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Confidentiality

Introduction

When people allow researchers to undertake research that involves them, they often negotiate terms for the agreement. Participants in research may, for example, consent on the basis that the information obtained about them will be used only by the researchers and only in particular ways. The information is private and is offered voluntarily to the researcher in confidence.

The concept of confidentiality is often considered in bioethics. In that medical context, patients typically approach a doctor and provide personal information in exchange for help. The research relationship in social science is typically very different (Robinson, 1991). In the social sciences, it is the researcher who is more likely to approach a potential participant and ask for confidential information to be revealed in exchange for ... possibly not very much direct benefit. As two Canadian criminologists, John Lowman and Ted Palys, have argued:

Our research subjects divulge information in confidence about their own criminal activity ... and sexual activity to a person who has asked them to divulge the information, with the full knowledge they are offering us 'data' that will at some point be compiled, analyzed and published. The researcher usually initiates the interaction and, in our experience, the respondent divulges the information only on the condition that they are not named. Since the interaction would not have happened if we had not initiated it, a tremendous ethical burden is placed on us to ensure no adverse effects befall the participant because of our entry into their lives. (Lowman and Palys, 1999, p. 30)

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While social science research participants might be hurt by insensitive data collection, often a more significant danger is posed by what happens to data after it has been collected during the process of analysis, publication and, indeed, archiving (Parry and Mauthner, 2002). In this chapter, we examine the difficulties associated with protecting information given to researchers in confidence by research participants.

Justifications for confidentiality

Justifications for confidentiality are often inadequately elaborated within social science. However, working in the field of bioethics, Tom Beauchamp and James Childress (2001) identified three different arguments – consequence-, rights- and fidelity-based – that might justify maintaining confidentiality.

Consequentialist arguments (see Chapter 2) examine the results of an ethical practice, consider what would happen if the practice did not exist and make a decision about what to do on the basis of the comparison. In social science, interviewees might be reluctant to reveal details about themselves if they think the information could be freely disseminated to third parties, despite assurances to the contrary (O’Neil, 1996; Van Maanen, 1983). And,

Where there can be no trust between informant and researcher, there are few guarantees as to the validity and worth of information in an atmosphere where confidence is not respected. (Fitzgerald and Hamilton, 1997, p. 1102)

These claims seem to be particularly true where the research topic is sensitive (Singer et al., 1995) and where dissemination of the information would have adverse consequences for the participant. Researchers who break confidences might not only make it more difficult for themselves to continue researching but, by damaging the possibility that potential participants will trust researchers, might also disrupt the work of other social scientists (see Chapter 1).

The second justification for confidentiality is rights-based. Allen (1997) maintained that everyone has a right to limit access to his or her person. Such a right encompasses informational, physical and proprietary privacy. Beauchamp and Childress (2001) argued that our right to privacy rests on the principle of respect for autonomy. On this basis, while some matters cannot or should not be concealed, people should have the right, as far as is possible, to make decisions about what will happen to them. In the context of research, they should be able to maintain secrets, deciding who knows what about them. This principle was accepted in the Nuremberg, Helsinki and Belmont codes.

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Finally, fidelity-based arguments rest on the view that researchers owe loyalty to the bonds and should honour promises associated with research – a deontological position. Researchers should be faithful to the obligations relating to respect for autonomy, justice and utility that are imposed by their relationship with participants. Researchers should, for example, meet those expectations that research participants might reasonably hold about investigators' behaviour. By offering a promise of secrecy, social scientists offer both to give and perform something. They offer to give allegiance and agree, at minimum, to keep silent or possibly even to do more to guard a confidence. As Sissela Bok (1983, p. 121) noted, 'Just what performance is promised, and at what cost it will be carried out, are questions that go to the heart of conflicts of confidentiality.'

Both Bok (1983) and Beauchamp and Childress (2001) concluded that obligations of confidentiality are only *prima facie* binding. This means that they cannot be considered absolute and in some situations we should contemplate disclosing to a particular person or group, information that we had received under an implied or explicit assurance of confidentiality. We shall return to this later in the chapter.

