providing their credentials, so that our audiences can judge their status.

ANONYMOUS SOURCES

Sometimes information the public needs to know is only available through anonymous sources or contributors, generally on an "off the record" basis.

Protecting sources is a key principle of journalism for which some journalists have gone to jail. We must take care when we promise anonymity that we are in a position to honour it, including the need to resist a court order.

When a source asks for anonymity as a condition of giving information, or a contributor demands anonymity when taking part, we must agree with them precisely the way they are to be described.

However, with an anonymous source, especially a source making serious allegations, we must give the audience as much information about them as is compatible with protecting their identity, and in a way that does not mislead the audience about their status.

Whenever a BBC story involves an anonymous source, the relevant editor has the right to be told their identity. In cases involving serious allegations we should resist any attempt by an anonymous source to prevent their identity being revealed to a senior BBC editor. If this happens, the reporter should make it clear that the information obtained confidentially may not be broadcast.

When anonymity is agreed everyone must be clear about its extent. It may be sufficient to ensure that contributors are not readily recognisable to the general public, or in the case of significant contributors it may be necessary to ensure they cannot even be identified by friends and family.

We must ensure that if anonymity is necessary it is effective. Both picture and voice may need to be disguised. A "voice-over" by another person is usually better than technically induced distortion, which can be reversed, but audiences should be told what they are hearing. Blurring rather than "pixilation ", which can be reversed, is the best way of ensuring anonymity in pictures.

Our promises of anonymity may also need to include, for example, blurring car number plates and taking care not to reveal the location of a contributor's home in order to avoid any risk of "jigsaw identification".

We may need to disguise the identity of contributors if their safety may be compromised when material originally recorded for the BBC's UK services is rebroadcast on our international services.

REPORTING ALLEGATIONS

We should not normally use live unscripted two-ways to report allegations. It must be the editor's decision as to whether they are an appropriate way to break a story. When BBC colleagues follow up a story they must ensure they understand the terms in which the allegations are to be reported and do so accurately.

Any proposal to rely on a single unnamed source making a serious allegation or to grant anonymity to a significant contributor must be referred to a senior editorial level, or for Independents to the commissioning editor. In the most serious cases it may also be necessary to refer to Controller Editorial Policy and Programme Legal Advice. We will need to consider:

- whether the story is of significant public interest.
- whether the source is of proven credibility and reliability and in a position to have sufficient knowledge of the events featured.
- any legal issues.
- safety concerns e.g. whistleblowers.
- whether a response to serious allegations has been sought from the people or organisations concerned.
- sensitive and personal issues such as whether the serious allegation was made or substantiated "off the record".

We should script carefully the reporting of allegations made by an anonymous source to explain:

- the nature of the allegation.
- that the allegation is being made by an anonymous source and not the BBC.
- whether the allegation has been independently corroborated.

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2. CBC – Canadian Broadcasting Corporation (2004)

CBC Journalistic Standards and Practices, September 2004, extracts from section IV.A. on "Production Standards: Information Gathering", http://www.cbc.radio-canada.ca/accountability/journalistic/sources.shtml, and from Appendix A.1 on "Use of Sources" http://www.cbc.radio-canada.ca/accountability/journalistic/appendixA.shtml:

4. PROTECTION OF SOURCES

4.1 ETHICAL ASPECTS

The Corporation strongly upholds the principle of freedom of information and considers the protection of a journalist's sources to be an important element of this principle.

Information about which the public should know is sometimes only available through a confidential source. Off-the-record discussions with journalists, for example, are often held by public figures and others. If the confidentiality of sources were not respected as a matter of principle this would inhibit the free flow of information which is essential to the vitality of a democratic society.

Information from a source who does not wish to be publicly identified may be used if the source is known to the journalist and has a prima facie credibility. However, to avoid the possibility of being manipulated to broadcast inaccurate or biased information, the journalist must carefully check the reliability of the source and must obtain corroborative evidence from other pertinent sources.

The identity and bona fides of a confidential source must be made known prior to broadcast to at least one senior editorial supervisor acceptable to the senior officer in information programming. Disclosure of sources within the journalistic line of responsibility should not be confused with public disclosure of sources.

4.2 LEGAL ASPECTS

In the event the protection of a source becomes a legal issue in any given case, the Corporation will not advise an employee to refuse to obey an order of a court. The Corporation's legal counsel, however, would be available for advice and to present legal argument in court to protect the source.

In cases involving clear danger to public safety, the Corporation itself would require that the proper authorities be immediately notified through its legal counsel.

4.3 ANONYMOUS PROGRAM PARTICIPANTS

Accuracy and integrity in journalism require that the identity and credentials of an interviewee be evident to the audience.

If an interviewee or any program participant is anonymous, if the face or identity is concealed or the voice distorted, it is tantamount to concealing from the audience pertinent information required to judge that person's comments and might further the chance of irresponsible statements by the participant.

There are occasions when the value of the information (measured in terms of the importance of bringing it to the attention of the public) that can be conveyed by an anonymous interviewee or participant outweighs the objections and the technique may be used. For example, where the public identification of the interviewee may cause personal hardship, or where the interviewee is a person whose personal safety may be jeopardized by identification, anonymity may be justified.

Cases where an anonymous interview is believed to be warranted require the prior approval of the senior officer in information programming who should be provided with the name, address and bona fides of the interviewee.

[Journalistic Standards and Practices, Appendix A: 1. Use of Sources]

1. JOURNALISTIC SOURCES

For journalists, protecting their sources is a sacred duty. Likewise, all media organizations have the essential mission of revealing the truth in an independent, thorough, impartial and transparent manner. Journalists aren't there to hide the facts, but rather to bring them to light. With this in mind, how should journalists behave vis-à-vis their sources? When should reporters reveal their sources or keep them anonymous? What are the exact meaning and implications of commonly used terms such as "off the record," "background" and "deep background"? When can we say "according to unnamed sources," attribute controversial statements to "reliable sources" with further clarification, or use classic journalistic catch-phrases such as "according to an observer," "authoritative sources" or "sources close to the government," etc.? This document attempts to answer these questions.

