



DUTY OF CONFIDENTIALITY AND OFFICE ADMINISTRATION: A MORAL CONSIDERATION

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ABSTRACT: *The paper attempts a moral consideration on confidentiality and office administration. Confidentiality is seen as a major theme and ethical code in office administration cum public administration; it is a duty an administrator not to disclose or relate some confidential information to public or third party without receiving the consent of the higher or topmost officer (issuer of the information) of the organization. It could be infer from the foregoing that duty of confidentiality constitutes a moral dilemma in office administration especially public office where conflict of interest emerges between the employer and employee, and the relationship between one employee and the other is of great essentiality. Now, the question is, what obligation an office officer/administrator has to protect the image of the organization? What role should one play on duty of confidentiality as an administrator where there is conflict of interest; for instance, a situation when an office secretary was asked to type a retrenchment letter for his husband who happens to be an employee in same organization? What should be an action of this officer? In this regard, this paper thrust is to critically examine the paradox of the duty of confidentiality and, the justification for the duty of confidentiality. Also, we will discuss various limitation to the duty of confidentiality on office administration. For methodological purpose, the paper shall employ critico-expository approach to examine the subject matter, since man is a product of his experience.*

KEYWORDS: Confidentiality, Office, Administration, Morality, Ethics, Duty

INTRODUCTION

For decades now, there has been serious concern on the justification of duty of confidentiality on professions as contrast to duty of professionals and the codes of conduct each profession hinges upon. In this regard, attention has been given to professionals like Lawyer, Medical Doctor, Engineers, Architects among other professions that requires an extensive and rigorous training. In contrast to this, little or no attention had been giving to office administrator even though growing body of research in administration in recent years has worked on the issue of office organization and problems of the duty of confidentiality in order to understand the wide variety of ethical codes that guides the proper conduct of public administration (Andersen et al., 2012; Beck Jørgensen & Bozeman, 2007; Beck Jørgensen & Sørensen, 2012; Menzel, 2007; Van der Wal et al., 2015). The sheer number of values and range of possibilities in ethical theories has given rise to the quest of morality of confidentiality in office administration.

Ethics in a general sense has been defined as the systematic study of conduct based on moral principles, reflective choices, and standards of right and wrong conduct. Like general ethics, ethical behavior from a professional standpoint also involves making choices based on the



consequences of alternative actions.¹ In lieu of this, conflict of interest plays a crucial role when an office administrator is confronted with moral dilemma when it comes to making a moral decision.

Ethical behavior in office administration or in any other activity is no more than a special application of the general notion of ethical conduct devised by philosophers for men generally. Ethical conduct in office administration draws its justification and basic nature from the general theories of ethics. Thus, we will be giving some attention to the ideas and reasoning of some of the great philosophers on this subject.

Prior research on ethical issues in office administration has generally avoided philosophical discussions about "right and wrong" or "good and bad" choices. Instead the focus has been on the ethical or unethical behavior of an administrator based on whether they conformed to rule-oriented codes of professional conduct without any prejudice and emotion. Various theories of ethics have been identified and used to resolve ethical dilemmas, but the two prevailing theories applicable to the matter at hand are utilitarianism and rule deontology.

Utilitarian Principle, the principle devised by J.S Mill and Jeremy Bentham is based on the "greatest good" criterion. Put differently, utilitarian believes that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. According to this principle, when faced with an ethical problem, the consequences of the action are evaluated in terms of what produces the greatest amount of good for the greatest number of people. The emphasis here is on the consequences of the action rather than on the following of rules.

On the other hand, deontological ethical theories based its moral justifications on a duty to a moral law. Thus, the office administrator's actions rather than their consequences become the focus of the ethical reasoning process. Under this principle, an administrator is morally bound to act according to the requirements of a rule of conduct of the Code which he or she is working without regard to a concern for the effects of that action.