While this chapter is about confidentiality, it is worth pointing out that not every research subject wants confidentiality. During research on sexual abuse in Latin America, Lisa Fontes (1998) found that shantytown leaders were angry that they were not being given adequate recognition for their work, a matter acknowledged by the American Anthropological Association (1998; see also Burgess, 1985; Szklut and Reed, 1991):

... the assurance of confidentiality seems to have contributed to participants' continued accurate perceptions that their labor and knowledge were being exploited by those in power, including academics like me. (Fontes, 1998, p. 56)

On the other hand, not every participant should be offered confidentiality. Oral historians engaged in gathering personal narratives routinely do not offer anonymity or confidentiality, although restrictions on access may be negotiated (Boschma et al., 2003). Social scientists may feel that it is inappropriate to offer confidentiality to people in public office who are speaking about their public work (Sudnow, 1965; Rainwater and Pittman, 1967), a situation recognized in some professional codes (British Sociological Association, 2002) and government regulations (United States Code of Federal Regulations 45 CFR 46.101, 3[iii]).

Negotiating confidentiality

In some research projects, negotiations around confidentiality may be fairly straightforward. Some researchers are able to operate in relatively predictable contexts where standardized assurances may be included in a covering letter. However, other work takes place in informal and unpredictable environments, where agreements may need to be negotiated with individuals and groups and renegotiated during the course of lengthy fieldwork.

Researchers may find it extremely difficult to keep secrets during fieldwork. They may also have to disguise material in any ensuing publications. Christine Mason (2002) witnessed an incident of sexual assault while engaged in fieldwork in Eritrea. After the event, women she had interviewed as part of her research revealed they too had been victims of such assaults. Mason decided not to publish this material, believing that the information had been given to her by friends solely to provide emotional support. Patricia Adler (1985) undertook a study of drug dealers and smugglers operating in California:

Dealers occasionally revealed things about themselves or others that we had to pretend not to know when interacting with their close associates. This sometimes meant that we had to lie or build elaborate stories to cover for some people. Their fronts therefore became our fronts, and we had to weave our own web of deception to guard their performances. This became especially disturbing during the writing of the research report, as I was torn by conflicts between using details to enrich the data and glossing over description to guard confidences. (1985, p. 26)

A further complication may arise if the participant has commercial interests to protect and the resources and expertise to ensure that these protections are stipulated in any agreement. For example:

An agreement with a chemical company involved in an environmental clean-up or an insurance company involved in mass tort litigation may provide more rules governing confidential data and subpoenas than a short form of consent and confidentiality assurance that might be used in a study of mentally ill homeless persons or elderly medical patients. Such an agreement might require notification if a subpoena is served or the use of best efforts by the researcher to resist production of confidential data; it might limit the 'except as required by law proviso' to a court order, not merely a subpoena; and it might provide for return or destruction of the data at the conclusion of the study. (Traynor, 1996, p. 122)

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Table 6.1 Contractual procedures for protecting the confidentiality of individuals in research projects using administrative microdata files

Prohibition on re-disclosure or re-release
Specification of electronic data transmission (for example, encryption methods for network access)
Description of storage and/or handling of paper copies of confidential data
Description of storage and/or handling of electronic media such as tapes or cartridges
Description of network security
Requirement for notification of security incidents
Description of methods of statistical disclosure limitation
Description of disposition of data upon termination of contract
Penalties for breaches

Source: Brady et al., 2001, p. 255

Contracts with government may also specify a range of provisions to uphold confidentiality and security and could indicate the penalties that may be imposed if a breach of confidentiality occurs. In their review of confidentiality issues arising as a result of sharing administrative data gathered as part of United States welfare programs, Brady and his colleagues (2001) provided a range of examples they thought should be specified in any written contract (see Table 6.1).

In addition, many national and professional codes contain provisions dealing with the long-term use of data, including considerations such as data storage and secondary use (for example, American Sociological Association, 1993; British Sociological Association, 2002; ESRC, 2002; RESPECT, n.d.; Social Research Association, 2002; Tri-Council, 2003). These provisions often require researchers to conform to relevant data protection laws.

