

Attribution / Anonymity of Sources

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Status of Guidance Note

This Guidance Note, authorised by the Managing Director, is provided to assist interpretation of the Editorial Policies to which the Guidance Note relates. Guidance notes provide advice to assist in the interpretation of the Editorial Policies, which contain the standards enforceable under the ABC's internal management processes and under the ABC's complaints handling procedures.

It is expected that staff will normally act in accordance with the advice contained in Guidance Notes. In a given situation there may be good reasons to depart from the advice. This is permissible so long as the standards of the Editorial Policies are met. In such situations, the matter should ordinarily be referred upwards. Any mandatory referrals specified in Guidance Notes must be complied with.

Key Editorial Standards

Excerpts of key editorial standards relevant to this Guidance Note are set out below. Other editorial standards may also be relevant, depending on the specific circumstances applying in each case.

1 Independence, integrity and responsibility

- 1.5 Exercise editorial independence as authorised and accept responsibility for it. When in doubt about an editorial matter, refer it up to the next most senior person for advice or decision.
- 1.6 When any editorial matter, including an editorial matter not being referred up for advice or decision, is likely to cause controversy or have an extraordinary impact, give proper notice of it to the most appropriate senior manager.

5 Fair and honest dealing

Dealing with participants

- 5.1 Participants in ABC content should normally be informed of the general nature of their participation.
- 5.2 A refusal to participate will not be overridden without good cause.

Attribution and sources

- 5.4 Aim to attribute information to its source.
- 5.5 Where a source seeks anonymity, do not agree without first considering the source's motive and any alternative attributable source.

Undertakings

5.7 Assurances given in relation to conditions of participation, use of content, confidentiality or anonymity must be honoured except in rare cases where justified in the public interest.

Mandatory referral

5.9 An appropriately senior ABC person designated for the purpose must approve in advance, having consulted ABC Legal, any proposal:

- c to broadcast or publish without attribution information that forms the basis of a report and the ABC is to be committed to protect the identity of the source of the information; or
- d not to honour an assurance given in relation to conditions of participation, use of content, confidentiality or anonymity.

Mandatory referrals

The Editorial Standards require (at section 5.9) that an appropriately senior ABC person designated for the purpose must approve in advance, having consulted ABC Legal –

- any proposal to broadcast or publish without attribution information that forms the basis of a report and the ABC is to be committed to protect the identity of the source of the information; or
- any proposal not to honour an assurance given in relation to conditions of participation, use of content, confidentiality or anonymity.

It is mandatory to disclose a source's identity, if sought, to an appropriately senior ABC person designated for the purpose.

Any proposal not to comply with a lawful order to disclose, or any proposal not to honour an assurance, must be referred to the responsible Divisional Director.

Presumption of attribution

Aim to attribute information to its source [Editorial Standard 5.4]

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

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

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

Negotiating about anonymity

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

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

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

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

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

Key terms

In negotiating with sources, be clear with them about key terms including --

- ***On the record***, meaning both parties agree that the information conveyed may be disclosed and attributed to the source by name.
- ***On background***, meaning both parties agree that the information conveyed may be disclosed but not attributed in a way that would be likely to identify the source.
- ***Off the record***, meaning both parties agree that the information conveyed is not to be disclosed, with or without attribution.

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

Individual staff members will have established and continuing relationships with their own sources. They may use particular terms that are clearly understood between them. Certain terms may be understood by both parties to be synonymous with the definitions given above. Whatever language is used with particular sources when obtaining information, staff should be clear with sources about the terms of agreement prior to disclosure by the ABC of information obtained from the source.

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

Reconsidering the status of the information

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

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

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

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

- **The circumstances** prevailing at the time the information was conveyed. The on the record nature of the exchange may not have been sufficiently clear from the outset. Circumstances may be that the source has been drinking or has recently woken from sleep, is reeling from serious news just conveyed, or is otherwise vulnerable or incapacitated.
- **The nature of the information.** For example, in the course of an on the record exchange the source may convey sensitive information that has low public interest value but may unreasonably affect others if disclosed with attribution. For example it may infringe the privacy of a member of the source's family and neither the information nor its disclosure may be material to the story.

- **The nature of the source.** It may be appropriate to negotiate retrospectively with people who are inexperienced in dealing with media, especially young people, to ensure they are treated fairly. A different type of source, usually highly experienced with media, may be such a significant ongoing source of information of value in serving the public interest that retrospective negotiation may be judged to be a necessary aspect of maintaining the relationship.

Clear understandings, clear purpose

When sources seek to convey information off the record, tell them beforehand that if the information warrants disclosure in the public interest you will try to confirm it through other sources and disclose it.

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

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

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

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

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

Considering motive

Where a source seeks anonymity, do not agree without first considering the source's motive and any alternative attributable sources [Editorial Standard 5.5].

A source's motives need not be pure. Long experience teaches that the public interest in the disclosure of information can be served by media professionals

cultivating sources who may have mixed motives for seeing the information they provide made public.

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

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

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

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

Avoid reliance solely on sources to which you are referred by the original source.