Consequently, is the ethical behavior of an office administrator involving confidentiality decisions based on a moral reasoning process that weighs the good against the bad based on the consequences to other outside his/her area of duty (utilitarianism)? On whether the rule of conduct for the profession is always applied? If utilitarianism is applied, each situation involving confidential information in an office would have to be evaluated to determine if it would be morally right to disclose the. The duty of confidentiality would be followed only if that course of action produced the greatest good to the greatest number of people. If rule deontology is applied, however, the Professional Code of Conduct would be followed in all circumstances involving confidential information, regardless of the consequences. Hence, it's expected of office administrators especially the secretary keeps all confidential record and other related matters confidential irrespective of situations surrounding it in order to promote the interest of the organization he/she is working with without any prejudice. The aim of this paper therefore is to make justifications on duty of confidentiality and office administration and to subject it in same manner to moral understanding, giving the paradoxical situations in offices administration and moral dilemma.

Even though no academic paper can exhaust all the different moral problems, circumstances and contexts of everyday living. Nevertheless, it is hoped that the readership of this paper will



find it useful and will be able to form more readily correct opinions when faced with difficulties office duty or administration pertaining to secrecy, confidentiality, keeping promises and doing what is right in order to foster the common good or the organization they may find themselves.

CONCEPTUALIZING CONFIDENTIALITY

Many attempts have been made by the professional ethicist to conceptualise “confidentiality” as moral measure and codes to professionals in different spheres of live. Confidentiality was etymologically derived from a Latin word *confidentia* which means *secrecy, confide, faith, trust countable, and conformable*². Hence, the concept of confidentiality supposes a duty to kept, or meant to be kept, secret within a certain circle of persons; not intended to be known publicly. However, there are many distinctions and definitions regarding confidentiality. Some assert that a secret is something ‘kept hidden or separate from the knowledge of all or all but a few others’³ while a confidence is ‘something confided’.⁴ Others say that a confidentiality is a hypothetical bubble in which the military ‘need to know’ security principle is extended to restrict the flow of information between professionals, such that they might do their job well.⁵ Still again is the idea that secrets are those things which one has a *duty* to keep concealed⁸ or cannot be made known without causing injury or displeasure.⁶

A common (but not exclusive) theme is that confidentiality implies some sort of personal or professional privacy, free from any need to be protected in an underhand way. The methods by which a confidential thing is kept confidential are publically known, and the contents of confidential information may be known in general, albeit, however, not in specific terms. It is well known, for example, that office or administrative records are confidential documents and it is well known what sort of information office records contain. However, the contents of a particular office records are not open for public inspection. In contrast the methods used to keep things secret are often secret themselves and the contents of secrets, even in general terms (especially in highly secretive regimes), may not be publically known nor open to debate.

The contents of that which is confidential is not for public consumption, but may, however, be shared amongst like-minded professional parties to further some gain; such as in technical research, the development of a company advertising campaign or in the postulating of new government policy. Confidentiality also seems to protect human relationships which, by their nature, are intimate. Just like other professionals, the conversations of a head of an office with his staffs (especially, secretary) are private. Many of these relationships are protected by professional codes of conduct, and it is understood by all the parties involved what the limits of confidentiality are, and when those boundaries may be extended or, indeed, broken.⁷

A person may seek to extend the boundaries of a confidence. For example, a doctor may decide to share his patient’s notes with a specialist medical consultant if the doctor feels that the patient’s treatment would be better served. In this way a consultant is brought within the limits of the boundaries of the confidence.⁸ Alternatively, a different professional may wish to remove the limits of confidentiality altogether. A psychological therapist may report to the police a client who has become obsessed with firearms and who poses an immediate threat to the safety of those about him. In this particular case all confidentiality is lost and



the client's unstable psychological state becomes public matter in order that the safety of all citizens be guarded.

The nub of what makes something confidential is that there seems to be an understanding of safeguarding the parties involved or the safeguarding of the wider community and maintaining privacy by means which are known about and have been debated and consented to beforehand. This is the case even when that which is confidential, if revealed, would not be in anyway detrimental to the parties concerned. An obese person may not want his weight to be publically known (even though it could be accurately guessed at) and would be upset if his doctor were to reveal it. A wife might be cross with her husband if he told his friends what model she would like their new family car to be before they, as a couple, had discussed the matter fully. In both of these cases, the content of the confidentiality is trivial but the damage done in breaking the confidentiality strikes at the heart of the human relationship of the parties involved.

