



Part 2 - Law Of Confidence

Illustration

The appellant was a lawyer. He was charged with receiving information on the current addresses of persons from one Ganesan, who was a CID officer, contrary to s 5(2) of the Official Secrets Act (Cap 213) (‘the Act’). The appellant then communicated the addresses and the dates of changes of addresses to PW1, another lawyer, who needed them to serve processes on these persons. He was also charged for this under s 5(1)(c)(i) of the Act.

The prosecution’s case was that these addresses came from the CID on-line system and that they were secret official information. Ganesan, who was tried jointly with the appellant on charges of communicating the addresses to the appellant or alternatively abetting the appellant to receive the addresses, called DW4 to give evidence. DW4 testified that the addresses came from one Sheila of Creditnet, a company which provided search services. The prosecution was allowed to call PW12, the managing director of Creditnet, to give rebuttal evidence that the addresses could not have come from Creditnet because Creditnet did not have them. The investigating officer, PW10, had interviewed Sheila and PW12. DW4 had also complained that PW10 did not record down his statements regarding Creditnet. The prosecution relied on a confession by Ganesan that the addresses came from the on-line system. The appellant’s defence was that he did not know that the addresses came from the on-line system, that the addresses were not official secrets and that he had no reasonable ground to believe that they were communicated to him in contravention of the Act. The appellant was convicted and he appealed.

Learning Objectives

- Discuss the elements under the law of confidence
 - Information must be confidential
 - Must be imparted in circumstance importing an obligation of confidence
 - Unauthorised use
- Liabilities





Law Of Confidence

- The law protects a wide range of confidential information
- Confidential information can be **commercial** and **technical/industrial secrets**, *government secrets* and *personal secrets*
- Based on English common law (not codified)

Law of Confidence

Elements:

1. Information must be confidential
2. Must be imparted in circumstances importing an obligation of confidence
3. Unauthorised use of the information



1. Information must be **confidential**

Categories of Information

- Information not in the public domain
 - a) Trade secrets
 - b) Government secrets
 - c) Some personal secrets
- Information under public domain
 - information that is public property and public knowledge
 - once information enters the public domain, it will lose its confidentiality

1. Information must be confidential (Not public)

a) Trade secrets

- **Technical secrets**
 - Software, hardware specifications, formulas
- **Business secrets**
 - Pricing policies, customer lists

<https://www.youtube.com/watch?v=Z0DZBRPJrfY>

1. Information must be confidential (Not public)

b) Government secrets (under OSA)

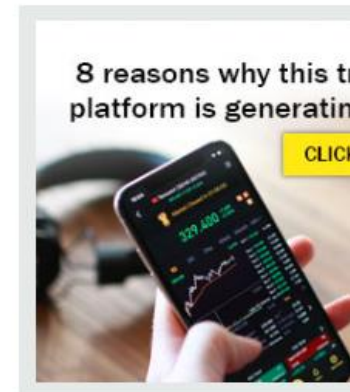
- Government policies, statistics, or information under the Official Secrets Act
 - Criminal Records
 - Staff strength in the Army, Navy and the Air Force
 - Economic policies and statistics
 - Question: a document with statement “the sun rises from the east” and has a Government stamp “Top Secret”, is this information confidential?

=> No! The information must be by nature confidential

<https://www.straitstimes.com/singapore/courts-crime/sia-pilot-who-shared-picture-of-dead-maid-on-whatsapp-is-found-guilty-of-osa>

<https://www.tnp.sg/news/singapore/hdb-officer-charged-breaching-official-secrets-act>

Couple arrested for allegedly leaking press release on Covid-19 school closures



ST VIDEOS ▶



<https://www.straitstimes.com/singapore/couple-arrested-for-allegedly-leaking-press-release-on-covid-19-school-closures>



1. Information must be confidential (Not public)

c) Some personal secrets (not protected)

- Grossly immoral confidences
 - e.g. Clinton & Monica Lewinsky's affair
- Trivial matters
 - e.g. information about movie/TV stars
- Information in public domain
 - Owner made it available to public
 - => No longer confidential

1. Information must be confidential (Public domain)

- Information that is:
 - Public property
 - Public knowledge (eg. there is an ATM at Dover MRT)
 - Common knowledge (eg. location of Dover MRT)
- Information made freely available to public by owner is not confidential information
 - Mustad v. Allocock: publishing a patent specification means confidential information has been disclosed to the world
 - Eg. Mobile phone number



2. Obligation of confidence

- Confidential information was imparted in circumstances importing an obligation of confidence between the confider and the confidant
 - Once a person realise that information was given in confidence, then it is sufficient to impose upon him the equitable obligation of confidence
- Obligation of confidence will also be imposed when confidential info is disclosed for a LIMITED purpose, e.g.
 - consultant programmer
 - under duty to use info for limited/specific purpose

2. Obligation of confidence

- Obligation is also imposed in:
 - a) Express contract (express term)
 - b) Employer/employee relationships (Obligation owed by employees)
 - c) Relationships with Independent contractors
 - d) Professional relationships
- *Note:* obligation of confidence is not dependent upon the existence of any contractual relationship or contractual terms; obligation can arise out of equity (being fair)

3. Unauthorised Use

- Plaintiff must prove defendant made unauthorised use of information:
 - a) Confidential info came from plaintiff
 - b) Disclosure or use was inconsistent with the limited purpose for which the information was given
 - c) Use of the confidential information without the plaintiff's consent

LIABILITY

- Civil liability

- Injunction
- Damages / accounts for profits



- Criminal liability

- E.g. Official Secrets Act

(1) A person who is guilty of an offence under this Act by reason of Section 3 (spying) shall be liable on conviction to a fine not exceeding \$20,000 and to imprisonment for a term not exceeding 14 years.

In closing...

- Discuss the elements in the law of confidence
 - Information must be confidential
 - Must be imparted in circumstance importing an obligation of confidence
 - Unauthorised use
- Liabilities