1.1 ON THE USE OF ANONYMOUS SOURCES: IDENTIFYING AND CHECKING SOURCES

Our credibility hinges on our transparency. Information from anonymous sources should therefore be used only in truly exceptional circumstances, when we have no other way to report a piece of information deemed reliable and essential.

Journalists who choose to grant anonymity must ensure the source's reliability and endeavour to double-check the information received with other credible, independent sources. We have a fundamental commitment toward those who depend on us for their news not just to provide accurate, substantiated information, but to provide it in a thoroughly transparent manner.

Clearly, therefore, we cannot grant sources anonymity whenever they ask for it. Nor should we use anonymity as a bargaining chip to obtain information of questionable value. In this age of spin, journalists are increasingly bombarded by information from experts in whose interest it is to remain anonymous. We need to protect ourselves from this form of manipulation by carefully considering the rationale for granting anonymity.

It is acceptable to request information from someone under cover of anonymity if it provides access to more substantial information. For example, there's no need to divulge the name of a source who provides secondary information, such as a telephone number.

1.2 PROTECTING SOURCES

There are of course occasions where the public will benefit from information obtained from anonymous sources and other reasons to grant anonymity. For instance, when someone's personal safety could be at risk or when we know that a source is likely to face reprisals, legal action, or even lose his or her job, anonymity can be granted.

1.3 TRANSPARENCY ON AIR

When we grant anonymity it is important to state off the top, with as much context as possible, why we have done so.

It is not enough to attribute information to an "anonymous source". We should explain with as much precisions as we can where this information comes from. For instance a senior official from Health Canada is preferable to a more general phrase like a senior government official.

1.4 ON A SOURCE'S CREDIBILITY

When using anonymous sources, we must ensure that these sources provide first-hand, credible and reliable information in exchange for confidentiality. Confidentiality should never be given to sources merely to provide cover for speculation and hearsay they wouldn't otherwise put on the record. Thus, politicians who ask not to be quoted so that they can attack their opponents should not be allowed to remain anonymous. The same goes for sensational declarations that, if their author were known, would become even more so. Basically, we must always ascertain whether the anonymity requested by a source is not merely a gimmick to sway or manipulate public opinion. Source confidentiality is a privilege not a right.

1.5 COMMITMENT OF CONFIDENTIALITY

Whenever anonymity is granted, both the journalist and the source must be fully aware that this commitment extends to Radio-Canada as well, and is not merely limited to the journalist granting it.

As stipulated in section 4.1 of the CBC/Radio-Canada Journalistic Standards and Practices (Chapter IV, A), "The identity and bona fides of a confidential source must be made known prior to broadcast to at least one senior editorial supervisor acceptable to the senior officer in information programming. Disclosure of sources within the journalistic line of responsibility should not be confused with public disclosure of sources".

1.6 OFF THE RECORD

The expression off the record lies at the very heart of journalistic practices: the protection of sources. Although we hear these words almost all the time, a commitment of this type is so fundamental that it shouldn't be taken lightly with a person or group from whom we want information.

The truth is that many journalists and news professionals tend to confuse the expression "off the record" with "not for attribution." There is a clear distinction, however. When information is provided "off the record," not only can't the sources be revealed, but the content as well and, consequently, can't be used [sic] in a current or future report. Off-the-record information is provided in confidence, meaning that the reporter is bound to absolute secrecy.

Information provided as "not for attribution," however, can be reported provided the source remains anonymous. This type of confidentiality is often used during negotiations, for instance, to give reporters a head's-up on what to expect. It may also be requested by civil servants speaking on behalf of their ministers. In short, we need to be sure that when sources say something is "off the record," they don't just mean "not for attribution."

We can agree to protect the identity of sources when the information they provide merely corroborates facts obtained elsewhere. This is where the concepts of "background" and "deep background" come in. Be careful, though. We need to proceed with extreme caution here, because when information is provided under cover of the strictest confidentiality, we are not even allowed to provide viewers or listeners with even the vaguest description of how the information was obtained.

1.7 CONDITIONS FOR ANONYMITY

If information is obtained from a source who does not request anonymity, the reporter cannot be forced to grant it after the fact because the source has a change of heart. When official information has been divulged by a source, it remains official.

Neither should sources ever be given the right to review the final version of a report in order to retract certain comments they made during the taping. Of course, this doesn't mean that a reporter cannot, among other things, ask a source for further clarification to ensure the truthfulness of the facts reported or to ensure they are being taken in the proper context.

1.8 CONCLUSION

Radio-Canada journalists should always endeavour to identify their sources, just as they must always identify themselves as reporters to interviewees (see IV, Production Standards, A, article 10.1, Misrepresentation).

The decision to grant a source anonymity must be well thought out and take into account all the issues raised by report.

We should always ask ourselves the following key question: Will granting anonymity to someone essentially compromise the credibility of a piece of information, of the journalist who uses it in a report, or of Radio-Canada that airs it?

A final checklist:

- Why are you agreeing to anonymity? Is it the easiest path or the best path?
- Have you explored all other avenues before agreeing to anonymity?
- Do you have a second source? Can you confirm this information another way?
- Is the story important enough to justify the anonymity?
- Have you considered what's motivating your source? Are you sure you're not being spun?
- Is there anything making you uncomfortable about the information your source is providing?
- Have you clarified the terms of the relationship? Are you clear on the difference between "anonymity", "not for attribution", "background" and "deep background"?
- Are you convinced that the revelation of the identity will endanger the source professionally or personally?
- Does the source have direct or personal knowledge of the subject? Are you confident they are not just reporting hearsay?
- Have you found a way to contextualize the information provided by the source?
- Does your source expect more protection than you can reasonably offer?
- Have you consulted enough before granting anonymity?

See also IV - A - 4. Protection of Sources

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3. NPR – National Public Radio (US) (2004)

NPR News Code of Ethics and Practices, 2004, extract from section VII. on "Ethical conduct in coverage of news and production of programming", http://www.npr.org/about/ethics/:

VII. Ethical conduct in coverage of news and production of programming

14. NPR journalists do not sign non-disclosure agreements, except in the rarest of circumstances. The Vice President for their Division or their designee and the General Counsel must approve exceptions to this rule. NPR journalists respect embargoes on news unless the circumstances surrounding the embargo make adherence to it inappropriate, such as where the information has already surfaced elsewhere or a strong public interest requires the disclosure to place other news in the proper context.