While a confidentiality may contain a secret, the secret itself, although important, does not seem to be the defining factor. In the case of the obese man the confidentiality is not even a secret – the fact that the man is overweight is in plain view. The author Sissela Bok defines confidentiality thus:

Confidentiality refers to the boundaries surrounding shared secrets and to the process of guarding those boundaries. While confidentiality protects much that is not in fact secret, personal secrets lie at its core.⁹

The term “confidentiality” often time used interchangeably with “secret”, in lieu of this, so what then of secrets: what is it about secrets that seem to make them more esoteric? Karl Peschke defines a secret as, ‘a hidden fact which may not be divulged’¹⁰ while Bok defines a duty of confidentiality as,

that which is kept intentionally hidden, set apart in the mind of office administrator as requiring concealment. [Therefore] I shall take concealment, or hiding, to be the defining trait of secrecy.¹¹

The former definition of Peschke is quite succinct and very clearly has an absolute nature about it: the definition admits of no cases whereby the confidentiality can be shared. The latter definition given by Bok is subtly different inasmuch that there is a notion of concealment attached; there is more here than the simple not telling of the secret fact, rather, there seems to be an understanding that certain lengths may be taken to keep the confidential information undisclosed. For Bok, it is this aspect of concealment which gives rise to her describing concealment as the essential trait of secrecy.¹²

In the case of secrets, it seems to be that there are greater levels of protection than when compared to confidentiality – not only with regard to the content of the secret but also with regard to the actual existence of the secret. In contrast, confidential records may not be open to the public, but the public know they are there. With secrets, there is more *not knowing* as to whether a secret does or does not exist in the first place.¹³ This distinction is possibly what goads conspiracy theorists to develop more and more outlandish theories seemingly contrary to common sense. They develop a circular argument that the government, or military, or administrative body, or some other body, has some secret to hide. When the official body denies the secret, the conspiracy theorist uses this as evidence that the secret must exist; it is because the secret is so shocking that the secret has to be protected from ever getting out. Denial of the



secret is, in their mind at least, tantamount to admitting it exists – of course, neither position can ever be proved without the suspected secret being broken.

Confidentialities, the methods used to keep things secret are often secret themselves and the contents of secrets, even in general terms, may not be publicly known nor open to debate. Because the level of containment is not available to public debate there is a strong sense, in western democracies at least, that confidentiality given short shrift to the idea of an open and accountable government, that secrets undermine family relationships and that secrets somehow betray the goodness of living a virtuous life where what you do is plainly seen. Pope John Paul II once said: “the man who lives by the truth comes out into the light, so that it may be plainly seen that what he does, is done in God.”¹⁴

As an office administrator, there is perhaps an understanding (at times unfair) that by keeping confidential records, by failing to come out into the light, one is not living virtuously, but rather suspiciously or dangerously.¹⁵ This may or may not be true, but there are good cases in office administration that do exist secrets which should be kept as a principle of justice.

PARADOX OF THE DUTY OF CONFIDENTIALITY

In contemporary times, the issue of confidentiality is no longer simply about professionals keeping to themselves personal information about clients that approach them for assistance. This is because these days, apart from the professionals retained by clients, there are a number of office personnel and other professional collaborators who can easily access such confidential information. Besides, there are some situations in which there are clients with complex and interdependent needs requiring the collaboration of several professionals and the free exchange of what is ordinarily considered to be confidential information.

The manner in which information is acquired, stored and retrieved in recent times also tends to weaken the idea of confidentiality. For instance, the uses of various forms of information technology render confidential information more open and accessible to unauthorised persons than before. In addition, a lot of people in recent times need to give up more and more information which they consider to be personal and confidential for them to have access to public welfare assistance, some work training programmes, and even some kinds of employment.

