
Personnel Files, Confidentiality and the Right to Privacy

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This study, which focuses on the Roman Catholic Church, explores the concepts of confidentiality and the right to privacy in contemporary moral and legal thought. The management of church personnel files presents the challenge of observing and maintaining confidentiality and privacy. In most cases, the information contained in personnel files of the clergy, members of religious institutes, and others holding ecclesiastical offices is confidential, which should safeguard the reputation of all persons involved. From a juridical viewpoint, the Church's innate duty to respect the dignity of the person, as well as the natural right of privacy and good name, forms the foundation of this study. Certain practices in the Church entail the collection, use, or retention of confidential information about individuals for internal purposes, the administration of justice, and the management of archives and documents in the diocesan curia. In the final analysis, the Church has the responsibility to both protect the privacy of all the faithful and to transmit the Gospel message transparently.

Keywords: confidentiality, right to privacy, archives, Roman Catholic Church

INTRODUCTION

Church records are created for various purposes and, in many cases, contain confidential information that must be safeguarded to protect the privacy and reputation of the Christian faithful. The handling of personal information obliges those responsible for such information to observe confidentiality to protect the privacy of the persons concerned. Privacy is a natural right that the Church safeguards in respect of the dignity each person possesses. From her foundation, the Church has been concerned with the protection of the right to privacy and the dignity of the person, and it contributed indirectly to the 1948 Universal Declaration of Human Rights. In the Code, Canon 220 imposes the obligation to protect the fundamental right to privacy and a good reputation.¹

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1 Canon 220: 'No one is permitted to harm illegitimately the good reputation which a person possesses or to injure the right to any person to protect his or her own privacy' (cf. Code of Canons of the Eastern Churches (CCEO) Canon 23.) The right to privacy in civil law and American jurisprudence is a fairly recent invention. The term 'civil law' refers to all secular law systems, including common law, whereas 'common law' is reserved to the laws of jurisprudence following the Anglo-American legal system.

In the court of public opinion, the mention of secrecy or privacy relating to the Church provokes thoughts of the Church ‘covering up’ criminal activity. However, the Church, like every organisation, maintains personnel files that contain confidential information. Proper handling of these records is one way of protecting the privacy of staff, which can be easily violated when information is revealed by the mishandling of personnel files. Such violations can lead to the unlawful harm of a person’s good name or an injury to the individual’s right to protect his or her right to privacy.

This paper will analyse the concepts of confidentiality, privacy, and the right to privacy as applicable in Church documents, archives, and access to records. Further, we will offer insights into the general principles of collecting personal information, the composition of records, and the management of church personnel files. Of significance to this study is the obligation of competent authorities to observe confidentiality and protect the right of each person to privacy, as well as the obligation to protect the common good. Fundamentally, there are limitations and excesses that result from the relationship between transparency and secrecy in the Church.² We shed light on these issues while focusing on the church’s fundamental mission of evangelisation.

THE CONCEPT OF PRIVACY

The concept of the right to privacy dates back to a law review article published in December 1890 by Samuel Warren and Louis Brandeis, two Boston lawyers. They described the right to privacy as the ‘right to be let alone’ and expressed the common law understanding of it as securing to each individual the right to determine ordinarily to what extent his thoughts, sentiments and emotions would be communicated to others.³ Even though this definition is not universally accepted, it offers a foundation for discussion:

[P]rivacy is difficult to define because it is exasperatingly vague and evanescent, often meaning strikingly different things to different people. In part this is because privacy is a notion that is emotional in its appeal and embraces a multitude of different ‘rights’, some of which are intertwined, others often seemingly unrelated or inconsistent. Of late, however, lawyers and social scientists have been reaching the conclusion that the basic attribute of an effective right of privacy is the individual’s

2 See J P Soler and R De Oca Montes, *Transparency and Secrecy within the Catholic Church* (Chicago, 2022), 2.

3 See S D Warren and L D Brandeis, ‘The Right to Privacy’ (1890) 4(5) *The Harvard Law Review* 197. By 1890, a vast literature of law had developed to protect privacy as confidentiality. Therefore, it is incorrect to portray Warren and Brandeis as the originators of the right to privacy. Instead, they shifted from the concept of confidentiality to what they termed ‘inviolate personality’.

ability to control the circulation of information relating to him—power that often is essential to maintaining social relationships and personal freedom.⁴

The right to privacy is understood by theologian Richard McBrien as '[...] the right to the protection of one's secrets, of one's confidences, of one's psychic self. Thus, my privacy is violated, if someone reads my mail without permission, or photographs my medical records surreptitiously, or tape records my conversations without my knowledge, or tells other persons something communicated in the strictest confidence or wiretaps my telephone without legal warrant or probes into my credit records without my consent.'⁵

Meanwhile, confidentiality focuses on relationships. 'Confidentiality focuses on trusting others to refrain from revealing personal information to unauthorized individuals. Rather than protecting the information we hide away in secrecy, confidentiality protects the information we share with others based upon our expectations of trust and reliance in relationships.'⁶ In other words, the individual entrusts his personal information to the Church guaranteed by confidential relations,⁷ the law of which protects relationships in which an individual entrusts his interests to another.

