

# **Anonymised information about individuals and the duty of confidence**

## **Section 41**

### **Line to take**

Where no individual can be reliably identified as the subject of information as a result of its release and reference to other material available to the general public, there will be no breach of confidence to action if that information is released.

### **Further information**

This casework advice note only applies to cases in which the information under consideration is anonymous information about individuals. Case officers should continue to follow the approach set out in the lines to take in relation to all other cases involving section 41.

Where it is not possible to identify the subject of information from the material to be disclosed, either on its own or together with other information available to the general public, it is no longer necessary to consider each limb of the section 41 test of confidence.

If an individual cannot be reliably identified then there can be no expectation of confidence and no detriment to the confider by way of an invasion of privacy. It therefore follows that there can be no breach of confidence to action.

Case officers need to explain why identification of an individual is not possible. If it has been necessary to address the issue of identification in relation to section 40 the explanation in respect of section 41 will follow the same analysis. Once the identification point has been addressed the following wording can be used in decision notices to explain our conclusions regarding the duty of confidence.

“In order for section 41 to apply it is necessary for all of the relevant elements of the test of confidence to be satisfied. Therefore, if one or more

of the elements is not satisfied then section 41 will not apply. The Commissioner has explained why he does not consider it possible to reliably identify an individual as the subject of the withheld information from its contents or if it is linked with other material available to the general public. In such circumstances he does not consider that there can be an expectation of confidence or that disclosure would cause detriment by way of an invasion of privacy. Therefore, it follows that there can be no breach of confidence to action and section 41 does not apply”.

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