Ironically, as confidential information are becoming more accessible, there remains a great deal of immoral and even illegal secrets that are not recorded in any way, but which continue to burden professionals, such as lawyers, accountants, priests and journalists, even, office personnel who are convinced that they are professionally bound to secrecy on the basis of their understanding of their professional duty of confidentiality. Our society today is confronted by a growing demand to reveal and at the same keep some information as confidential. This has placed those who need to make decisions about whether or not to uphold confidentiality in serious moral dilemma.

On the one hand, employment relationships often times involve the exchange of sensitive information and disclosure of company trade secrets and facts important to the business or organisation interests. It therefore becomes imperative to achieve a balance of employer and employee interests and due protection of pertinent disclosures.



The National Industrial Court of Nigeria (NIC) has recognised this fact and as such, in certain decisions, worked to protect such interests. One of such decisions in which an aspect of this was addressed are reviewed below.

AERO CONTRACTORS CO. OF NIG. LTD V. MR. AKINTAYO AKINWUNMI AKINGBEHIN ¹⁶

Mr. Akingbehin was employed by Aero Contractors Company of Nigeria Ltd in August 2003. In October 2012, the company engaged the services of a consultancy firm to undertake an appraisal of its information and communication systems. The consultancy firm uncovered a massive fraud of about N64, 000,000 in the Commercial Department. Further to investigations, Mr. Akingbehin was identified as one of the perpetrators of the fraud. He was suspended indefinitely from November 28, 2012, following more investigations by the Police.

On December 27, 2012, Mr. Akingbehin's solicitors wrote threatening to share the Company's information gotten through transactions and finances which Mr. Akingbehin had been privy to if he was not reinstated to his position. The company sued contending that Mr. Akingbehin breached the confidentiality agreement contained in the contract of employment and would expose it to further damage if the threat was carried out; the company claimed N25, 000,000 for the damage occasioned by the breach of confidentiality, amongst other reliefs. Mr. Akingbehin claimed that, as Union Chairman he had the responsibility of representing the interest of other employees and as such, frequently contended with the Management. He stated that the investigations were executed without his being afforded fair hearing and the disclosures his solicitor made were not in bad faith nor a breach of confidentiality. Mr. Akingbehin asked the court to declare his dismissal wrongful, illegal, unconstitutional and contrary to the principle and rules of natural justice and fair hearing, and that he be reinstated. He also claimed his unpaid salary and other emoluments from the time of his suspension, and special and general damages of N100, 000,000 for inconveniences, emotional and psychological trauma and infamy suffered in the aviation industry.

Following a review of the facts and documents before it, the court found that Mr. Akingbehin did in fact breach the duty of confidentiality by disclosing details to his counsel, who published same in the scathing letter to the company for the sole purpose of blackmail. For this breach of the non-disclosure clause of his contract, the court ordered that Mr. Akingbehin pay the company the sum of N2, 000,000 as damages. It however held that Mr. Akingbehin was wrongfully dismissed and ordered that the company pay him damages of N845, 890.75.

Comments

The case above showcase the extent the NIC would go to protect an employer in matters relating to its business interests. In the first case, the NIC awarded damages in favour of the employer for breaching the confidentiality clause in the contract of employment. The employee admitted to the dissemination of financial information pertaining to the employer which he was under a duty not to disclose to his lawyer. The court did not hesitate to hold that, by the facts at hand, he was not protected by the plea of client/lawyer privileged communication.

In regard to the case above, the court noted that the duty of confidentiality/non-disclosure existed between the parties. It further upheld that duty above two canons of law; lawyer/client



privilege and spousal privilege. Even with respect to trade union obligations in this case, it stated that; "the defendant became first a staff of the claimant before he became a union leader, hence his primary responsibility is to the claimant by obliging the terms of his contract before any other responsibility. He rather chose to do otherwise thereby breaching his contract of employment. The defendant must be ready to face the consequences of that breach."¹⁷

In all, while the NIC is reckoning with employer's rights, it is imperative that employers follow the entire process in disciplinary proceedings. This is especially as the NIC will not hesitate to accord liability/damages to a failing party, once same is due. A major issue with regards to this is that confidentiality relates to why it should be binding as a duty on professionals. Why should it be considered as an absolute duty by a few while many accept that the onus of proof of justification rests on whomever wants to override this duty?