The law of confidential relations protects a variety of relationships in which one party entrusts his or her interests to another. One of the most important aspects of maintaining all ecclesiastical records is observing and maintaining confidentiality. There is a reasonable expectation that the collected information will not be revealed to an unauthorised person without the consent of the individual concerned or the appropriate ordinary.

MANAGEMENT OF RECORDS

The management of records is a sensitive issue because of the confidential nature of the information contained.⁸ The Code obliges those appointed to

4 A Miller, 'The New Technology's Threat to Personal Privacy', in *Assault on Privacy* (Ann Arbor, 1971), 25.

5 R McBrien, 'The Believer's Right to Privacy', in William C Bier, *Privacy: A Vanishing Value* (New York, 1980), 124. *Black's Law Dictionary* defines privacy as 'the legally protected right of an individual to be free from unwarranted publicity and to be protected from any wrongful intrusion into his private life which would outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities'; H C Black, *Black's Law Dictionary* (5th edn) (St Paul, MN, 1979), 1075.

6 See N M Richards and D J Solove, 'Privacy's Other Path: Recovering the Law of Confidentiality' (2007) 96 *George Washington University Law Review* 125.

7 Confidential relations are defined as 'relations formed by convention or by acquiescence, in which one party trusts his pecuniary or other interests to the fidelity and integrity of another, by whom, either alone or in conjunction with himself, he expects them to be guarded and protected'. See T M Cooley, *A Treatise on the Law of Torts or the Wrongs Which Arise Independent of Contract* (Chicago, 1879), 508. See also Richards and Solove (note 6), 135.

8 'Records management is the systematic control of all records from creation or receipt through processing, distribution, maintenance, and retrieval to their ultimate disposition'; J J Teanor, 'Records Management' (2002) 42(1) *The Catholic Lawyer* 51.

curial offices to promise to fulfil their function faithfully and observe secrecy, according to the manner determined by law or the bishop (Canon 471). Good management of the acts of the curia establishes who owns the file, what goes into it, who has access to it, and the retention period. Where there is good management of records, decisions are documented, records are kept current according to the norm of the law, and records are secured (see Canon 486 §1). In other words, good record management ensures accountability on the part of the chancellor and the archivist.

The bishop appoints the chancellor and vice chancellor, who are notaries of the curia (Canon 482). The chancellor must be of unimpaired reputation and above all suspicion, because the primary duty of the chancellor is to ensure that acts of the curia are gathered, arranged and safeguarded in the archive of the curia (Canon 482 §1). The chancellor is to keep an inventory of the documents in the archive (Canon 486 §3). In practice, this involves collecting various documents and arranging them so they are easily accessible for the proper governance of the diocese.

Negligence in handling records may result in the disclosure of information that is otherwise confidential and a violation of privacy, causing harm to a person's good name. The duty of the chancellor to care for documents includes authenticating them when needed (Canon 483 §1). The new title of Book VI, 'Delicts against Good Reputation and Delict of Falsehood', indicates that the offence of falsehood is a violation of the dignity of the person.⁹

The newly revised Canon 1391 specifies that authenticating a false document or composing a false document is a delict against good reputation. Although the canon does not address privacy, reputation and privacy can hardly be separated where a falsehood against an individual has been perpetrated: 'A person who composes a false public ecclesiastical document, or who changes, destroys or conceals a genuine one, or uses a false or altered one' (Canon 1391, 3°) asserts a falsehood and is subject to punishment according to the gravity of the offence (Canon 1336 §§2–4). Falsifying documents in a personnel file or negligently disclosing those documents harms the reputation of the concerned person and is a violation of privacy. This is not permitted according to Canon 220.¹⁰

9 J I Arrieta, 'A Presentation of the New Penal System of Canon Law' (2021) 77 *The Jurist: Studies in Church Law and Ministry* 260.

10 See *Catechism of the Catholic Church* (CCC), no. 2477. The CCC defines calumny as '[...] a false statement which harms the reputation of others and gives occasion for false judgments concerning them'. Detraction is that action through which one, without an objectively valid reason, discloses another's faults and failings to another or to others who did not have legitimate reason to know it. See Canon 1391.

Ecclesiastical documents and private documents

Records are categorised according to their nature. Canon 1540 distinguishes between public ecclesiastical documents, public civil documents, and private documents.