- 15. Although NPR journalists do agree to talk to sources on background when necessary, NPR's strong preference is to have people on the record. Before any information is accepted without full attribution, reporters must make every reasonable effort to get it on the record. If that is not possible, reporters should consider seeking the information elsewhere.
- 16. The grant of anonymity should be a last resort. When NPR journalists use anonymous sources to obtain information necessary for a story, the editor or producer of that story has an obligation to satisfy him/herself that the source is credible and reliable, and there is a substantial journalistic justification for using the source's information without attribution. This obligation also pertains to situations where individuals ask that their real names be withheld. The editor or producer has a twofold responsibility to (1) make a judgment about whether it is editorially justified to let the person speak anonymously, and (2) satisfy him/herself that this person is who the piece says s/he is. An editor should never be in the position of having to verify these things after a story has aired and a question is raised about it. We should not grant anonymity if a person makes pejorative comments about the character, reputation, or personal qualities of another individual, or derogatory statements about an institution. When anonymity is granted, pseudonyms should not be used. A more detailed description of NPR policy on anonymity can be found in the memo on "Granting Anonymity" in the "Style and Usage" subfolder at the MANAGING EDITOR location in ENPS.
- 17. When NPR journalists attribute information in a story to a "source" or "sources," it is assumed that these are the journalists' sources and that they have obtained the information firsthand from them. If this is not the case, and the sources are ones quoted by other news organizations, then those sources must be attributed to those other news organizations.

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Newspaper services

1. AP – Associated Press (US) (2006)

See respectively Associated Press *Statement of News Values and Principles* and *Standards and Practices Anonymous Sources*, February 2006, extracted from http://www.ap.org/newsvalues/index.html:

[STATEMENT OF NEWS VALUES AND PRINCIPLES]

[A]Iways and in all media, we insist on the highest standards of integrity and ethical behavior when we gather and deliver the news....

It means we always strive to identify all the sources of our information, shielding them with anonymity only when they insist upon it and when they provide vital information – not opinion or speculation; when there is no other way to obtain that information; and when we know the source is knowledgeable and reliable.

[STANDARDS AND PRACTICES ANONYMOUS SOURCES]

Transparency is critical to our credibility with the public and our subscribers. Whenever possible, we pursue information on the record. When a newsmaker insists on background or off-the-record ground rules, we must adhere to a strict set of guidelines, enforced by AP news managers.

Under AP's rules, material from anonymous sources may be used only if:

- 1. The material is information and not opinion or speculation, and is vital to the news report.
- 2. The information is not available except under the conditions of anonymity imposed by the source.
- 3. The source is reliable, and in a position to have accurate information.

Reporters who intend to use material from anonymous sources must get approval from their news manager before sending the story to the desk. The manager is responsible for vetting the material and making sure it meets AP guidelines. The manager must know the identity of the source, and is obligated, like the reporter, to keep the source's

identity confidential. Only after they are assured that the source material has been vetted should editors

allow it to be transmitted.

Reporters should proceed with interviews on the assumption they are on the record. If the source wants to set conditions, these should be negotiated at the start of the interview. At the end of the interview, the reporter should try once again to move some or all of the information back on the record.

Before agreeing to use anonymous source material, the reporter should ask how the source knows the information is accurate, ensuring that the source has direct knowledge. Reporters may not agree to a source's request that AP not pursue additional comment or information.

The AP routinely seeks and requires more than one source. Stories should be held while attempts are made to reach additional sources for confirmation or elaboration. In rare cases, one source will be sufficient – when material comes from an authoritative figure who provides information so detailed that there is no question of its accuracy.

We must explain in the story why the source requested anonymity. And, when it's relevant, we must describe the source's motive for disclosing the information. If the story hinges on documents, as opposed to interviews, the reporter must describe how the documents were obtained, at least to the extent possible.

The story also must provide attribution that establishes the source's credibility; simply quoting "a source" is not allowed. We should be as descriptive as possible: "according to top White House aides" or "a senior official in the British Foreign Office." The description of a source must never be altered without consulting the reporter.

We must not say that a person declined comment when he or she is already quoted anonymously. And we should not attribute information to anonymous sources when it is obvious or well known. We should just state the information as fact.

Stories that use anonymous sources must carry a reporter's byline. If a reporter other than the bylined staffer contributes anonymous material to a story, that reporter should be given credit as a contributor to the story.

And all complaints and questions about the authenticity or veracity of anonymous material – from inside or outside the AP – must be promptly brought to the news manager's attention.

Not everyone understands "off the record" or "on background" to mean the same things. Before any interview in which any degree of anonymity is expected, there should be a discussion in which the ground rules are set explicitly.

These are the AP's definitions:

On the record. The information can be used with no caveats, quoting the source by name.

Off the record. The information cannot be used for publication.

Background. The information can be published but only under conditions negotiated with the source. Generally, the sources do not want their names published but will agree to a description of their position. AP reporters should object vigorously when a source wants to brief a group of reporters on background and try to persuade the source to put the briefing on the record. These background briefings have become routine in many venues, especially with government officials.

Deep background. The information can be used but without attribution. The source does not want to be identified in any way, even on condition of anonymity.

In general, information obtained under any of these circumstances can be pursued with other sources to be placed on the record.

ANONYMOUS SOURCES IN MATERIAL FROM OTHER NEWS SOURCES:

Reports from other news organizations based on anonymous sources require the most careful scrutiny

when we consider them for our report.

AP's basic rules for anonymous-source material apply to pickups as they do in our own reporting: The material must be factual and obtainable no other way. The story must be truly significant and newsworthy. Use of sourced material must be authorized by a manager. The story must be balanced, and comment must be sought.

Further, before picking up such a story we must make a bona fide effort to get it on the record, or, at a minimum, confirm it through our own sources. We shouldn't hesitate to hold the story if we have any doubts. If the source material is ultimately used, it must be attributed to the originating member and note their description of their sources....