In some cases, researchers may face considerable pressure from government officials or courts to disclose data, thereby breaching assurances of confidentiality (see Appendix, Case 2). Benjamin Paul (1953) described how Ecuadorian tax officials attempted to obtain an anthropologist's field notes that described land holdings in an Ecuadorian community. Adler (1985) was concerned about drawing police attention to her work on drug dealing in California and so avoided any publicity by holding back on publications until she had finished her fieldwork. Fitzgerald and Hamilton (1996) were not so lucky. Their work on illicit drug use in Australia was compromised when one researcher was approached by a police officer working under cover:

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The undercover police officer suggested that a trade of information could be done: the undercover officer would introduce the ethnographer to drug users to interview in exchange for information that the ethnographer could pass on to the police. (p. 1593)

Fearing that police might seek access to their data by getting a warrant or by placing fieldworkers under surveillance, the researchers suspended their fieldwork while they sought to clarify their legal position.

These extreme threats to the confidentiality of data may be rare but, as we illustrate in this chapter, they are not so uncommon that they can be ignored by researchers (see Israel, 2004a). There are two kinds of measures that can be taken to preserve confidentiality. The first is methodological, the second legal.

Methodological precautions

Researchers have acted to protect the confidentiality of research participants and their activities by either not recording names and other data at all, or by removing names and identifying details from confidential data at the earliest possible stage. In some disciplines, the name of the community where the research took place may also be disguised (Hancock, 2001; Szklut and Reed, 1991), otherwise

the interested reader can identify the revolutionary in the Santiago squatter settlement, the reformer among the Northern Ute, the Lebanese trader in central Ghana, or the patrón on the upper Rio Ucayuli. (Jorgensen, 1971, p. 331)

These precautions offer the advantage of helping to guard data against theft, accidental (Meth with Malaza, 2003) or improper disclosure by other members of a research team. For example, in quantitative research on child abuse and neglect, a North Carolina research team (Kotch, 2000) required participants to seal their answers to sensitive questions. These were then separated from other information that might have identified the respondent. During his qualitative research with property criminals, Tunnell also took a range of methodological precautions. He:

never spoke participants' names during the recorded interviews, which were themselves quickly transcribed and the tapes erased. Although I kept an identifier list and assigned numbers to pertinent information obtained from individuals' case files, names were not connected to the information from the files or interviews. (1998, p. 208)

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Other researchers have counselled participants not to give them specific information such as names or details of past criminal events for which they had not been arrested (Decker and van Winkle, 1996; Feenan, 2002; Hall and Osborn, 1994; Sluka, 1995) or future crimes that they planned to commit (Cromwell et al., 1991).

Social scientists have gone to considerable lengths to safeguard their data. At various points in her research, Patricia Adler (1985) and her husband had to protect their data from suspicious and sometimes volatile drug dealers:

We encountered several threats to our collection of taped interviews from people who had granted us these interviews. This made us anxious, since we had taken great pains to acquire these tapes and felt strongly about maintaining confidences entrusted to us by our informants. When threatened, we became extremely frightened and shifted the tapes between various hiding places. We even ventured forth one rainy night with our tapes packed in a suitcase to meet a person who was uninvolved in the research at a secret rendezvous so that he could guard the tapes for us. (Adler, 1985, p. 23)

Other researchers have reported sending files out of the jurisdiction, and avoiding using mail or telephone systems so that data could not be intercepted or seized by police or intelligence agencies (Feenan, 2002; Sluka, 1989).

Identifiers such as names, geographical clues and vernacular terms can be removed in the writing up stage. However, it can be difficult to hide the identity of some people from themselves, their peers, investigative journalists or officials. In Australian interview-based research on clinical and client perceptions of a particular therapy, one of our colleagues had to take special care to hide clinicians' identities from their colleagues when presenting her work to the professional community in seminars, conferences and publications. The small size of the sample population meant that, without changing key details, people could have been identified. In addition, her methodology involved obtaining paired accounts from clinicians and their clients and, where clinicians could identify themselves, they might have been able to identify the paired client. The process of rendering two people's accounts of the same interaction unidentifiable to these two parties while at the same time including enough detail to make the case study valuable proved extremely difficult. Where possible, the researcher altered or removed information that was recognizable without altering her argument. She also discussed this dilemma with some of her participants and in some cases obtained further consent for the inclusion of data that might make participants more readily identifiable. Forbat and Henderson (2003) suggested that members of paired interviews be allowed to read their transcripts and be asked if they were prepared to share