Public ecclesiastical documents (Canon 1540 §1)

Sacramental records are public ecclesiastical documents, retained by parishes or the chancery. They pertain to the status of a person in the Church, and access to them is generally restricted because they contain certain information beyond the fact of the administration of the sacrament. For instance, in the case of baptism, adoptive and biological parents may be identified, depending on the particular law of the conference of bishops. This policy may state that sacramental records are not open to the public, any research is performed by archive staff only, or that access may be granted by the bishop or the chancellor. A legitimate reason must be given for genealogical research, along with a relevant connection to the person being researched.¹¹

There is no specific mention of personnel files in the Code. In practice, every diocese and religious institute maintains them. Records of priests and religious usually contain public ecclesiastical documents (e.g. records of ordination and/or religious profession).

A personnel file should be maintained for each lay employee and volunteer with the following contents, as applicable: employment application, résumé, employment contract, salary and benefits information, performance review, disciplinary information, safe environment training, and records. If medical information is provided, it should be maintained in a separate file for confidentiality. The archivist must be familiar with the requirements of civil law.

It is important to recognise that people have a right, both canonically and civilly, to know that the information about them in the archives is correct. They also have a right of access to the information in their own personnel file and to make or obtain copies of documents which are of a public nature and pertain to their own status as persons (Canon 487 §2). They do not have the right to remove documents from their files, so access might be granted on the condition that a staff member is present.

Private documents (Canon 1540 §3)

Any other documents, apart from those stated in Canon 1540 §§1 and 2, are private. Confidential information should be kept no longer than is necessary or required by law. It is important to retain a summary of relevant information when documents are being destroyed. For example, personnel files may

¹¹ 'Sacramental and Genealogy Requests', available at <<https://www.catholichawaii.org/diocesan-offices/office-of-the-chancellor/sacramental-and-genealogy-requests>>, accessed 7 February 2023.

contain records of a sensitive nature, such as dispensations from impediments. These are not public ecclesiastical documents and do not become so by being placed in an official file of an ecclesiastical institution. They are private documents and the sole property of the ecclesiastical authority in whose possession they are retained.

MANAGEMENT OF ARCHIVES (CANONS 482–491)

The Council of Trent promulgated regulations on the preservation of important documents. Even prior to that, several popes had initiated legislation on management of records and archival reforms. On 14 June 1727, Pope Benedict XIII issued the Constitution *Maxima vigilantia*: ‘A Constitution on archives [is] to be erected in Italy for the preservation of legal papers and documents pertaining to cathedral churches both collegiate and noncollegiate, to seminaries, monasteries of both men and women, guilds, confraternities, hospitals and to all other pious institutions legally instituted’.¹² This Constitution regulated the information to be kept in archives and the norms governing access to the archives.

The norms on archives are found in Canons 486–491 of the 1983 Code and CCEO Canons 256–261. There are no canons that apply specifically to archives in religious institutes or societies of apostolic life. However, by analogy, the canons on diocesan archives can be applied. The law gives indications of what type of material ought to be preserved, e.g. sacramental records, and documents regarding church property ownership and rights (Canon 1284 §2, 9°; CCEO Canon 1028 §2, 8°).

The diocesan chancellor is the legal custodian of the archives (Canon 482 §1; CCEO Canon 252 §1). Canons 486–491 and CCEO Canons 252–261 address the chancellor of the diocesan curia and his or her role in maintaining the diocesan archives. Together with the diocesan bishop, the chancellor determines what is of its nature private and what is public. In turn, this determines what should be kept in the secret archive and what can be kept in the general archive.

The law places emphasis on the confidential nature of the archive and archive material. Therefore, access is restricted (Canon 487 §1). There are three sections in the archives, that is, general, historical and secret archives (Canon 489 §1). All three must be securely locked (Canon 486 §2). Only the diocesan bishop keeps the key to the secret archive, and the same norm can apply by analogy to the major superior of a religious institute. The chancellor and the diocesan administrator can access the secret archive when necessary.

12 Benedict XIII, Constitution *Maxima vigilantia*, 14 June 1727, in *Bullarium Romanum* 12, Rome, 1736, 221–225.

General archive (Canons 486–488)

The records of the general administration of the diocese are kept in the general archive. The diocesan bishop, vicar general, moderator of the curia, chancellor, archivist, and chancery notaries have access to the general archive. Access by other persons in the diocesan curia may be granted as needed, with the permission of the diocesan bishop or the chancellor.

The obligation of some practical, orderly arrangement of the archives is the subject of Canon 486 (*CCEO* Canon 256). Active documents or files that are not strictly confidential are kept in the general archive; otherwise, they belong in the secret archives. Included in the general archives are common documents (active files) like records of ordinations (Canon 1053 and *CCEO* Canon 774) and authentic documents regarding church property ownership and rights (Canon 1284 §2, 9° and *CCEO* Canon 1028 §2, 8°).

