

Confidentiality & Official Information

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Background

1. You must exercise care in handling the information that has come into your possession in the course of your official duties and should not forget that you are employed for the purposes of the Scottish Government. You owe duties of confidentiality and loyal service to the Crown. Since constitutionally the Crown acts on the advice of Cabinet Secretaries and Ministers who are answerable for the Scottish Government in Parliament, these duties are for all practical purposes owed to the Government of the day.

Introduction

2. If you are in doubt about the application of the duties and obligations set out below to particular activities, or situations relating to the use of information obtained in the course of official duties, you should always consult a senior officer.

Duties and Obligations

3. As a serving or former member of staff you are bound by the provisions of the criminal law which protect certain categories of information. You should be aware of the Official Secrets Act 1989. There are also many other Acts of Parliament containing provisions which create criminal sanctions for the unlawful disclosure of certain kinds of information. Many of these provisions relate to information received or gathered under a statutory framework for official purposes. In branches dealing with such information any special guidance necessary should be provided in standing branch instructions.

4. You owe the Crown, as your employer, a duty of confidentiality. Whether or not the criminal law applies you must protect official information which is held in confidence: because it has been communicated in confidence within Government (for example by Cabinet Secretaries and Ministers or civil servants), or because it has been received in confidence from others (for example, a member of the public or a firm), and no decision has been taken to lift that restriction. This duty of confidentiality continues not only during your employment but also after you have left the service. It extends to material published in the press or in book form, in a television or radio broadcast, or in a speech or lecture.

Classified Information

5. Guidance relating to the unauthorised disclosure of classified information is on the Intranet

Requests for Information by Telephone

6. Both inside and outside the office, you should be discreet in discussing official business, or in providing information to any outside body e.g. researchers. In particular, you should be on your guard when you receive requests by telephone for official information which is protected by security classifications, privacy markings or branch instructions or is otherwise clearly not intended for public dissemination. If any caller who requests such information cannot be satisfactorily identified as a proper person to receive the information, they should be asked to give a telephone number at which they can be rung back. This number should be checked from a directory or with the department or organisation which the caller claims to represent, before any information is disclosed. Particular care should be taken with any call which appears to come from a public call box. It will often be possible to check by some means who has made the call: the caller may be able to refer circumstantially to the contents of a letter they have written or to give other evidence of identity which can be checked with the file. If a caller from a public box fails to give adequate proof of identity, or if any other caller declines to give a number, saying that they will ring back later, the matter should be reported to the Head of Branch or Division who, if there are grounds for believing that an improper attempt has been made to obtain information, should report the facts to the Departmental Security Officer.

Openness in the Use of Official Information or Experience

7. The need for greater openness in the work of the Government is now widely accepted. Openness in this context means 2 things:

- the fullest possible exposition to Parliament and to the public of the reasons for Government policies and decisions when those policies and decisions have been formulated and are announced;
- creating a better public understanding about the way in which the processes of Government work and about the factual or technical background to Government policies and decisions.

8. Openness in this sense does not imply a licence to discuss with unauthorised persons Government policies and decisions which are in the process of being formulated, before announcements are made. Nor does it cover participation by staff in the public discussion of politically controversial topics, whether the issues are important or relatively trivial. The exposition of Government policies and decisions is the responsibility of Ministers. There

may, from time to time, be opportunities for you to help in creating a better understanding of the way in which the processes of Government work and, in some instances, about the factual or technical background to Government policies or decisions.

There may also be occasions when you can and should make a contribution to knowledge on the basis of specialised information and experience in the course of your official duties. Any such participation in public discussion or contribution to knowledge of this kind must, however, be such as will neither damage national security; create the possibility of embarrassment to the Government in the conduct of its policies; nor bring into question the impartiality of the Civil Service. It is essential therefore that there is control over what is made public.

Outside Activities Involving The Use of Official Information or Experience

9. If you wish to take part in any outside activity which involves the disclosure of official information, or use of official experience, you must have authority to do so.