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data with the paired partner. When dealing with the possibility that members of a community might be able to identify information about each other, even if outsiders could not, Tolich (2004) recommended that researchers spend time learning from insiders what information might be damaging (see also Appendix, Case 3). Of course, researchers' best attempts to disguise locations can be undermined if research participants reveal their involvement deliberately or inadvertently. During his work on a co-educational Roman Catholic state school in England, Burgess (1989) had to handle a complaint from one of the teachers who claimed that Burgess had broken his assurances of confidentiality. Unfortunately, the teacher left his complaint with the secretary of Burgess' university department and, in so doing, revealed the identity of the school which, until then, Burgess had managed to conceal from his colleagues.

In quantitative research, practices of stripping data of individual identifiers may be compromised by improved capacities to manipulate multiple, linked data sets. While a survey might not include individual names or other unique identifiers, it may include sufficient identifying attributes to allow a person's identity and/or various sensitive attributes to be inferred. Bluntly, there may be only one 80-year-old, tertiary-educated, Canadian-born Buddhist female in a particular neighbourhood and if data sets then reveal that unnamed individual's income or number of sexual partners, then confidentiality would clearly be compromised.

However, there are various statistical methods that can be used to disguise or conceal the identities of individuals whose attributes are reported in data sets. Disclosure:

can be limited by making sure that the amount of information about any particular person never exceeds some threshold that is adjusted upward as the sensitivity of the information increases. (Brady et al., 2001, p. 229)

Brady et al. noted that two major methods may be used to limit disclosure of sensitive information. The first involves altering the data and the second requires restricting access to the data. As the United States National Research Council (Mackie and Bradburn, 2000) recognizes, each method offers advantages and disadvantages. Alteration may allow data to be disseminated more broadly, but may affect the confidence that people can place on particular aspects of the data. Conversely,

Restricting access may create inconveniences and limit the pool of researchers that can use the data, but generally permits access to greater data detail. (2000, p. 29)

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Table 6.2 Methods for data alteration

Cross-tabulations	Present aggregate data in the form of tables
Aggregation	Creating rules for minimum number of units before information is reported
Suppression	Not providing any estimate where cells are below a certain size
Random rounding	Rounding cells to a certain level, rounding up or down on the basis of probability not proximity
Controlled rounding	Adjusting rounding so that published totals equal actual totals
Confidentiality edit	Selecting a small sample of firms and swapping or altering values
Tables of magnitude data	Suppressing sensitive cells to ensure that information about dominant contributors of data (such as near monopoly firms) cannot be inferred

Source: Brady et al., 2002, pp. 259–60.

Brady et al. (2001) list various forms of data alteration (see Table 6.2). We can mask data in various ways (Brady et al., 2001, p. 261): by sampling; eliminating obvious identifiers; limiting geographical detail; limiting the number of data elements presented; simulating data through microaggregation (synthetic average persons are described from aggregated data); adding top and bottom coding on continuous data which would allow, for example, all people over 75 years old to be treated as one group; recoding into intervals and rounding (so that, for example, date of birth is transformed into an age group); adding random noise; swapping, blanking and imputing, and blurring data in ways that do not significantly change the statistical properties of the database, including error inoculation (contaminating statistical data in random ways so that it is impossible to determine whether the responses recorded from an individual were those that he or she gave) (Kimmel, 1988).

Legal protections

A range of legal protections are also available in some jurisdictions (see, for example, Chalmers and Israel, 2005). Some researchers may receive statutory protection for their data. In the United States, the Department of Health and Human Services and the Department of Justice have issued confidentiality

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certificates to individual projects or classes of research in the area of health and justice. In Canada, Statistics Canada researchers guarantee confidentiality to research participants under the protection of the Statistics Act 1985, although this protection might not be absolute if challenged on the basis of the Charter or, possibly, provincial mandatory reporting laws (Palys and Lowman, 2000).