Records are to be maintained according to the guidelines established in particular law for archives, including a retention schedule. Records older than the retention period should be destroyed in accordance with the law and the directive in the retention policy. The exception is if records are relevant to current civil or canonical litigation, in which case the records must be preserved until the chancellor (in consultation with canonical and civil counsel) determines that the records are no longer needed.

The historical archive (Canon 491)

The historical archive contains records of historical significance to the diocese or other ecclesiastical institution.¹³ The diocesan bishop, the vicar general, the moderator of the curia, the chancellor, the archivist, and chancery notaries have access to the historical archives. Others may be granted permission. The archive is to be locked, and only the bishop and the chancellor are to have the key (Canon 487 §1). The permission of either the bishop or of *both* the moderator of the curia and the chancellor is required to enter the archive (Canon 487 §1 and *CCEO* Canon 257 §1).

Canon 487 §2 allows interested parties to access/obtain an authentic public document (or a photocopy), personally or through a proxy. The canon does not grant the right to access private documents. The removal of any document from the archives is restricted by Canon 488 (*CCEO* Canon 258), except with the consent of the bishop or of *both* the moderator of the curia and the chancellor, and only for a short time. Historical documents become public after seventy years, but confidential documents remain confidential indefinitely.¹⁴ Civil legislation must be consulted, and nothing from the historical archive is to be destroyed.

13 J M O'Toole, 'Diocesan Archives: Twenty-Five Years of Preserving American Catholic History' (1998) 16(1) *U.S. Catholic Historian* 1–2.

14 F Morrissey, 'Confidentiality, Archives and Records Management' (2006) 26 *The Catholic Archive* 21.

The secret archive (Canons 489–490)

The protection of confidential church documents in a secret file originated with a 1741 decree by Pope Benedict XIV.¹⁵ The 1917 Code of Canon Law mandated each diocese to maintain archives which are locked and from which documents cannot be removed (see *CIC/17* Canon 379 §1). Canons 389 and 340 of the 1983 Code govern secret archives: ‘In the diocesan curia there is also to be a secret archive, or at least in the common archive there is to be a safe or cabinet, completely closed and locked, which cannot be removed; in it documents to be kept secret are to be protected most securely’ (Canon 489 §1). Once placed in the secret archive, documents cannot be taken out, and they can only be accessed by the diocesan bishop for consultation. Confidential documents and documents of great sensitivity are kept securely there, and the diocesan bishop is the sole custodian of the key (Canon 490 §1).

A few canons specify the documents to be kept in the secret archive, including matrimonial dispensations (Canon 1082), secret marriages (Canon 1133), dispensations from impediments to holy orders (Canons 1047–1048), decrees of dismissal from religious life (Canon 700), documents relating to loss of clerical status by dismissal, and invalidity of orders or dispensations (Canons 290–293). The Code also specifies that preliminary investigations (Canon 1717) and ‘the acts of the investigation, the decrees of the ordinary which initiated and concluded the investigation, and everything which preceded the investigation are to be kept in the secret archive of the curia’ (Canon 1719).

Some documents in the secret archive are kept at the discretion of the diocesan bishop to prevent scandal or illegitimate damage to someone’s good name, including priest personnel files.¹⁶ It should be noted that ‘[...] placing personnel files in the diocesan secret archive will not suffice to shield confidential documents from court ordered disclosure in civil litigation’.¹⁷

When can records in the secret archive be destroyed? Penal or criminal case documents are to be destroyed only if there has been a canonical trial that has issued a definitive sentence. If no trial has taken place, all documents are to be kept. If the case is terminated for any other reason before a final determination of guilt or innocence, the entire file must be retained. Documents in the secret archive must be maintained until the guilty party has died, or ten years have passed from the condemnatory sentence. A summary case with the texts of the definitive sentence is to be retained permanently (Canon 489 §2 and *CCEO* Canon 260 §2).

15 Benedict XIV, Encyclical letter *Satis vobis*, 17 November 1741, nos 10–11, available at <<https://www.vatican.va/content/benedictus-xiv/it/documents/enciclica-i-satis-vobis-compertum-i-17-novembre-1741-il-pont.html>>, accessed 7 February 2023.

16 See N P Cafardi, ‘Discovering the Secret Archives: Evidentiary Privileges for Church Records’ (1993–1994) 10(1) *Journal of Law and Religion* 97.

17 *Ibid.*, 99.

Access to the secret archive is restricted to the diocesan bishop (Canon 489) and people authorised by him (Canon 490). The diocesan administrator has restricted access to the secret archive, in a case of true necessity.