9.1 Authority may be granted on behalf of the Head of the Department concerned by the appropriate authorising officer specified in

- Publications on Official Subjects
- Publication of Personal Memoirs
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The authority granted may be continuing (e.g. where you are authorised to attend all non-political public conferences relating to your official responsibilities) or restricted to a particular occasion.

9.2 The responsibility for seeking authority in sufficient time to allow proper consideration rests with you, and failure to obtain the necessary permission before undertaking any such activity is a disciplinary offence (see paragraph 14 Disciplinary Sanctions).

9.3 All cases of difficulty and cases raising questions of general principle should be referred by authorising officers to the HR Shared Service Centre who will, as necessary, consult the Head of the Department concerned and the Permanent Secretary.

Trade Union Activities

10. Permission is not necessary to take part in activities organised by, or on behalf of, trade unions, although a member of staff's conduct in public should still be consistent with the principles outlined in paragraph 11 (General Principles). Other than in the circumstances set out in the last sentence of this topic, the requirement to obtain authority also does not apply to a member of staff who, as an elected national, departmental or branch representative or officer of a recognised trade union, is publicising his/her union's views on an official matter which, because it directly affects the conditions of service of members of his/her union as employees, is of legitimate concern to them.

NB This exemption does NOT apply where the official duties of the staff union representative or officer in his/her role as a public servant are directly concerned with the matter in question.

General Principles of Confidentiality and Official Information

11. The general principles which follow apply to all activities involving the use of official information or experience, which, in the main are the publication of books or articles, contacts with the media, broadcasts, speeches or lectures and participation in outside seminars or conferences.

11.1 You must not disclose classified or "In Confidence" information.

11.2 You must not seek to frustrate the policies or decisions of Ministers by the use or disclosure outside the Government of any information to which you have had access as a civil servant.

11.3 You should not disclose the relations between civil servants and Ministers, or the confidential advice given to Ministers.

11.4 You should not make public statements or remarks in terms which the Department could find objectionable about -

- individuals, whether officials, Ministers or private persons; or
- organisations, whether public or private.

12. You must not take part in activities, including discussion of matters of current or political controversy, which -

- conflict with the interests of the Department;
- bring the name of the Department, or the Civil Service generally into disrepute; or
- bring into question the impartiality of the Civil Service.

13. The same general principles apply to similar activities by former civil servants, and in their own interest they should seek permission from their former Department if they contemplate using their official experience in such activities.

Disciplinary Sanctions

14. Any breach of these duties, involving:

14.1 the disclosure or publication of information falling in the categories described in paragraphs 3 and 4 (Duties and Obligations) except in confidence to those entitled to receive it; or

14.2 a failure to observe the principles described in paragraphs 11 and 12 (General Principles) ,

is a disciplinary offence, which may result in a range of penalties up to and including dismissal.

15. In addition to the general principles outlined in paragraphs 11 and 12 (General Principles) there are special considerations which need to be taken into account with regard to particular activities. These are set out in the following topics.

Publications on Official Subjects

16. On no account should you enter into commitments or negotiations with private publishers about a publication on an official subject before departmental permission to publish has been obtained. Permission should be sought as follows:

Scientific or professional publications -In the case of a work which is purely scientific or professional, permission should be sought from the Head of Division or Chief Professional Officer concerned, who should consult the HR Shared Service Centre (Phone: 0131-244-3334) if he/she considers that the work touches on one of the matters of principle mentioned in paragraphs 11 and 12 (General Principles). It should be made clear in such a publication that the contents represent the author's views alone and in no way commit the Department.

All other publications - Departmental permission should be sought through the HR Shared Service Centre. (see below paragraph 18 Publication of Personal Memoirs).

17. Provisional permission may be given on the basis of a brief outline of the proposed work, but the actual text for publication must be submitted before final permission can be given. If any other department is concerned as well as the Scottish Executive, the application for permission should be given in time for that department to be consulted. If the work includes any Crown copyright material, published or unpublished, or if the work has been prepared under official direction and may itself be Crown copyright material, the Copyright Unit of Her Majesty's Stationery Office, Cabinet Office must be consulted. All questions of Crown copyright should be referred to the HR Shared Service Centre.