In Australia, various acts including the Commonwealth Epidemiological Studies (Confidentiality) Act 1981 and the Australian Capital Territory Epidemiological Studies (Confidentiality) Act 1992 impose a statutory duty to maintain confidentiality of any information concerning the affairs of another person where that information was gathered as part of a 'prescribed study' (Bronitt, 1995; Cica, 1994). The Commonwealth legislation necessitates a cumbersome and time-consuming approval process that can only cover prescribed epidemiological projects conducted by or on behalf of the Commonwealth government (Loxley et al., 1997). By 1996, there was an 18-month waiting period for studies to be considered (Chalmers and Israel, 2005; Fitzgerald and Hamilton, 1996).

Social scientists have attempted to reach agreements with criminal justice agencies. In St Louis in the United States, Wright and Decker (1997) negotiated a written agreement with the police that allowed the researchers to be taken to the site of armed robberies by offenders without any intervention from the police. In South Australia, Israel negotiated a protocol with police that allowed students to interview sex industry workers without threat of police interference. Criminal justice agencies are not always this accommodating. When Feenan (2002) sought to reach an agreement with the prosecuting authority in Northern Ireland during his research on informal justice systems established by paramilitary groups, he received a non-committal answer.

Even when there has been no statutory protection, researchers have refused to reveal information to government investigators or to courts. As the examples in Table 6.3 illustrate, the reasons for their decisions and the point at which they decided they could no longer co-operate with the legal system vary considerably. For example, Steven Picou, a professor of sociology in Alabama, undertook a longitudinal study between 1989 and 1992 of the social impact of the 1989 Exxon Valdez oil tanker disaster on small coastal villages in Alaska. Picou had guaranteed respondents confidentiality, telling them that 'immediately following the receipt of their final interview, all personal identifiers, including names, addresses, and phone numbers, would be eliminated from the master data file and all hard copies would be discarded' (Picou, 1996, p. 151). In 1992, Exxon subpoenaed Picou's files. Picou was able to persuade the court to allow access

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Table 6.3 Attempts by the legal system to obtain confidential research data

Case	
Welfare cheats	In the 1970s, records of participants in the New Jersey Negative Income Tax Experiment were sought by a grand jury and a congressional investigating committee. A New Jersey prosecutor issued 14 subpoenas calling for the names of welfare families who might be cheating the system (Kershaw and Fair, 1976). The researchers persuaded the prosecution to drop their demands
Police violence	In 1974, a Californian graduate student observing police patrols witnessed a police assault of a civilian (Van Maanen, 1983). Although Van Maanen gave police internal investigators a sworn statement about the incident, the patrol officers were exonerated. The police officers sued a newspaper that covered the assault. When the paper subpoenaed Van Maanen's field notes, he refused to show them
Environmental decision-making	In 1976 Marc Roberts, a Harvard professor of public health, refused to produce documents for a Californian civil court about interviews that had been conducted with a gas and electricity utility company about their environmental decision-making (<i>Richards of Rockford v. Pacific Gas and Electric</i> , 1976)
Long Island arson	In the 1980s, a New York student engaged in an ethnography of Long Island restaurants was subpoenaed together with his field notes by prosecutors investigating arson in a restaurant (Brajuha and Hallowell, 1986). Brajuha negotiated with prosecutors to remove the names of informants from sensitive material, but not before a lengthy and expensive court battle which resulted in Brajuha losing his money, his family and his desire to work in sociology
Microsoft and Netscape	As part of its defence to an antitrust action, Microsoft unsuccessfully sought access to the notes and interview tapes compiled by two American business and management professors as part of their book on Netscape Communications (McCollum, 1999)

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only to the data that had been used for published papers while blocking access to unpublished and incomplete material from later research. He also ensured that the earlier information would be released solely to an expert sociologist retained by Exxon who was to use the data for statistical analysis only. Attempts to identify individuals listed on the computer documents were prohibited. Exxon's expert was warned by the court that he could be held in contempt if he failed to maintain the confidentiality of the material.