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2. New York Times (1999, 2004 & 2005)

See, respectively:

- 1. The New York Times, "Confidential News Sources Policy", 1 March 2004, http://www.nytco.com/company/business_units/sources.html;
- 2. New York Times executive editor, Bill Keller, "Assuring our Credibility: Response to the Credibility Committee's report", staff communication, 23 June 2005, extract from http://nytco.com/pdf/assuring-our-credibility.pdf:

[CONFIDENTIAL NEWS SOURCES POLICY, March 2004]

Readers of The New York Times demand to know as much as possible about where we obtain our information and why it merits their trust. For that reason, we have long observed the principle of identifying our sources by name and title or, when that is not possible, explaining why we consider them authoritative, why they are speaking to us and why they have demanded confidentiality. Guidance on limiting the use of unidentified sources, and on informative description of those we do use, has appeared in several editions of our stylebook, including the current one, and in our Integrity Statement, dating from 1999.

In the last few months, readers and our professional colleagues have asked for additional assurances – that we heed our own guidelines uniformly and that we are accountable for compliance. This restatement of our sourcing policy adds those elements. The rules are effective on March 1, 2004, and will become part of a revised Integrity Statement to be issued in the coming months.

Principles for Granting Anonymity

The use of unidentified sources is reserved for situations in which the newspaper could not otherwise print information it considers reliable and newsworthy. When we use such sources, we accept an obligation not only to convince a reader of their reliability but also to convey what we can learn of their motivation – as much as we can supply to let a reader know whether the sources have a clear point of view on the issue under discussion.

In routine interviewing – that is, most of the interviewing we do – anonymity must not be automatic or an assumed condition. In that kind of reporting, anonymity should not be offered to a source. Exceptions will occur in the reporting of highly sensitive stories, when it is we who have sought out a source who may face legal jeopardy or loss of livelihood for speaking with us. Similarly they will occur in approaches to authoritative officials in government who, as a matter of policy, do not speak for attribution. On those occasions, we may use an offer of anonymity as a wedge to make telephone contact, get an interview or learn a fact. In such a case, the reporter should press the source, after the conversation, to go on the record with the newsworthy information that has emerged.

Whenever anonymity is granted, it should be the subject of energetic negotiation to arrive at phrasing that will tell the reader as much as possible about the placement and motivation of the source – in particular, whether the source has firsthand knowledge of the facts.

In any situation when we cite anonymous sources, at least some readers may suspect that the newspaper is being used to convey tainted information or special pleading. If the impetus for anonymity has originated with the source, further reporting is essential to satisfy the reporter and the reader that the paper has sought the whole story.

We will not use anonymous sourcing when sources we can name are readily available.

Confidential sources must have direct knowledge of the information they are giving us — or they must be the authorized representatives of an authority, known to us, who has such knowledge.

We do not grant anonymity to people who are engaged in speculation, unless the very act of speculating is newsworthy and can be clearly labeled for what it is.

We do not grant anonymity to people who use it as cover for a personal or partisan attack. If pejorative opinions are worth reporting and cannot be specifically attributed, they may be paraphrased or described after thorough discussion between writer and editor. The vivid language of direct quotation confers an unfair advantage on a speaker or writer who hides behind the newspaper, and turns of phrase are valueless to a reader who cannot assess the source.

Anonymity should not be invoked for a trivial comment, or to make an unremarkable comment appear portentous.

We do not promise sources that we will refrain from additional reporting or efforts to verify the information being reported.

We do not promise sources that we will refrain from seeking comment from others on the subject of the story. (We may, however, agree to a limited delay in further inquiries – until the close of stock trading, for example.)

Responsibilities of Editors

When anonymity is granted, reporter and source must understand that the commitment is undertaken by the newspaper, not alone by an individual journalist. Any editor who learns a source's identity is required to maintain exactly the same confidentiality as the reporter. That editor may not divulge the identity to other reporters, or to unauthorized editors. And the editor may not use the source – either for reporting on the current story or for later ones.

- In the case of a routine story with unidentified sourcing, the name or explicit role of the source should be conveyed confidentially to the reporter's department head. At the discretion of the department head and provided the reporter agrees the responsibility for learning about the source may be delegated to a subordinate supervising editor. (Departments are expected to formulate their own day-to-day routines, in consultation with reporters, for expeditious handling of source information.) In all such routine cases, the department head is accountable for knowing the identity of the source, or for knowing which subordinate editor has been informed. Upon request, the executive editor and the managing editors are entitled to know the identity of the source.
- In the case of a moderately sensitive story, the reporter may wish to share the identity with the executive editor or managing editor only. Such a request should be honored without prejudice, and not taken to signify a lack of trust.
- In the case of exceptionally sensitive reporting, on crucial issues of law or national security in which
 sources face dire consequences if exposed, the reporter may appeal to the executive editor for total
 confidentiality. In such circumstances, intended to be extremely rare, the executive editor may
 choose to ask for only a limited description of the source and waive the right to know the full
 identity. Only the executive editor may approve such a request.

The standards editor, while not necessarily entitled to know the identity of a confidential source, is responsible for spot-checking compliance with our procedures – that is, for knowing which editors have learned the identity.

Forms of Attribution to Confidential Sources

When we agree to anonymity, the reporter's duty is to obtain terms that conceal as little as possible of what the reader needs to gauge reliability. We should distinguish conscientiously between high-level and lower-level executives or officials. We should not use blind attribution – "sources said," for example – which is more a tease than a signpost. Attribution should never amount to a truism: since "source" merely means a provider of information, "one source said" is equivalent to "somebody said." And "informed" or "reliable source" is no improvement. (Would The Times quote an uninformed or unreliable one?) The objection is not to the word "source," but to its emptiness without a meaningful modifier: "a Senate source," for example, may be acceptable – unless, of course, it is possible to tell the reader still more. The word "official" is overused, and cries out for greater specificity.

Trail markers should be as detailed as possible. "United States diplomat" is better than "Western diplomat," which is better than "diplomat." Still better is "a United States diplomat who took part in the meeting." And "a lawyer who has read the brief" or "an executive close to the XYZ Company" is far better than "a person familiar with the case," a phrase so vague that it could even mean the reporter.

Readers value signs of candor: "The report was provided by a Senate staff member working to defeat the bill."