On 22 October 2019 with the *motu proprio*, ‘For the Change of the Name of the Vatican Secret Archive to the Vatican Apostolic Archive’, Pope Francis renamed the Vatican Secret Archive the Vatican Apostolic Archive, ‘without prejudice to its identity, its structure and its mission’.¹⁸ It may be time to begin to use language like ‘restricted access archive’ or ‘reserved archive’.

SPECIFIC RECORDS AND PROTECTION OF RIGHT TO PRIVACY

The personnel records of a cleric might contain psychological reports focusing on a person’s sexuality and capacity for celibacy, or other assessment reports in the course of his formation.¹⁹ All of this material is confidential. Personal health records are kept in the personnel file of each individual. They must be secured and not accessible except to those authorised.

Medical and psychological records

Seminarians and candidates for admission to the novitiate must present results of a general medical examination, any documents concerning diseases, or special treatments that have been necessary in the past. In various jurisdictions, one has to undergo an HIV/AIDS test and disclose the results. The use of psychological testing to verify certain facts about the individual also remains pertinent. One bishop has written:

There are a number of problems encountered in making a judgement about the suitability of a candidate... For example, in discovering somewhere along the line that someone has an orientation toward homosexuality, the bishop must take very serious precautions and make sure that this man live out a life of priesthood and be faithful to his vows and his calling... Most dioceses require some kind of psychological testing [...] Church law gives the bishop full discretion and authority to deal with these measures.²⁰

18 Pope Francis, Apostolic Letter m.p. *Lesperienza storica*, 22 October 2019, in *Acta Apostolicae Sedis* (AAS), 111 (2019), 1681–1683, English translation in *Review for Religious* (2020), 49–51.

19 Congregation for Catholic Education, Guidelines for the Use of Psychology in the Admission and Formation of Candidates for the Priesthood, 29 June 2008, no. 11, *Enchiridion Vaticanum* (EV), 25 (2011), 1271–1272. See Canons 241 §1 and 1029. For irregularities for receiving orders, see Canons 1040–1041; for other impediments for receiving orders, see Canon 1042. Canon 1044 addresses those who are irregular for the exercise of orders received and those impeded from the exercise of orders.

20 A J Maida, ‘The Selection, Training and Removal of Diocesan Clergy’ (1990) 53 *The Catholic Lawyer* 55–56, cited in Cafardi (note 16), 114.

The Instruction of the Congregation for the Clergy, *Gift of the Priestly Vocation*, states:

The bishop is responsible for admissions to the seminary, and with the help of formators, he is to evaluate the human, moral, spiritual, and intellectual qualities of the candidates, their physical and psychological health and their right intentions. In this sense, the guidelines for the use of experts in the psychological sciences must be taken into account, together with situations of transfer from another seminary, or institute of formation and the possibility of a candidates having homosexual tendencies.²¹

The psychologist should also recognise that candidates to the priesthood and religious life come from many cultures and ethnicities, and this should be considered when selecting tests and interpreting test data.²²

Access to this material is limited to the bishop or the major superior and the rector of the seminary. Disclosure is regulated by the civil laws of each country and the ecclesiastical norms in force in each episcopal conference. No release of the information can be made without the consent of the person to whom it concerns, with the exception of a court order.

In religious institutes and societies of apostolic life, the major superior is responsible for admission to the novitiate (Canon 641). The norms for the admission and formation of candidates to the religious institute (Canons 641–661) and the proper law must be observed. The major superior, in person or through others, gathers information about the candidates (Canon 645) to establish that those admitted have good health, suitable character, and maturity (Canon 642). Most of the information collected becomes part of the documents for the personnel file of the individual.

An applicant dismissed from one seminary or religious institute who seeks admission into another seminary or religious institutes must consent to the sharing of all relevant information from prior formation with the diocesan bishop or the major superior. All persons who receive or review this information are obliged to confidentiality (cf. Canon 220). If such information is sought through interviews, for the sake of an accurate account of the

21 Congregation for the Clergy, Instruction on the Gift of the Priestly Vocation *Ratio fundamentalis institutionis sacerdotalis*, 8 December 2016, Vatican City, L'Osservatore Romano, 2016. no. 189.

22 See P C Kleponis, review of the USCCB *Guidelines for the Use of Psychology in Seminary Admission*, in *The Linacre Quarterly*, 83 (2016), 221. Any psychologist who has been asked to evaluate candidates for the seminary or religious life should familiarise himself with the 2008 Guidelines for the Use of Psychology in the Admission and Formation of Candidates for the Priesthood by the Congregation for Catholic Education, the 2016 Instruction on the Gift of the Priestly Vocation *Ratio fundamentalis institutionis sacerdotalis* by the Congregation of the Clergy, and the guidelines developed by each particular Church or religious institute.

interview, written notes should be taken and included in the applicant's permanent file.