Although potential liability will vary between jurisdictions, researchers may be vulnerable to legal action in several ways (Fitzgerald and Hamilton, 1997). If they refuse to disclose information where ordered by a court, researchers may be found guilty of obstructing the police in execution of a warrant or even of contempt of court. In 1972, a Harvard political scientist, Samuel Popkin, failed to disclose to an American grand jury the names of, and the data provided by, Vietnamese villagers and government officials who had discussed a classified American Defense Department project with him (*United States v. Popkin*, 1972). Popkin spent eight days in jail. In 1993, an American sociology graduate student spent 159 days in jail in Washington State for contempt of court. Rik Scarce had failed to comply with a demand from a grand jury that he disclose information gathered during research concerning radical animal rights activism. Scarce defended his actions in a later publication:

As information gatherers and transmitters, we will be bankrupt – morally and professionally – if we do not treat our information and the trust of readers and informants as so valuable that we would, in the worst case, defend them with our liberty. (Scarce, 1999, pp. 980–1)

One of the few reported British cases of police intervention in research involved a doctoral student at Glasgow University who guaranteed confidentiality to male interviewees who admitted to being involved in the sexual abuse of children. Although the University concluded that its rules had not been breached, the student was instructed to change his research methodology (Mackie, 2001), though this proved insufficient to avert a police investigation into the student's conduct (Mega, 2002).

In the only case where a Canadian social scientist has been charged with contempt for failing to disclose confidential information relating to the identities of research participants (Pals and Lowman, 2000), a Masters' student investigating the deaths of AIDS patients was subpoenaed by the Vancouver Coroner to appear at an inquest. In his interviews with people who had assisted in the suicides, Russel Ogden had offered absolute confidentiality following a procedure approved by his university's ethics committee. Ogden agreed to discuss his

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research findings with the court but refused to divulge the names of research participants. With very limited support from his university, Ogden asserted that this was privileged communication between researcher and research participant. He won his case on the basis that the information had been obtained in confidence, confidentiality was essential to the research relationship, that the research was socially valuable and that the harm of breaching confidentiality outweighed the benefit to be gained by disclosure (see Lowman and Palys, 2001b). Two academic staff at Ogden's School of Criminology at Simon Fraser University argued that not only had the student acted ethically, but their university – in disassociating itself from Ogden – had not (Palys and Lowman, 2000). In 2003, Ogden ran into further trouble when, as an independent researcher, he received a subpoena to appear as a prosecution witness in the preliminary hearing of a British Columbian woman charged with counselling, aiding and abetting suicide (Palys and Lowman, 2003).

One way that researchers have responded to demands by third parties to see their research data has been to offer redacted material, that is information where the identity of study participants has been removed. In some cases, such as those involving short questionnaires, redacting data may be quite easy. In other cases, it may place an enormous burden on researchers. For example, in *Deitchman v. E.R. Squibb and Sons* in 1984, the manufacturer of the drug diethylstilbestrol (DES) sought all the information contained in the University of Chicago's DES Registry of 500 cases. The Registry refused to breach patient confidentiality and Squibb offered to accept the data stripped of identifying information. The task was described by the Chairman of the Department of Obstetrics and Gynecology at the University as 'herculean' (Crabb, 1996; Wiggins and McKenna, 1996).

Similar fishing expeditions for research data were conducted by manufacturers in lawsuits involving tobacco and the Copper Seven intrauterine device. In the latter case, attorneys demanded 300,000 pages of documents from a non-profit institute that had undertaken research in the area (Wiggins and McKenna, 1996). More recently, 10 universities in the United States received subpoenas from tobacco companies demanding thousands of documents from studies conducted in the previous 50 years (McMurtrie, 2002).

Difficulties in de-identifying material may also arise in long-term, in-depth, studies such as ethnographies.

Anthropologists' data are less easily 'cleaned', disguised, separated or aggregated than are, for example, quantitative data gathered by more formal means for which various methodological safeguards have been devised. (Ellen, 1984, pp. 148–9)

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As one anthropologist acknowledged, 'The prospect of having to refuse to respond to a subpoena or to testify clearly chills the depth of researchers' inquiries' (McLaughlin, 1999, p. 934). As a result, some American researchers have argued that research data should be privileged, shielded from court discovery (Levine and Kennedy, 1999). As we have seen, Ogden discovered that some protection may be available in Canada.

A strategy for protecting confidential data

Researchers can only very rarely invoke legislative protection to maintain the confidentiality of their data. However, Michael Traynor (1996) has identified a range of techniques that researchers can use both while planning and conducting their research as well as after legal action is initiated (see Table 6.4). While Traynor's recommendations relate to the American legal system, many of his suggestions are relevant to other jurisdictions.