JUSTIFICATION FOR THE DUTY OF CONFIDENTIALITY

Confidentiality may be justified on four premises.¹⁸ The first and most fundamental of these four premises relates to the autonomy of the individual over personal information. It maintains that the right of individual to have secrets should be respected. If individuals do not have a measure of control over secrecy and openness about themselves, their thoughts, intentions, and properties, they would not be able to maintain their privacy nor guard against danger.¹⁹ However, this right is not absolute and is to be set aside when it conflicts with the right of others. An example would be when an individual is afflicted with a contagious disease that endangers others in society. In this circumstance, the individual in question cannot claim a right to confidentiality. Also, there are a good number of issues over which an individual cannot claim a right of secrecy over, for instance, a broken arm or a habit of stealing.

The second premise, which is derived from the first, maintains that apart from the right to have secrets, there is also the cognate right to share them. It also assumes respect for human relationship and intimacy between humans.²⁰ On the basis of this, the premise asserts first that it is natural and proper to respect the secrets of those that are intimate and associated with us and second that human relationships could not survive without such respect. This premise is primary in the marital privilege upheld in the American law that a spouse cannot be coerced to give evidence against the partner.

The third premise is that an oath of silence creates an obligation that is supposed to be binding. However, when questions are raised over the legitimacy of an obligation of secrecy that is based on an oath, further questions may be raised about the legitimacy of the oath in the first instance and if the person with whom the oath is made has any right to accept it.²¹ In addition, other questions may be raised to determine the circumstances that might justify overriding the oath.

The three premises identified above, when combined, offer a strong prima facie reason to support the idea of confidentiality although it must be recognised that there might be contrary reasons that are strong enough to override these premises. For example, these premises are overridden when secrecy would allow violence to be perpetrated against the innocent or make a person an unwitting accomplice of a crime. In such situations, autonomy and relationship do not provide sufficient ground for secrecy or silence. Indeed, in such situations the oath of silence should never be made, or if made for whatever reason, may be legitimately breached.



The fourth premise is more specific to the issue of confidentiality in the professional-client relationship. It adds more weight beyond ordinary loyalty to professional confidentiality given its utility to persons and society. It is for the sake of such utility that professionals grant clients secrecy even when ordinarily they have good reasons to speak out.

Hence, against all forms of inclination, office administrator is obliged to conceal all of his/her office confidential records just as lawyers for example believe that they are justified in concealing past crimes of clients or priests the sins they hear at confession.

CONCLUSION

An issue becomes a moral issue when it affects the wellbeing of people in society either by increasing or decreasing the harm or benefit that would accrue to them.²² However, an extension of moral issue is accrued to organizational (public or private) wellbeing and not only when an individuals or moral agent wellbeing is at stake. The paper underscores the duty of confidentiality as a measure of essentiality in office administration. Seeing from the deontological ethical theory, to be precise, Kantian *categorical imperative*, moral actions are justifiable base on the universal maxim and the rules of duty. Putting differently, deontological ethical theorists are of the view that what matters is the kind of action it is. What matters is doing our duty. Seeing that every organizations are predicated on policies and administrative codes, office administrator in this context is also predicated on the predicated on the codes of operation; the skills of accountability and confidentiality of office records and information. Hence, office administrators are of the necessity of safeguarding official records and information of their office by avoiding the all prejudices and emotions that may prompt breach of duty of confidentiality except on the assent or approval of the higher authority.

Consequently, the confidentiality aspect of the job of the administrative professionals defies prediction and standardization, it would be prudent to always adhere to my Golden Rule of Confidentiality: Unless otherwise instructed by your boss, treat all information received, written or spoken, as strictly confidential. However, in our discussion so far, offices administration and duty of confidentiality seems to be rigid but with limitations; this would be subject to future debate.

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