Whenever possible, in writing about documents we should specify how we received them.

We should avoid automatic references to sources who "insisted on anonymity" or "demanded anonymity"; rote phrases offer the reader no help and make our decisions appear automatic. When possible, though, articles should tersely explain what kind of understanding was actually reached by reporter and source, and should shed light on the reasons and the source's motives.

In editing on the copy desk or at higher levels, the description of a source must never be altered without consultation with the reporter who made the confidentiality commitment.

It should go without saying that The Times is truthful. We do not dissemble about our sources – we do not, for example, refer to a single person as "sources" and do not say "other officials" when quoting someone who has already been cited by name. We do not say a source has refused to comment if in fact that person has commented off the record. (We may, however, say – when it is true – that the source refused to comment on a specific aspect of the story.) There can be no prescribed formula for attribution, but it must be literally truthful, and not coy.

Multiple Anonymous Sources

When we grant anonymity, we do not necessarily require multiple sources. A cabinet official, for example, or the White House adviser on national security, may require anonymity while conveying a policy decision that is clearly "authorized," necessitating no corroborating source.

But when we grant anonymity for less verifiable assertions – especially if they form a disputed account, or are potentially damaging to one side in a court case, for example – corroborating sources are often necessary. The reporter should confer with the department head or senior deputy to agree upon the need and the number.

In such a case, the reporter and editor must be satisfied that the sources are genuinely independent of one another, not connected behind the scenes in any kind of "echo chamber" that negates the value of a crosscheck.

[ASSURING OUR CREDIBILITY, June 2005]

Unidentified Sources: Some Next Steps

Our policy on anonymous sources is a good one, and bears repeating. It begins: "We resist granting anonymity except as a last resort to obtain information that we believe to be newsworthy and reliable." The information should be of compelling interest, and unobtainable by other means. We resist granting anonymity for opinion, speculation or personal attacks.

The idea that a news organization can conduct serious, aggressive journalistic inquiry without the use of anonymous sources is a fantasy. Some areas of coverage, notably involving national security, intelligence or sensitive diplomacy, and stories that reflect dissent within governments, companies and other institutions, necessarily depend on the ability to protect sources. The problem is, the credibility of those necessarily anonymous sources — and of our work — is undermined by the casual use of unnamed sources where no such protection is called for. We have taken several steps over the past year or two to tighten our policy on anonymous sources, and in keeping with the committee's recommendations we intend to reinforce them.

The responsibility to be vigilant about unnamed sourcing begins with the reporter and runs all the way up to the News Desk. • Reporters must be more aggressive in pressing sources to put information on the record. We will give greater emphasis and attention to this in training and orientation programs. The committee noted in particular a shortage of practical guidance on how to persuade reticent sources to put information on the record. I have asked Al to draw on the committee's research and prepare a primer on techniques that some of our colleagues have found effective. These suggestions will be incorporated in orientation and training materials, and will be made available on the in-house website.

- I have asked Al to assure that every desk has a clear procedure for impressing upon editors their responsibilities in the realm of anonymous sourcing: that (under a policy spelled out last year) an editor must know the identity of any unnamed source, that editors must press reporters to get information on the record, and that when anonymity is unavoidable editors must press for adequate disclosure how the sources know what they know, what motivated them to share the information, and why they are entitled to anonymity. (Note: Not why they ASK for anonymity, but why we feel they are entitled to it.)
- Department heads must be prepared, in some cases, to hold back stories even competitive stories if the sourcing does not meet our standards. When in doubt, feel free to consult with a senior editor (Rick, Craig or Marty) or with me or Jill.
- Probably the single greatest purveyor of anonymous information is the U.S. Government (which can also be the loudest complainer about anonymous reporting.) We will continue to push, as the Washington Bureau has recently been doing, to put more official briefings on the record. It is patently silly for a Government spokesman, whose job is to articulate official policy, to brief a room full of reporters anonymously. At the same time, at least in the case of official briefings the reader knows who is ultimately accountable for this information the Administration that authorized the briefing. I agree with the committee that we have little to gain by unilaterally walking out of off-the-record briefings, but we can set the bar higher for whether such briefings are newsworthy.

Just to be clear, this policy and these practices are to apply across all sections of the paper, from sports to government affairs, in features as well as hard news, in staff-written and freelance coverage.

Sourcing is an area where progress will be measured in increments, and subjectively. There is no reliable statistic that will tell us whether we are being sufficiently vigilant. But here's my subjective standard of success: A year from now, I would like reporters to feel that the use of anonymous sources is not a routine, but an exception, and that if the justification is not clear in the story they will be challenged. A year from now, I would like every backfielder and copy editor to feel it is a right and a responsibility to challenge the use of an unnamed source when it does not measure up to our standards. I would like this to be central in our orientation of new reporters and editors, and a critical component in our mid-career training workshops. I would like care in the use of anonymous sources to be one of the criteria used in evaluating the work of reporters and editors.

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3. Washington Post (1999 & 2004)

See, respectively:

- 1. The Washington Post Standards & Ethics, February 1999, extract taken from the American Society of Newspaper Editors, http://www.asne.org/ideas/codes/washingtonpost.htm;
- 2. The Washington Post's *Policies on Sources, Quotations, Attribution, and Datelines*, February 2004, extract on "Confidential Sources" and "Ground Rules" taken from Poynter Online at http://www.poynter.org/column.asp?id=53&aid=61244.

[STANDARDS & ETHICS]

D. Attribution of Sources

The Washington Post is pledged to disclose the source of all information when at all possible. When we agree to protect a source's identity, that identity will not be made known to anyone outside The Post.

Before any information is accepted without full attribution, reporters must make every reasonable effort to get it on the record. If that is not possible, reporters should consider seeking the information elsewhere. If that in turn is not possible, reporters should request an on-the-record reason for concealing the source's identity and should include the reason in the story.

In any case, some kind of identification is almost always possible – by department or by position, for example – and should be reported.

No pseudonyms are to be used.

However, The Washington Post will not knowingly disclose the identities of U.S. intelligence agents, except under highly unusual circumstances which must be weighed by the senior editors.