Disclosing confidential information

Both Bok (1983) and Beauchamp and Childress (2001) concluded that obligations of confidentiality were only *prima facie* binding. So, while many researchers have sought to avoid releasing confidential information, there are some situations where they have argued it would be appropriate to breach confidentiality.

In some circumstances, in law, it might be permissible for researchers to disclose information they hold in confidence. As Palys and Lowman (2000) have argued, this does not mean that it might be ethically acceptable for a researcher to disclose such information. However, it does mean that the research participant would be unable to take legal action for damages arising from breaches of confidence. First, a researcher can release confidential information if consent has been granted by a participant. Second, English and American case law has shown that a researcher would have a defence in law if he or she released information because it was in the public interest for the information to be disclosed. In Canada, Australia, New Zealand and the United Kingdom the courts would accept that a duty of confidence is not breached by disclosure of iniquity to the proper authorities (Cica, 1994; McKeough and Stewart, 2002; McSherry, 2000). For example, a confidentiality agreement could be broken, in law, in order to protect the community from destruction, damage or harm. The information would have to be released to the proper authorities – the police in the case of criminal conduct, public

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Table 6.4 Strategies for countering subpoenas for research

The planning stages	<ul style="list-style-type: none"> Identify reasons for confidentiality Give confidentiality assurances sparingly Obtain statutory confidentiality protection, if available
Research in progress	<ul style="list-style-type: none"> Unlink names and identifying details of sources from confidential data and safeguard the data Comply with requirements of your institutional research ethics committee
After the subpoena arrives	<ul style="list-style-type: none"> Consult with your management and legal counsel immediately Notify confidential sources and study participants when there is risk of disclosure Make timely service of written objections Negotiate an acceptable limitation of subpoena or move to quash or modify it Seek an adequate protective order
When disclosure has been ordered	<ul style="list-style-type: none"> Seek recovery for costs of compliance with subpoena when possible and appropriate Request a court order that may help protect you from liability for disclosure and/or require party who issued subpoena to indemnify you If trial court orders disclosure of confidential data, consider requesting a stay as well as review by an appellate court Develop constitutional issues and policy questions and preserve significant matters for appellate review Consider refusing to obey a final and binding court order of disclosure and going to jail for contempt

Source: Adapted from Traynor, 1996

authorities in the event of medical danger or, occasionally to the media or the general public. In *Smith v. Jones* 1999, Canadian courts accepted that a psychiatrist seeing a client for a pre-trial assessment could divulge to the court the client's revelation that he intended to murder Vancouver prostitutes.

In some instances, legislation or the courts may require information to be disclosed. For example, various jurisdictions have mandatory reporting requirements, requiring particular professionals to report specific activities such as child abuse or elder abuse. As we have seen, courts may also order documents to be disclosed during criminal investigations or civil litigation.

Of course, these are legal and not ethical obligations and researchers and courts may reach different conclusions as to what the right course of action

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might be. Recently, some researchers have raised the matter of what Palys and Lowman (2001) call the problem of 'heinous discovery' – what should researchers do if they discover that participants intend to harm either themselves or someone else? What should they do if they uncovered a miscarriage of justice and were in a position to prevent the wrongful conviction of a third party for a serious offence?

Offering limited confidentiality

In some situations, researchers may offer only *extended confidentiality*. Information disclosed to the researcher may be shared within a research team. In other cases, social scientists may agree to or even be required to deposit data in archives determined by funders, employers, governments or host communities (Ellen, 1984) and subject to privacy legislation.

Some researchers offer *limited assurances of confidentiality* because they believe they have an obligation to a third party. For example Ivan Zinger (Zinger et al., 2001), a Canadian psychologist, told prisoners who participated in his doctoral research on administrative segregation that 'he had an obligation to disclose any information you may provide if it's in regards to your safety or that of the institution. Those areas include suicide plans, plans of escape, injury to others and the general security of the institution.'