Publication of Personal Memoirs

18. The rules governing the publication of personal memoirs were revised following the report of the Radcliffe Committee on Ministerial Memoirs in 1976 (Cmnd 6386). The following sub-paragraphs summarise the rules on the application of personal memoirs by existing and former Scottish Executive staff.

18.1 You may not publish your memoirs while still in the service. Former members of staff should apply for permission to publish their memoirs by submitting their text to the HR Shared Service Centre for scrutiny by the Head of their former Department before it is submitted to the Head of the Home Civil Service as the final authority. You should obtain clearance before any commitment is entered into with a publisher, newspaper or broadcasting authority. This requirement applies whether or not an outline plan of the proposed work has been submitted at an earlier stage.

18.2 Former members of staff are expected to abide by the decisions given on the proposed text in respect not only of State Secrets, or information, the disclosure of which would be prejudicial to this country's international relations, but also in respect of matters of confidentiality (official advice, the views of Ministers or of colleagues, or judgements on qualities or abilities of Ministers or of colleagues) which fall within the period of 15 years recommended by the Radcliffe Committee.

18.3 In the past, some memoirs which have been published have been based on a personal diary recording details of the association of Ministers with each other and with their advisers. The maintenance of private records of this kind is inadvisable; such records may themselves constitute a risk to security.

Broadcasts/Press Interviews

19. In all dealings with the press and the broadcasting authorities, the Department's advisors are the staff of the Media and Communications Group (MCG).

20. A broadcast on an official matter, on either radio or television or an interview with a newspaper or magazine, is normally arranged between the broadcasting authority or publication on the one hand, and MCG on the other. MCG will be responsible for: seeking policy guidance from the appropriate department and clearance with the Minister concerned; arranging and agreeing the form, content and timing of the broadcast or newspaper/magazine interview; co-ordinating briefing material; and ensuring that any conditions laid down are observed.

21. Broadcasts or press interviews by staff on official matters may be undertaken only after appropriate clearance has been obtained. In most cases it is necessary for the request to be referred to the responsible Minister and in all cases Perm Sec and/or the appropriate Head of Department must be given the opportunity to consider the proposition. The responsibility for obtaining clearance rests with the relevant Portfolio Press Team, part of MCG. In seeking clearance the Press Team will indicate whether the interviews proposed are likely to have a policy, political and newsworthy flavour or are broadly educational and therefore less likely to be contentious. MCG will also be responsible for: arranging and agreeing the form, content and timing of the broadcast or newspaper/magazine interview; co-ordinating briefing material; ensuring that any conditions laid down are observed; and that the officer concerned receives a copy of the conditions for such occasions.

22. It is possible that press or radio and television companies may approach you direct. In these circumstances you must inform your Head of Department and the Head of your Portfolio Press Team. You must give no indication that you are prepared to participate in any interview until clearance has been obtained as indicated in the paragraph above. Similar arrangements apply where a radio or television company asks you to co-operate in the production of a programme or to help in providing briefing and background information for a programme; or where a publication asks for assistance in preparing an article or feature.

MCG will normally ensure that all requests received and arrangements made are verified in writing, but there will be occasions when staff and MCG are asked to co-operate in media features at very short notice with no opportunity to get agreements in writing. This may be accepted, provided the clearance system outlined above has been complied with and the general basis of participation agreed. Confirmatory texts will always be prepared by MCG in these urgent cases, to place the request, recommendations and decisions reached on the record.

23. You do not require official permission for broadcasts or newspaper/magazine interviews on matters which have no bearing on your official duties. You should remember, however, that you are speaking as an individual and not as a civil servant and that your official position

should not be mentioned. Human Resources, in consultation with MCG will advise on any invitation to be interviewed by the media on issues not related to your current official duties.