[POLICIES ON SOURCES, QUOTATIONS, ATTRIBUTION, AND DATELINES]

The Washington Post is committed to disclosing to its readers the sources of the information in its stories to the maximum possible extent. We want to make our reporting as transparent to the readers as possible so they may know how and where we got our information. Transparency is honest and fair, two values we cherish. Whenever questions arise about how to convey the transparency of our reporting to the reader, consult with editors.

Confidential Sources

Sources often insist that we agree not to name them in the newspaper before they agree to talk with us. We must be reluctant to grant their wish. When we use an unnamed source, we are asking our readers to take an extra step to trust the credibility of the information we are providing. We must be certain in our own minds that the benefit to readers is worth the cost in credibility.

In some circumstances, we will have no choice but to grant confidentiality to sources. We recognize that there are situations in which we can give our readers better, fuller information by allowing sources to remain unnamed than if we insist on naming them. We realize that in many circumstances, sources will be unwilling to reveal to us information about corruption in their own organizations, or high-level policy disagreements, for example, if disclosing their identities could cost them their jobs or expose them to harm. Nevertheless, granting anonymity to a source should not be done casually or automatically.

Named sources are vastly to be preferred to unnamed sources. Reporters should press to have sources go on the record. We have learned over the years that persistently pushing sources to identify themselves actually works—not always, of course, but more often than many reporters initially expect. If a particular source refuses to allow us to identify him or her, the reporter should consider seeking the information elsewhere.

Editors have an obligation to know the identity of unnamed sources used in a story, so that editors and reporters can jointly assess the appropriateness of using them. Some sources may insist that a reporter not reveal their identity to her editors; we should resist this. When it happens, the reporter should make clear that information so obtained cannot be published. The source of anything that appears in the paper will be known to at least one editor.

We prefer at least two sources for factual information in Post stories that depends on confidential informants, and those sources should be independent of each other. We prefer sources with first-hand or direct knowledge of the information. A relevant document can sometimes serve as a second source. There are situations in which we will publish information from a single source, but we should only do so after deliberations involving the executive editor, the managing editor or the appropriate AME. The judgment to use a single source depends on the source's reliability and the basis for the source's information.

We must strive to tell our readers as much as we can about why our unnamed sources deserve our confidence. Our obligation is to serve readers, not sources. This means avoiding attributions to "sources" or "informed sources." Instead we should try to give the reader something more, such as "sources familiar with the thinking of defense lawyers in the case," or "sources whose work brings them into contact with the county executive," or "sources on the governor's staff who disagree with his policy."

In the age of news management, some government agencies and private companies order their employees never to speak to a reporter on the record. In politics, locally and nationally, people who work as aides to prominent figures are often reluctant to speak on the record on behalf of their bosses. But we can still help readers with specific, if anonymous, attribution. So "a senior aide to a Democratic senator on the Commerce Committee" is more helpful to the reader than "a Senate Democratic source."

When sources refuse to be identified, it is often helpful to show readers that we tried to identify them, and explain why we could not. We should write, for example, that a source "spoke only on the condition that he or she not be named," rather than saying that a source "asked not to be identified." Merely asking should not be sufficient to become anonymous in our stories.

It is nearly always possible to provide some useful information about a confidential source. In rare cases when you think a story simply cannot do this, you should seek the approval of the relevant AME, the managing editor or the executive editor before printing information attributed to a totally unidentified source.

Spokespersons, by virtue of their role and title, should be on the record when they are giving briefings or calling us with information. When they decline to be quoted by name in such situations, we should protest, ask for a publishable explanation as to why, and tell readers what happened, if appropriate.

When we call spokespersons in search of guidance, confirmation or information that we need, of course, we can accept that information on background or not for attribution.

In cases where a source is actively trying to persuade us to put something into the paper, but refuses to be identified, we should request a publishable reason for concealing the source's identity. In an era when more and more of the people we deal with want to remain hidden from view, we can help readers by telling them the reasons why they are not seeing more on-the-record quotes. Indeed, this is one of our best weapons against excessive secrecy. A sentence that reminds readers, for example, that a particular government agency has internal rules forbidding most of its officials from speaking on the record, and has refused to explain this policy publicly, is a good addition to any story where it is appropriate.

Obviously, it is important to share with readers any direct interest our sources may have in the story we are writing. When sources have axes to grind, we should let our readers know what their interest is. Smart sources, particularly in government and increasingly in business, know how to tempt reporters with juicy stories. Smart reporters and editors know how to avoid letting them spin us for their own purposes. Attribution must be truthful. If a story refers to sources (plural), we must have multiple sources. If the story says someone declined to comment, that must be the truth. We cannot offer to protect sources by writing inaccurately that they refused to talk to us. This is not always easy; clever sources sometimes try to pressure us to write things that are untrue or misleading in order to protect their identity. We must resist their efforts. Sometimes we may have to avoid any reference to a source who has helped us but refuses to be identified. Sometimes we may be able to find a formulation that protects the source, but to fulfill our obligations to readers, the attribution must be true. Situations of this kind should be discussed between

reporters and editors before anything is put in the paper. As a general rule, any reporter who feels she or he is at risk of misleading the reader about the sources of information in a story has an obligation to discuss this with his/her editor.

. . . .

Ground Rules

Journalistic ground rules can be confusing, but our goal is clarity in our dealings with sources and readers. This means explaining our ground rules to sources, and giving readers as much information as possible about how we learned the information in our stories. If a source is not on the record, it is important to establish ground rules at the beginning of a conversation. In a taped interview, it is preferable for the discussion of ground rules to be on the tape. We strongly prefer on-the-record interviews to all other types, but we recognize that getting sources on the record is not always possible. When it is not, we owe readers explanations as to why not, as discussed above.

We should start virtually all interviews with the presumption that they are on the record.

Inexperienced sources—usually ordinary people who unexpectedly find themselves the news—should clearly understand that you are a reporter and should not be surprised to find themselves quoted in the newspaper.

In establishing ground rules, the following are The Washington Post's definitions of various forms of attribution. People use these terms to mean different things, so if your dealings with a source are going to be anything other than "on the record," you should have a discussion to clarify the terms before you begin an interview.

On the record: For quotation, attributable to the source by name.

