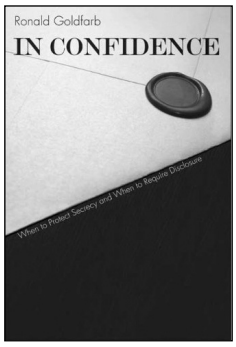
GOLDFARB, R. *In Confidence: What to Protect Secrecy and When to Require Disclosure.*
New Haven: Yale University Press, 2009.
ISBN 978-0-300-12009-7



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In Confidence: When to Protect Secrecy and When to Require Disclosure

Books such as this one by Ronald Goldfarb are not customary. A work that extensively, gratifyingly and rigorously describes one of the big legal themes of contemporary society, namely the "evanescent concept of privacy". A particularly controversial debate in the legal and journalistic spheres of the United States. Goldfarb is a prestigious veteran lawyer who worked with Robert F. Kennedy and is a specialist in the constant legal debate between justice and the media. His last important work was "TV or not TV, Television, Justice and the Courts", published in 1998 by the New York University Press.

The book, obviously focused on the United States, is divided into three broad questions that come under the title of confidentiality. The first is a study of the confidentiality of personal data, intimacy and the disclosure of private information. Here he distinguishes between confidentiality, privacy and professional secrets, a very interesting distinction analysed later on. In the field of professional secrets, the book deals with medical confidentiality, that of attorneys, clergy and also the so-called family or marriage privilege and business secrets. The work describes the recent cases of journalists charged with and convicted of "not revealing their sources" of information, as in the case of Judith Miller, a journalist with the New York Times who refused to reveal to a judge the person who had told her that the wife of an American diplomat was a member of the CIA. The second question tackled in the book is that of governmental and judicial secrets, although its study is somewhat less detailed. There is, however, an extensive description and application of the Freedom of Information Act (FOIA), a law passed in 1966 and amended in 1974 and 1986. Lastly, the third question refers to confidentiality in the field of new technologies and social networks, an issue that has been dealt with more frequently in recent bibliography, with a profusion of works from both sides of the Atlantic. The author analyses the control of Google, the identification of radio frequencies or mobiles, as well as the "re-use" of public information.

One of the significant contributions of this work is its comparison of the jurisprudence of the US Supreme Court since the 18th century through the different changes introduced in the Constitution, known as "amendments". In this respect, what is missing is an index of jurisprudence by theme and the trends in North American constitutional with regard to the areas in question.

Beyond a description of the content, if we analyse the first part of the book, which is the part that truly corresponds to its title, we can see how the author argues, from the legal point of view, that personal autonomy is what underlies both confidentiality in the legal sphere (lawyers, judges) and also privacy in the medical and religious sphere. A position I agree with. Less support and jurisprudence has been enjoyed by the proposed right to confidentiality claimed by companies and universities. In the United States there have been several legal cases that have ruled against scientific researchers who have refused to reveal their surveys, study data, etc. for reasons of confidentiality. Neither has this proposal prospered in the legislation, as Congress rejected the bill known as the "Researcher's Privilege Act" in 1999.

The book's main contribution is the distinction the author makes between 'privacy', 'confidentiality' and 'information privileges'. The basis of the concept of "privacy" is not specifically given either in the 3rd or 4th Amendment of the Constitution where, on the other hand, the freedom of domicile is recognised, as well as prohibiting interference with intimacy (for example, searches) and people are protected by the right not to have their personality sold. For Ronald Goldfarb, while privacy refers to freedom in the individual sphere, i.e. to free movement, control of one's own identity, self-determination, ownership of one's own personal data, including the right to be alone, on the other hand 'confidentiality" refers to keeping personal secrets and private information. So confidentiality, "rather than a personal right, is a principle of legal ethics that applies at the time when information must be disclosed or otherwise remain confidential" (p. 22). In Spain, we understand self-determination to be the ownership and use of data

of a personal nature as part of our information-related intimacy (art. 18 Spanish Constitution).

In addition to these two concepts, Goldfarb also believes that, in the public arena, there is another concept that must be taken into account, namely that of certain "privileges" of communication: "information privileges". There are several personal or professional statutes that can be invoked in a trial: the professional secret of journalists, doctors or the clergy. As we know, this is habitual practice in the US and also in the European Union, although with unequal recognition and guarantees in the different states and/or countries. Other groups have also asked for these same privileges that are still not recognised: for example, victims of crimes and social workers.

In fact, the Supreme Court is restrictive with regard to extending the list of privileges. For example, it refused this right of confidentiality to Pennsylvania University in a research case (Univ. of Pen vs. EOC 493 US, 182, 194 (1990)). In the US, the peer review of publication processes, as well as contests for seats, also generates confidential information that has been taken to the courts. In the case of Syposs vs. United States 63, F. Supp. 2d, 203 (1999), US justice ruled that scientific freedom does not include confidentiality and rejected the petition for a file to be kept secret.

The author maintains that exceptions in the use of information should be reduced or even eliminated, such as secrecy of the clergy, which does not have sufficient justification, while he believes that those cases where confidentiality must be protected have to improve. All this notwithstanding the fact that democracy is developed under the principle of public transparency.

To end the book, he proposes a series of legal reforms: the first that a federal law should be passed on the professional secrecy of journalists, as this type of “shield-law” only exists in some states of the US and several journalists and bloggers have gone to jail due to a lack of shield laws, which provide protection for journalists and thereby prevent them from being accused of not collaborating with justice. The second is that the occurrences of offences and misdemeanours should be clearly typified that are committed through ICTs and, lastly, also as a novelty not often heard in Spain, that the rights to confidentiality should be extended to educational institutions and families, due to the nature of the facts they carry out.

References

GOLDFARB, R. *TV or Not TV, Television, Justice and the Courts*. New York: New York University Press.