Zinger's decision to offer only limited confidentiality contrasts sharply with the decision made by Kenneth Tunnell in his research with Tennessee property offenders. Tunnell discovered that an offender that he had interviewed in prison had assumed a false identity before his arrest, an identity that allowed him to qualify for early release from prison to a halfway house. This information was leaked by a member of the research team and Tunnell was confronted by the director of the halfway house. Tunnell was concerned about the reaction of correctional authorities when they realized that the entire department 'had been duped by a three-time loser' (Tunnell, 1998, p. 209):

I denied it was true and claimed he was misinformed. I lied. I lied and was glad that I did. I lied and today remain happy that I did. (p. 209)

Palys and Lowman (2001) argued that Zinger's approach privileged institutional loyalties over the interests of research participants. They also claimed that given that areas excluded from confidentiality were central to the research study, the limited assurance compromised the research to the point of rendering the data obtained invalid. They suggested that the researchers should either

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have made an unlimited guarantee of confidentiality and stuck to that or not undertaken the research (Lowman and Palys, 2001). Not surprisingly, these arguments were rejected by Zinger and his colleagues (Zinger et al., 2001).

Recognizing that full confidentiality may not be assured, some institutional ethics committees have required researchers to offer only limited assurances of confidentiality indicating to participants that they could be forced to hand data over to courts. One commentary suggested that this might have a 'chilling effect' on research:

It cannot help but exacerbate the reluctance of respondents who worry that their revelations might be used against them or their friends, colleagues, or family members. (Adler and Adler, 2002, p. 518)

Two Australian drug researchers, John Fitzgerald and Margaret Hamilton (1997), have argued that the inability to give assurances of full confidentiality may be undermining the ethnographic and longitudinal research on illicit drug use necessary to understand the spread of HIV in their country.

When Lowman and Palys opposed mandatory inclusion of limited confidentiality clauses on the basis that they might be willing to violate a court order, the university ethics committee at Simon Fraser University refused to approve their research on the Vancouver sex industry (Lowman and Palys, 2001a), a decision that led to the intervention of the University President (see Lowman and Palys, 2000b; Palys and Lowman, 2000). Like Lowman and Palys, Fitzgerald and Hamilton (1996) were concerned that by such actions universities were abrogating ethical responsibility by assuming that law establishes ethics and that therefore it was acceptable to leave it to the courts to determine the answers to what should be primarily ethical questions.

On the other hand, some researchers are happy to comply with the inclusion of limited confidentiality clauses (Venkatesh, 1999), and several British researchers have warned that they would breach confidentiality in order to protect children from abuse (Barter and Renold, 2003; British Sociological Association, 2002; Tisdall, 2003). In his research on the illicit economy in the United States, Sudhir Venkatesh (1999) told potential informants he would report any information that he had about future crimes to law enforcement agencies:

Obviously this is not the most optimal way to initiate a relationship with someone from whom you are going to seek information! Indeed, several perceptive informants have then queried me, 'Would you tell the police my name? Would you give them your field notes, or would you go to jail and protect me?' After some

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proffered estimation of the odds that this might occur (which I say are relatively low if the past is any indication), I say that I will not compromise my position by disclosing names and other identities. (1999, p. 990)

Conclusion

While not every research participant may want to be offered or even warrant receiving assurances of confidentiality, it seems that most do and social scientists regularly assure them that confidentiality will be maintained. Researchers expect and are expected to keep their promises to participants. Researchers generally respect the privacy and autonomy of participants and if researchers do not, who would talk to them in the future?

Nevertheless, researchers are not always in control of their environment. Other people, organizations and government agencies may be keen to see what information researchers have gathered. As a result, social scientists have developed a range of methodological precautions in relation to collecting, analysing and storing data as well as strategies to respond to legal challenges.

Researchers find out about all kinds of things and there are occasions when they have argued that confidentiality should be breached. The question of whether to break a promise of confidentiality can be particularly difficult when researchers consider there is some possibility of someone else being harmed if they keep silent. Recognizing that there may be times when they will have to reveal information that they had promised to protect, some researchers have attempted to identify to potential participants the situations in which they will not protect material. Indeed, such an approach has been required by some research ethics committees. Other researchers have argued that the point at which their colleagues are willing to breach confidentiality might destroy the credibility of the research enterprise in general and in some cases has so compromised their methodology as to render particular findings utterly worthless.