On background, or not for attribution: These both mean the same thing: information that can be attributed to "a police department official" or "a player on the team" who is not named. We must be careful, when dealing with sources who say they want to provide information "on background," to explain that to us that means we can quote the statement while maintaining the confidentiality of the source. Some sources will try to negotiate the terms of art in "background" attribution — for example, a State Department official may ask to be identified as "an administration official." We should try to put the reader's interest first. In a story about a fight between the Pentagon and the State Department, for example, quoting "an administration official" is useless to readers. Use good judgment, and press for maximum revelation in attribution.

Deep background: This is a tricky category, to be avoided if possible. Information accepted on "deep background" can be included in the story, but not attributed. That means there is no way to help readers understand where it is coming from, which is why we discourage the use of deep background. You can also use information received on deep background as the basis for further reporting.

Off the record: This is the trickiest of all, because so many people misuse the term. By our definition, off-the-record information cannot be used, either in the paper or in further reporting. But many sources, including some sophisticated officials, use the term when they really mean "not for attribution to me." We must be very careful when dealing with sources who say they want to be "off the record." If they mean "not for attribution to me," we need to explain the difference, and discuss what the attribution in the paper will actually be. If they really mean off the record as we define the term, then in most circumstances, we should avoid listening to such information at all. We do not want to be hamstrung by a source who tells us something that becomes unusable because it is provided on an off-the-record basis.

One alternative to off-the-record is "for guidance." A source may be willing to give us information for our guidance or to prompt further reporting, on the understanding that we will not use his comments as the basis for putting something in the paper. This, for example, was the relationship between Deep Throat and Bob Woodward and Carl Bernstein. Such guidance can be useful even if we can't print it at once.

We do not allow sources to change the ground rules governing specific quotations after the fact. Once a quote is on-the-record, it remains there.

Sometimes sources will agree to be interviewed only if we promise to read quotations we plan to use back to the source before they are published. This can create difficult situations. We do not want to allow sources to change what was said in the original interview, but sometimes that cannot be avoided, or can be avoided only at the cost of losing an on-the-record quote from an important source. If you find yourself in this gray area, consult with your editor.

Some reporters have read stories back to sources before publication to insure accuracy on technical points or to try to catch any errors before they appear in the paper. For a science writer to read a story, or passage, about a complex subject to a source to make sure it is accurate is a routine occurrence. But it is not our policy to routinely read stories or parts of stories to sources or to share copy with outsiders before it has been fully edited by us. A reporter who isn't sure whether to read something to a source before publication should consult first with his or her editor.

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4. Los Angeles Times (2005)

Los Angeles Times Ethics Guidelines, July 2005, extract from the section on "Content", http://www.latimes.com/media/acrobat/2005-07/18479691.pdf:

Sources

We report in environments – Hollywood and Washington, to name two – where anonymity is routinely sought and casually granted. We stand against that practice and seek to minimize it. We are committed to informing readers as completely as possible; the use of anonymous sources compromises this important value.

These standards are not intended to discourage reporters from cultivating sources who are wary of publicity. Such informants can be invaluable. But the information they provide can often be verified with sources willing to be named, from documents, or both. We should make every effort to obtain such verification. Relying in print on unnamed sources should be a last resort, subject to the following guidelines:

When we use anonymous sources, it should be to convey important information to our readers. We should not use such sources to publish material that is trivial, obvious or self-serving.

Sources should never be permitted to use the shield of anonymity to voice speculation or to make ad hominem attacks.

An unnamed source should have a compelling reason for insisting on anonymity, such as fear of retaliation, and stories should state those reasons when they are relevant.

The reporter and editor must be satisfied that the source has a sound factual basis for his or her assertions. Some sources quoted anonymously might tend to exaggerate or overreach precisely because they will not be named.

Stories should identify sources as completely as possible consistent with the promise of anonymity. In particular, a source's point of view and potential biases should be disclosed as fully as possible. For instance, "an advisor to Democratic members of the House Foreign Affairs Committee" is preferable to "a Congressional source."

When practical, a reporter should consult an editor before entering into an agreement to protect a source's anonymity. In some cases, an editor may insist on knowing the source's identity in order to evaluate the reliability of the information provided.

In rare instances, sources may insist that the paper and the reporter resist subpoenas and judicial orders, if necessary, to protect their anonymity. Reporters should consult a masthead editor before entering into any such agreement.

Even in the absence of such an agreement, the possibility exists that a prosecutor, grand jury or judge will demand to know a source's identity, forcing the reporter to choose between unmasking the source and going to jail for contempt of court. Such situations are rare, and they should not deter us from investigating sensitive or contentious matters.

Reporters should be extremely circumspect about how and where they store information that might identify an anonymous source. Many electronic records, including e-mail, can be subpoenaed from and retrieved by non-newsroom employees.

Promises to a source must be kept except under the most extraordinary circumstances. If a source, acting in bad faith, were to succeed in using the newspaper to spread misinformation, we would consider our promise of anonymity no longer binding. That said, we do not "burn" sources.

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5. McClatchy Washington Bureau (D.C.) (undated)

McClatchy, "Anonymous Sources Policy", undated, http://www.mcclatchydc.com/188:

Anonymous Sources Policy

Every day, our readers rely on us to help them connect events in Washington and around the world to their lives. This privilege rests on our accuracy and our honesty - in short, on our credibility. That demands that we reveal as much as we possibly can about our sources of information, granting anonymity grudgingly and only when there is no alternative means to obtain essential information.

McClatchy's Washington bureau will use information from confidential sources when it's the only way to bring an important story to readers. We'll do so as a last resort and under the following rules:

- 1. The information is reliable, newsworthy and otherwise not available.
- 2. The source of the information is trustworthy and has access to reliable information on the subject in question.
- 3. The information is verified, which requires in almost every case having at least two sources and confirming that they are independent of each other.
- 4. The identity of the source must be protected because he/she might be imperiled physically or legally or his/her livelihood might be endangered.
- 5. The source is providing information, not leveling an accusation, stating opinion or conjecture, or simply adding color to a story.
- 6. The highest-ranking editor in the bureau or his/her designee knows the identity of the source and approves publication of the information. The editor is then bound to maintain the same confidentiality as the reporter.