Recourse to psychological testing is only possible with the informed and free consent of the person concerned, given in writing.²³ The person may be permitted to approach an expert of his choice among those named by the competent authority, or his own choice may be accepted by the competent authority. '[A]fter preparing his report, and observing the civil laws in force, [the expert] will communicate the results of the test directly to the party concerned and only to those persons who have lawfully been authorized to receive this information by reason of office.'²⁴

The use of invasive tests, such as a polygraph, is prohibited. This is because they are constructed in such a way that the individual undergoing them may not be aware that he is revealing certain information about himself. Episcopal conferences are to issue norms to establish the way psychological tests are to be carried out, determining the retention period for the reports, with respect to the civil laws, confidentiality, and the right to privacy. Any information gained through psychological tests should be held with the highest degree of confidentiality.

In a 1998 decision, the Congregation for the Clergy prohibited a bishop from coercing or ordering his priest to submit to psychological tests:

It is the consistent teaching of the Magisterium that investigation of the intimate psychological and moral status of the interior life of any member of the Christian faithful cannot be carried on except with the consent of the one to undergo such evaluation, as is clearly written about in the instruction of the Secretariat of State in their 6 August 1976 letter to pontifical representatives.²⁵

23 Sacred Congregation for Religious and Secular Institutes, Instruction *Renovationis causam*, 6 January 1969, in AAS 61 (1969), 103–120, §10, III, as cited in G Ingels, 'Protecting the Right to Privacy When Examining Issues Affecting the Life and Ministry of Clerics and Religious' (2000) 34 *Studia Canonica* 444. Pope Pius emphasised that, for the protection of the right to privacy, 'If . . . consent is unjustly extorted, any action of the psychologist will be illicit; if the consent is vitiated by a lack of freedom (due to ignorance, error, or deceit), every attempt to penetrate into the depths of the [individual's] soul will be immoral' (Pius XII, Address to the Participants at the 8th Congress of the International Association of Applied Psychology, 10 April 1958, in AAS, 50 (1958), English translation in *The Pope Speaks*, vol 5, no. 1 (1958), 13.

24 *Ibid.*, no. 195.

25 On 6 August 1976, Cardinal Villot, Secretary of the Secretariat of State, issued an instruction to pontifical representatives throughout the world following the address by the United Nations Economic and Social Council questioning psychological methods and related treatment which were being used in certain nations (Instruction of the Secretariat of State, 6 August 1976, Prot. No. 31157, cited in Ingels (note 23), 440.

Therefore, this Congregation concludes that Your Excellency cannot, in this case, under pain of obedience, oblige your priest, to undergo psychological evaluation.²⁶

It is illicit for a religious superior (see Canon 630 §5) or diocesan bishop to enter into the psychological or moral privacy of a person without the person's informed consent. A psychologist must not disclose to a religious superior or diocesan bishop knowledge obtained in therapy without the consent of the individual concerned. A psychologist is obligated to respect professional and ethical standards concerning confidentiality.²⁷ Therefore, the ordinary or superior is to *invite* the individual to undergo psychological testing and to release the results. Explicit, free, and informed consent must be given, preferably in writing. The bishop or superior may encourage the priest to undergo psychological testing and treatment and perhaps share the results with a responsible authority. Records of these should be kept securely and confidentially apart from the priest's normal personnel file.

The ordinary or his delegate cannot compel a priest or a religious to undergo psychological assessment, or to release the results of the test. The individual must be informed, however, that if he does not, decisions will be made using other tools of assessment. 'The ordinary is free to seek consultation of an expert of his own choice, and direct that an assessment of the individual be made based on the reports of the priest's behaviour which the ordinary has gathered.'²⁸ The use of a report obtained in the course of psychological testing to assist an individual regarding his health or to determine suitability for ministry cannot be used in a penal matter. 'Information arising from a psychological test conducted outside of the context of the penal forum is not admissible as proof in the process.'²⁹

The ordinary is guided by Canon 1041 1° in ascertaining whether a priest is labouring under an impediment due to some form of amentia. He must consult experts before judging whether the candidate is unqualified to fulfil the ministry properly. Ingels notes: 'when such conditions arise, there is a clear obligation on the part of the ordinary to investigate the allegations and make a determination whether or not the priest is capable of rightly exercising his priestly ministry and when appropriate, to provide him with the means of dealing with his problem.'³⁰ The consultation must be sought, and failure to

26 Congregation for the Clergy, decision, 8 October 1998, Prot. No. 980, cited in Ingels (note 23), 458. The decision was reached after a bishop attempted to coerce his priest to undergo psychological assessment under obedience.

27 Secretariat of State, Instruction to Pontifical Representatives, 6 August 1976, cited in Ingels (note 23), 440.

28 Ingels (note 23), 450.

29 *Ibid.*, 452.