Speeches or Lectures

24. Where you are asked to give a speech or lecture as a representative of your Department, or on a subject which has a bearing on official matters or draws on your official experience, the draft of the proposed speech or lecture should normally be submitted to your Group Head for departmental approval; if you propose to speak from notes of headings, you should discuss the lines of your speech with your Group Head; if you propose to make substantially the same speech on a number of occasions, you may be given continuing authority covering all the occasions. If the speech or lecture is subsequently printed in a volume of conference proceedings or in a Society's Journal, the question of copyright will arise - see paragraph 17 (Publications on Official Subjects). Before you give a speech or lecture as a representative of the Department it will normally be desirable to make it quite clear to the sponsoring organisation that the copyright in any written or printed document relating to the lecture belongs to the Crown and that conditions may be attached to the reproduction of the text.

Attendance at Outside Seminars or Conferences

25. You should not in your official capacity accept invitations to seminars or conferences convened by, or under the aegis of, party political organisations.

26. If you are invited to attend a seminar or conference which is not convened by, or under the aegis of, a party political organisation but is concerned with subjects having a political or controversial aspect, you may be allowed to attend if the Department thinks it desirable to be represented by an observer. You should not take any part in public discussion at the seminar or conference, save perhaps to correct a gross error of fact. Departmental approval should be sought through your Group Head before the invitation is accepted.

27. You may in your official capacity attend and take part in other public seminars or conferences (i.e. those not conducted under the aegis of a party political organisation and not dealing with political or controversial questions) provided that the Department is satisfied both as to the character of the event and as to the advantage likely to accrue. Approval should be sought from your Group Head. Where the nature of your duties obliges you to attend such events frequently, you may in appropriate cases be granted continuing authority for attendance and participation.

28. If you attend a public seminar or conference in your private capacity and take part in discussion you should make clear that you do so in your private capacity and should conduct yourself with discretion, bearing in mind the general principles set out in paragraphs 11 and 12 General Principles. You should guard against expressing views which might be interpreted as being based on official information or as representing Government policy.

Surveys or Research Projects Conducted by Outside Bodies or Individuals

29. You may be asked to take part in surveys or research projects conducted by outside bodies or individuals. You must not take part in your official capacity in surveys or research projects even unattributably, if they deal with attitudes or opinions on political matters or matters of policy. This rule is intended to prevent anyone from purporting to identify the

views of civil servants collectively and thereby undermining, even by implication, the political impartiality of the Civil Service. If the survey or research project is unconnected with official matters, and you are approached in your private capacity outside official hours, it is for you to decide whether to participate. Please address any enquiries to HR Shared Service Centre.

Inventions

30. The ownership of an invention made on or after 1st June 1978 depends, in accordance with Section 39 of the Patents Act 1977, on whether it was made in the course of duty.

31. If you make an invention in the course of your duties you must immediately report it with full details to HR Shared Service Centre. Where an invention is made otherwise than within the course of your duties you may, despite your ownership of the invention, have obligations of confidentiality towards the Crown and obligations under the Official Secrets Acts. You must therefore consult HR Shared Service Centre before undertaking any private activity likely to lead to an invention, particularly if you intend to make use of any official information or experience gained wholly in the course of your official duties.

32. The term "invention" includes inventions which are not patented or patentable and also what are often referred to as technical suggestions.

Retention of Fees

33. You may, at the Department's discretion, be allowed to retain in whole or part any fee paid for a publication, broadcast, speech or lecture based on official information or experience, provided that the work has been undertaken substantially outside official hours, or official time spent on the work has been made up. The following principles apply:

- if your preparation and/or the activity itself were conducted in official time, you should submit the fee to The Scottish Executive;
- if you used a proportion of official time, an appropriate portion of your fee should be submitted to the Scottish Executive;
- if you used substantially private time or if the official time used was made up, you may retain the fee, subject to 33.4 below;
- if you used Scottish Executive facilities e.g. typing and/or photocopying , a payment should be made to the Scottish Executive to cover the costs involved;
- in the case of inventions, where your invention falls outside the Government's field of interest and is unrelated to your duties, you may be allowed complete freedom of commercial exploitation; in other circumstances you may qualify for an ex gratia monetary award.