We will not report anonymous personal or partisan attacks. We will not report speculation or opinion offered under the condition of confidentiality. We will not grant anonymity for non-vital comments or information. We will not promise to refrain from further reporting to seek comment or to verify the information. We will not mislead readers about anonymous sources, such as making them plural when only one source is quoted or saying that someone refused to comment when that person was an anonymous source.

GUIDELINES

We always prefer on the record sources because they allow readers to make their own judgments about the reliability of the information. But we recognize, and history shows, that the public, on-the-record version of events given by governments, corporations and other institutions is often not the whole story, or even the principal one.

Corruption, secretiveness and policy disputes at the highest levels might remain hidden if sources are denied confidentiality. These criteria seek to define those circumstances in which we would be unable to give the public vital information unless we agreed not to name a source.

The use of information granted on the condition of confidentiality should follow a considered decision-making process that begins the moment a reporter approaches a source and continues through the editing process.

Anonymity should not be assumed or granted automatically. It should be the result of vigorous negotiation with the source. If the source insists on confidentiality, reporters should review the information and the quotes with the source at the end of the interview and seek to get as much as possible on the record.

Supervising editors should be made aware as soon as possible that a story relies on unnamed sources. The highest-ranking editor in the bureau must approve the use of such information.

We must identify sources as fully as possible. A source's partisan, institutional or policy allegiance should be made clear. The article should explain the reasons for granting anonymity, the motives of the source and a description of why the source is considered authoritative (e.g., an "administration officials who has participated in the discussions and disagrees with the policy" or "a senior aide to a Republican lawmaker at odds with his party leadership.")

Confidential sources must have direct knowledge of the information. Because confidential sources cannot be named - which prevents them from being held personally accountable for their information - at least two independent sources are necessary except in rare cases, such as when a source has unique first-hand knowledge and authority.

If the information is obvious, accepted fact, or simply common sense, there should be no need to attribute, and we can report it as fact.

We will always voice objection to "background" briefings to large groups of reporters. These are commonplace at the White House and State Department and in presidential campaigns. While they're often unavoidable, we will continue to voice our objections to them and seek to have them placed on the record. If our objections are ignored, reporters should weigh the news value of the briefing before deciding whether to participate.

Spokesmen for agencies, organizations, political groups or for individuals should not be granted anonymity if they are speaking for their employers. The only exception would be if the spokesman were providing information that, if his identity were known, would imperil his livelihood or physical well-being or that of his boss.

TERMINOLOGY

It is imperative that we understand the rules and the terminology that we use to enter into attribution agreements with sources.

To that end, here are terms of attribution:

On the record: The information can be used freely and the source identified fully.

Backgrounder/not for attribution: Both terms are used interchangeably. It means the source cannot be identified by name.

Deep background: The source cannot be identified at all but the information can be reported on the reporter's own authority.

Guidance: The source cannot be identified and the information can be used only to inform further reporting.

Off the record: The information is not usable. Be aware of what the terms mean so that the source is not preventing you from further reporting. Make sure the source is not using "off the record" to mean "background" or "not for attribution."

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Note: This list and the links it contains were compiled from available public sources between August 2007 and June 2008. Organisations' policies may have been revised or augmented.

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1. Australia

Evidence Amendment (Journalists' Privilege) Act 2007 (Cth), relevant amendments came into operation on 26 July 2007.

http://www.comlaw.gov.au./comlaw/legislation/act1.nsf/0/725719F843357051CA25730D002B8D35/\$file/11 62007.pdf. Introduced following recommendation of Australian Law Reform Commission report no. 102, *Uniform Evidence Law*, chapter 15 on "Privilege: Other privileges", http://www.austlii.edu.au/au/other/alrc/publications/reports/102/.

Evidence Act 1995 (NSW), sections 126A and 126B,

http://www.legislation.nsw.gov.au/viewtop/inforce/act+25+1995+FIRST+0+N/, introduced by the *Evidence Amendment (Confidential Communications) Act 1997 (NSW)* which came into operation on 1 January 1998, http://www.legislation.nsw.gov.au/sessional/iTILE/Evidence%20Amendment%20(Confidential%20Communications)%20Act%201997%20No%20122.pdf.

2. New Zealand

Evidence Act 2006 (NZ), section 68, http://legislation.govt.nz/act/public/2006/0069/latest/096be8ed8009e476.pdf. The Act came into force on 4 December 2006.

3. USA

Reporters Committee for Freedom of the Press, *Privilege Compendium*, 2002, http://www.rcfp.org/privilege/. [Guide of statutory and common law shield laws applying in each U.S. state and federal circuit.]

Free Flow of Information Act 2007 (USA), Bill number S.2036, (Long title: A bill to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media), introduced on 10 September 2007 and reported on by the Senate Committee on the Judiciary on 4 October 2007, status of bill available at http://www.thomas.gov/cgibin/bdquery/z?d110:s.02035:.

Also see the similarly titled bills under consideration by the U.S. Congress: S.1267 and related bill, H.R.2102. The status of these bills can be checked respectively at http://www.thomas.gov/cgi-bin/bdquery/z?d110:s.01267: and http://www.thomas.gov/cgi-bin/bdquery/z?d110:HR02102: Bill H.R. 2102 was passed by the House of Representatives on 16 October 2007 by a recorded vote of 398-21, after being reported on by the House of Representatives Committee on the Judiciary, *Report on the Free Flow of Information Act of 2007 (Bill no. H.R. 2102)*, House report 110-370, 10 October 2007, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_reports&docid=f:hr370.110.pdf. The Bill was read for the first time in the Senate on 17 October 2007.

Various witness testimony and member statements on 20 July 2005, 19 October 2005 and 20 September 2006 relating on "Reporters' Shield Legislation" are available at the Senate Judiciary Committee website, accessible at http://judiciary.senate.gov/search_testimony.cfm?testimony=free+flow+of+information and http://judiciary.senate.gov/search_statements.cfm?statement=free+flow+of+information&Submit3=Submit. Member statement on *Free Flow of Information Act, no.* \$2035 on 4 October 2007 available at http://judiciary.senate.gov/meeting notice.cfm?id=2973