30 *Ibid.*, 450.

do so invalidates his decision (Canon 127 §2, 2°). The priest retains the right to challenge the decision, and the burden of proof resides with him.

Accessing personnel files

Accessing one's file helps the concerned individual to refute false accusations and unsubstantiated claims. Diocesan personnel and members of religious institutes have the right to access their file, so that they can ascertain that information contained there is correct (Canon 220). If access to one's personnel file is restricted, it is impossible to rectify incorrect information, which might even have been collected without the person's knowledge.

Access to the file is restricted to the one to whom it concerns and those mandated by law. The individual whose documents are in the file has a right to privacy, which imposes an obligation on the ecclesiastical authority to treat such a file as confidential. Consequently, each diocese and religious institute should have policies regulating personnel files, which conform to applicable civil legislation.

At times, confidential information is transmitted from one person to another (e.g. when a new major superior comes into office). Francis Morrissey advises: 'Personal notes composed by a superior (e.g., seminary rector, parish priest, director of works) are to be destroyed at the time of change of office. Where necessary, a verbal communication can be made to the successor in office, who can take notes from the conversation.'³¹

PRESS STATEMENTS AND PUBLICATION OF NAMES

The practice of transparency within the Church remains fundamental to prevent the spread of false or biased news that might harm the dignity and course of justice. Therefore, press statements must present the facts under scrutiny yet respect the concerned individual's right to privacy. In the case of alleged criminal activity, a press statement should not absolve or condemn the accused before a canonical trial has concluded; instead, it must guarantee the right of the accused to be presumed innocent until proven guilty according to law.³² Cardinal Avery Dulles states: 'When dioceses routinely announce that accused priests have been "removed from public ministry because of a credible accusation of sexual abuse of a minor", such priests are, in effect branded as guilty. When priests [or religious] are treated as guilty, they suffer the loss of their good name and as a consequence find it difficult in the future

31 F Morrissey (note 14), 23. 'Record' is defined as correspondence, documents, digital or printed, or any other media generated, distributed or maintained by church personnel in the performance of their duties.

32 R Shaw, *Nothing to Hide: Secrecy, Communication in the Catholic Church* (San Francisco, 2008), 64.

to function effectively in their God-given vocation, assuming that they are restored to ministry.³³ Therefore, if an allegation is unsubstantiated, every step possible must be taken to restore the accused's reputation.

When communications by the institution do not respect the scope and aims of the institution, the communication can harm its public perception. It is crucial to maintain a balance between the extremes of information opacity (i.e. the situation when people have a right to know but information is not disclosed) and information overflow (i.e. when information is disclosed with no consideration of its appropriateness and effect on those to whom it pertains).³⁴ Mendoza Ovando observes that '[...] transparency in the Church should be translated into advancing its spiritual mission and creating ways to foster long-term information transparency in financial and personnel flourishing strategies'.³⁵ Transparency with personnel affairs, although welcome, is a delicate matter which requires an appropriate approach to personal information. When the matter relates to a cleric or religious embroiled in some scandal, the press statement should communicate transparently the action that the institution has put in place or is putting in place to restore justice, to offer help to victims, and to punish the offender after due processes. The fundamental principles of right to defence (Canons 1720, 1723 §§1–2) and the presumption of innocence must be upheld.

Some dioceses and religious institutes publish the names of all those who have been accused of a reserved delict.³⁶ The Pontifical Council for Legislative Texts responded to a question regarding such a publication of names:

- 33 A Dulles, 'Rights of Accused Priests: Toward a Revision of the Dallas Charter and the 'Essential Norms' (2004) 190(20) *America* 2. The Australian Catholic Bishops Conference decreed in December 2000 that 'All person are presumed innocent unless and until guilt is either admitted or determined by due process. If church personnel accused of abuse are asked to step aside from the office they hold while the matter is pending, it is to be clearly understood that they are on leave and that no admission of guilt are implied by this fact. Unless and until has been admitted or proved, those accused should not be referred to as offenders or in any way treated as offenders' (cited in *ibid*, 1–2).
- 34 See J C das Neves and A Vaccaro, 'Corporate Transparency: A Perspective from Thomas Aquinas' *Summa Theologiae* (2013) 113 *Springer Science and Business Media* 645.
- 35 C Mendoza-Ovando, 'What Kind of Transparency for the Church? Proposing Operational Transparency for Processes, Solutions and Decisions in the Catholic Church' (2020) 5(2) *Church, Communication and Culture* 225.
- 36 M Vitioli, 'Confidentiality and the Pontifical Secret' (2020) 109 *Periodica* 18. Publication of names, specific accusations, cautionary measures, eventual civil convictions, experts' reports, therapies, or photographs are published, for example, in the Diocese of Milwaukee. 'List of Clergy Offenders—in line with the assurances given in the Charter for the Protection of Children and Young People, these are the names of diocesan priests of the Archdiocese of Milwaukee who have been (or would be if they were still alive) restricted from all priestly ministries, may not celebrate the sacraments publicly, or present themselves as priests in any way. In addition, in accordance with the canonical norms that have been established, the allegations against any living priest are sent to the CDF'; available at <<https://www.archmil.org/clergy-abuse-response/restricted-priests.htm>>, accessed 7 February 2023.

