

Breach of Confidence

Overview

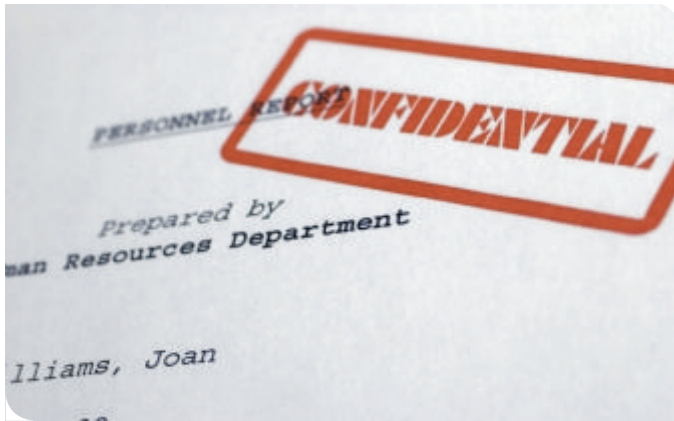
When giving information in confidence you expect this to remain a private matter. Examples of confidential information include personal employee records and medical records. However, it can also cover information that is personal such as details of relationships or private correspondence. The Court will apply what it calls ‘an intense focus’ on the facts of each individual case and determine the issue. Prevention is better than cure, so if you are made aware of a potential breach, then you may wish to take Court action to obtain an injunction to prevent the disclosure of the confidential information to your detriment. If the breach has already occurred, an action for breach of confidence can be taken for compensation.

Do I have a claim for breach of confidence?

To establish a claim against a defendant for breach of confidence in relation to the disclosure of information you must prove:

- ▶ The information has the necessary quality of confidence – an example of this would be someone’s personnel records
- ▶ The information was obtained in a manner which gives rise to a duty of confidence (for example, details of your health at an appointment with your GP). The duty of confidence can arise if you have a contractual relationship (for example an employer/employee) or as a matter of conscience (for instance, finding someone’s diary in the street)
- ▶ The information has been used in an unauthorised way
- ▶ The claimant has suffered a detriment from its unauthorised use.

A claimant has 6 years from the date of breach within which to bring Court proceedings.



Available defences

It is important to bear in mind that a right to confidentiality can be overridden or ceases in certain circumstances:

- ▶ The information is deemed not to be confidential in nature
- ▶ The information is already in the public domain. However, confidentiality may survive (depending on the facts) notwithstanding that the information is known to a small group of people, or is technically accessible. The key question is whether further publication of the information could still be damaging

- ▶ If there is a public interest in disclosing the information. The Court is then required to conduct a balancing act between legitimate public interest and the right to confidentiality. The media have often relied upon this defence when exposing the corruption or ineptitude of those in positions of authority and power. As police officers are public servants and upholders of the law, the court is likely to hold that there is a public interest in exposing the misconduct of an officer.



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What might I recover?

- ▶ An injunction can be obtained to prevent the future publication of the confidential information if it is not deemed to be in the “public domain”
- ▶ Compensation
- ▶ Legal costs are usually recoverable from the losing party.

If you think that you may have a claim please contact one of our specialist lawyers who will be able to help you.

Can I stop this?

If you have notice of a potential breach of confidence you might be able to obtain an injunction from the Court. It is vital that you act quickly and seek specialist legal advice.