Other factors to consider

In negotiating with sources, also consider the following factors --

- **The public interest:** Whether the disclosure of the information unattributed would serve a sufficiently important public interest.
- **Personal attack only?:** Whether disclosure of the information unattributed would amount only to a personal attack made on another person by the source under cover of anonymity provided by you.
- **Timeliness:** Whether the information can be obtained from an attributable source of comparable reliability for disclosure to occur within a time period that would allow the public interest to be adequately served.
- **Form of attribution:** A form of attribution which, while preserving anonymity, would give the audience an opportunity to weigh the reliability of the information, at least to some extent. Phrases like 'sources said' are unhelpful. The following advice adapts the New York Times' guidance on this point to the Australian context:

'Australian diplomat' is better than 'Western diplomat', which is better than 'diplomat'. Still better is 'an Australian diplomat who took part in the meeting'. The phrase 'a person familiar with the case' is vague enough to include the reporter. Better are 'an executive from the plaintiff company' and 'a staff member who has read the draft'.

- **No misleading descriptors:** Anonymity for the source requires an investment of trust in you by the audience (and your colleagues) as well as by the source. Do not say 'sources', plural, if there is only one source. Do not give false forms

of attribution in order to throw people off the scent of the real source: for example, 'a parliamentary source' when actually the source works in a department of executive government. Such actions can undermine the story as a whole and may affect the subsequent willingness of others to invest trust.

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

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

- legal proceedings in which you and/or the ABC are lawfully compelled to provide information; or
- the establishment of a process under law, such as a royal commission or parliamentary inquiry, with the capacity to address the issue that the source was trying to bring to light through the media; or
- an investigation under law by an authority, such as a statutory anti-corruption body, with the capacity to protect the source from adverse effects of being identified as the source.

Shared risks and responsibilities

It is not mandatory to refer upwards before approaching sources and obtaining information from sources.

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

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

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

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

Among those responsibilities are --

- the support you may expect from the ABC for yourself and your source after the disclosure; and

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

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

Using unattributed information

An appropriately senior ABC person designated for the purpose must approve in advance, having consulted ABC Legal, any proposal ... to broadcast or publish without attribution information that forms the basis of a report and the ABC is to be committed to protect the identity of the source of the information [Editorial Standard 5.9(c)].

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

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

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

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

The ABC may seek the identity of a source

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

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

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

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

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

Ensuring practical protection

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

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

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

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

In striving to maintain protection in practice --

- avoid exposing the source when cross-checking the information the source supplied;
- minimise and keep secure any notes, email exchanges, phone records, drafts and other material which may expose the source's identity;
- consider whether any retained notes can be written in ways that do not identify sources;
- be aware of the risks to the source arising from original documents, photocopies, disks, USB data storage devices and other items supplied by the source;
- be aware that some taxi-payment records show GPS-derived location data about pick-up and drop-off addresses;
- be aware that date/time-stamped CCTV footage in offices may be aligned with dated/timed phone records to indicate who was using a particular phone at the time of a particular call;
- if using vision of the source in the report that is broadcast, blur rather than pixelate (which can be reversed);
- for voiceovers of the source, use another person's voice rather than distort by technological means the actual source's voice;

- consider the potential for details other than face or voice to identify a source – for example, clothing, landmarks, street names, vehicle registration number; and
- be vigilant to maintain the security of a source even when the source is geographically remote from the place in which the report based on the source's information is first broadcast or published.

Handling hard cases

Experience shows that in this context of source protection, 'hard cases' can and do happen from time to time. In such cases, basic values can clash and choices must be made between promise-keeping and another basic value such as truth-telling.

An appropriately senior ABC person designated for the purpose must approve in advance, having consulted ABC Legal, any proposal ... not to honour an assurance given in relation to conditions of participation, use of content, confidentiality or anonymity [Editorial Standard 5.9(d)].

Where circumstances arise in which a decision needs to be made about whether to maintain a commitment to a source --

- it is mandatory to refer upwards to the Division's Director;
- consult Legal;
- consider whether a release from some or all of the commitment can be negotiated with the source in light of circumstances that have developed since the original commitment was made;
- gather and verify the facts needed to make the decision;
- identify the competing values;
- analyse the impact of the various options and how to minimise foreseeable harm.

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

Explain the decision publicly.

Dilemmas can arise in two very distinct settings.

Setting 1

Following a commitment to protect the identity of the source, the information from the source is disclosed but not attributed. Among the consequences of disclosure is a legal process – e.g., defamation action, royal commission, statutory regulator's corruption investigation – in which an enforceable demand is made for the identity of the source to be provided, notwithstanding the source's continuing wish to remain anonymous and notwithstanding the media professionals' objection to identifying the source.

Setting 2

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

Decision-making in either setting requires great care. This Guidance Note sets out a structure for making such decisions. The structure does not pre-determine the outcome of any particular case. The facts of every case will be different. Note that in every case upward referral is mandatory.

By including the decision-making structure in this Guidance Note, and by being willing to explain decisions publicly, the ABC demonstrates that it --

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

Further guidance

For further details and reference materials about source protection issues, see the report *Sources and Conflicts* (http://www.abc.net.au/corp/pubs/documents/200806_confidentialsources_finalreport_july2008.pdf) and the resources listed in it. See also the ABC News Division Style Guide. Consult colleagues, learn from their experience, and be willing to share your own.