[...] the legitimacy of rendering the status of an offender public cannot be set forth in general terms. In some cases, it will be legitimate, because there is a reasonable risk to other persons, while said publicity would not be legitimate when the risk was reasonable to be excluded. This latter [case] is to be observed, entirely, in the case of deceased delinquencies, in these cases there cannot be a proportionate reason or injury to reputation.

In this case, the basing of the publication of information [pertaining to an offender] upon reason of transparency or reputation (unless the same subject be consenting) does not appear to be legitimate, because such a publication would in fact contradict c. 220.³⁷

Church institutions need to leverage the expertise of professionals to manage, for instance, press statements and website administration. Formation of these experts is paramount so that the principle of stewardship of the spiritual patrimony of the Church is preserved and perpetuated.

When required by civil law, the documents in the archive must be turned over in cases of civil and criminal trials. No files are privileged either in civil law or canon law. Pontifical secrecy in legal proceedings was excluded by Pope Francis' rescript to the Substitute for General Affairs of the Secretariat of State on 4 December 2019,³⁸ which revised the offences of article 1 of the *motu proprio: Vos estis lux mundi*.³⁹ These norms apply to reports regarding clerics and members of institutes of consecrated life or societies of apostolic life concerning: (a) delicts against the sixth commandment of the Decalogue consisting of (i) forcing someone, by violence or threat, or through abuse of authority, to perform or submit to sexual acts; (ii) performing sexual acts with a minor or a vulnerable person; (iii) the production, exhibition, possession, or distribution, including by electronic means, of child pornography, as well as by the recruitment of or inducement of a minor or a vulnerable person to participate in pornographic exhibitions; (b) conduct carried out by the subjects referred to in article 6, consisting of actions or omissions intended to interfere with or avoid civil investigations or canonical investigations, whether administrative or penal, against a cleric or a religious regarding the delicts referred to in section (a) above.

37 Vitioli (note 36), 18.

38 Secretariat of State, Instruction on the Confidentiality of Legal Proceedings, 17 December 2019, available at <<https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2019/12/17/191217b.html>>, accessed 7 February 2023; cf. John Paul II, Apostolic Letter m.p. *Sacramentorum sanctitatis tutela*, Norms on Grave Delicts reserved to the Congregation for the Doctrine of the Faith, 30 April 2002, in AAS, 93 (2001), 737–739, article 6.

39 Pope Francis, Apostolic Letter m.p. *Vos estis lux mundi*, 7 May 2019, article 1 §1, available at <https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html>, accessed 7 February 2023.

The information gathered relative to these offences is to be maintained in a way that ensures its security, integrity and confidentiality, to protect the good name, image and privacy of all involved.⁴⁰ Those who handle such information are required to guarantee security, integrity and confidentiality, and to disclose the information only to those involved in the case.⁴¹ The exclusion from the pontifical secret of some criminal actions does not mean that those who possess such information may freely disclose it, as this would violate the right to reputation and the right to privacy of those involved.

CONCLUSION

The object of confidentiality is to protect the good reputation of persons and to safeguard the integrity of offices and processes in the Church.⁴² The management of personnel files cannot be separated from confidentiality and the right to privacy. Elizabeth Kim Meng Ong rightly notes: 'When something private or intimate is revealed about an individual, it is irreversible and the damage is irreparable'.⁴³ When privacy is lost, it is impossible to restore it. A good name, once lost, can be vindicated and somehow restored. The truth can vindicate the one whose name was maliciously defamed, by retraction of falsehoods. Furthermore, reparation and amends can be made to restore the dignity of the individual (Canon 128). The violation of one's privacy, however, cannot be undone.

⁴⁰ Ibid, no. 3.

⁴¹ Juan Ignacio Arrieta, Commentary on the Rescript of Pope Francis on the Confidentiality of Legal Proceedings, available at <<https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2019/12/17/191217f.html>>, accessed 7 February 2023.

⁴² J DeCew, 'The Priority of Privacy for Medical Information', in A Miller and J Paul, *The Right to Privacy* (Cambridge, 2000), 213.

⁴³ E Kim Meng Ong, 'The Revised Canons 1390 and 1391: The Impact on the Rights to Good Reputation and Privacy' (2022) 13(1) *The Canonist* 40.