

CONFIDENTIALITY, TELLING SECRETS, AND INFORMING

by Rabbi Dr. Nachum Amsel August 5, 2018

This essay is reprinted from the book, “The Encyclopedia of Jewish Values” published by Urim, or the upcoming books, “The Encyclopedia of Jewish Values: Man to Man” or “The Encyclopedia of Jewish Values: Man to G-d” to be published in the future. This essay is not intended as a source of practical halachic (legal) rulings. For matters of halachah, please consult a qualified posek (rabbi).

As we live in the age of digital information, with Facebook, Twitter, TMZ and many other forms of instant and mass communication, millions are constantly informed about other people, sometimes revealing private facts. Sometimes, this knowledge can give a person considerable power. Divulging information, on the other hand, can often greatly harm individuals. This situation, particularly in the twenty first century, invites many ethical questions. May a person ever divulge information which he knows to be secretive and damaging, if that information was not told in secret? Which circumstances make divulging such information morally proper and which make it improper?

There are numerous, practical moral dilemmas which certain groups of professionals face on a daily basis, and other people must confront on an occasional basis. Both doctors and lawyers are sworn to confidentiality by law. If, however, they learn something about their patients or clients that may be harmful to others, may they break this confidentiality? Psychiatrists, social workers and psychologists are constantly told intimate facts by patients. Is there ever a time when they may reveal such information? The future livelihood of these professionals may be harmed by revealing any information, because future patients may not want to come to them if they find out that the professional has broken confidence. Does this consideration legitimize withholding important information?

In a business office, if one employee sees another employee embezzling from the company, may that employee reveal this information to his or her boss? Must the employee tell the boss, knowing that he or she will be shunned by colleagues as a result, and possibly be blackballed from the industry? All of these dilemmas are of a very sensitive nature and, unfortunately, all too real. In the United States, a “whistle-blower” law had to be enacted some years ago regarding reporting on embezzlement of government contracts, which grants the “snitcher” or whistle-blower three times the monetary value that he or she was saving the government by revealing the crime. The reason this was enacted was as to provide an incentive to come forward, since no one was coming forth with information as crimes were being committed rampantly. In Judaism, there is no compensation other than the spiritual reward from G-d for doing the right thing. What is the right thing in such a situation and the situations described above? How does Judaism resolve these dilemmas and interface with other legal systems that require confidentiality?

IMPORTANCE OF NOT REVEALING INFORMATION

The Bible contains numerous verses admonishing people not to reveal secrets.¹ Proverbs states² that those who are talebearers reveal secrets that defame a person, but a faithful person conceals things. Technically, the Hebrew word for talebearer, *Rachil*, means a merchant, but his product is information, picking up some here and depositing it there.³ Therefore, the prophets admonish anyone who reveals secret information. However, since these are merely sayings, they do not carry any legal Jewish weight. From where can we derive a prohibition banning the Jew from revealing secrets?

¹ Proverbs 25:9

² Proverbs 20:19

³ Commentary of Ibn Ezra on Leviticus 19:16

The Torah⁴ prohibits a person from being a talebearer. Normally, we would think of this prohibition as one against gossip only. But since Proverbs linked tale bearing with telling secrets, the prohibition against revealing any information is also derived from here. In defining the actual sin, one decisor⁵ lists revealing secrets as the main prohibition of tale bearing. If not the main sin, according to other commentaries, revealing secrets is certainly part of this prohibition.

Even when revealing secret information seems to be hurting no one, it is still prohibited in Judaism. After a court case is completed, the Talmud says⁶ that one of the three judges may not even reveal which of the judges said he was innocent and which said he was guilty, even if that judge ruled the person was innocent and was overruled by the other two judges for a guilty verdict. The basis of the prohibition of revealing secrets that can hurt no one, according to that Talmudic passage, is that prohibition is also against tale bearing. This act, is codified as prohibited by Maimonides and prohibits revealing any secret, even those that do no damage as a result.⁷

Why should a person not reveal secrets, especially when “no one will ever find out?” According to Ethics of the Fathers,⁸ based on commentaries, the reason not to reveal secrets is that all secrets revealed in confidence will somehow eventually become known to all. The Talmud⁹, however, says that anything conveyed by one person to more than two people, even if said in confidence, is the equivalent of announcing it to the world. Therefore, on a practical level, secrecy cannot be maintained if information is leaked to a few people. We know this from numerous instances in the everyday world in which governments or other institutions try to keep information or meetings secret, but it somehow they leak out. How many times have people asked, “Can you keep a secret?” before revealing information that they know will be spread to others very quickly? This is a pragmatic reason, but the Talmud provides a moral reason not to reveal secrets as we will see.

EVEN "NON-CONFIDENTIAL" INFORMATION MUST BE CONFIDENTIAL

In Judaism, not only must a person withhold information after he or she was specifically told that communication in confidence, but even information that was not told "confidentially" must also not be revealed. The Talmud,¹⁰ referring to the introductory verses in Vayikra when G-d calls to Moses, does He use the expression "saying" followed by the phrase "Speak to the Children of Israel"?¹¹ It is obvious that if G-d calls Moses to speak to him, and using the phrase *Laimor*, "saying," that this is intended for the people. Why then add the extra words, "Speak to the people"? The answer is that without the last phrase telling Moses to tell it over to the people, Moses would be prohibited from telling the Jewish people what G-d had said. Only when there is specific permission granted to tell over information, may it then be repeated to another individual. Without that permission, even if not spoken in confidence, it would be forbidden to repeat a conversation. Thus, in Judaism, all information is, in its essence, considered confidential. One need not say “Keep this confidential” to indicate secrecy. This concept is also discussed in detail by the Or HaChaim commentary¹² on the very first occasion (of the hundreds of times) where this double phraseology of "saying"

⁴ Leviticus 19:16

⁵ Sefer Mitzvot Gedolot, Negative Prohibition 9

⁶ Sanhedrin 29a

⁷ Maimonides, Hilchot Sanhedrin 22:7

⁸ Avot 2:4

⁹ Arachin 16a

¹⁰ Yoma 4b

¹¹ Leviticus 1:1-2

¹² Commentary of Or HaChaim, Exodus 25:1-2

and "Tell the People of Israel" is mentioned in the Torah.¹³ Rashi¹⁴ then reinterprets the word *Laimor*, "saying," to signify two other Hebrew words, *Lo Amar*, you shall not reveal. Therefore, this word tells us that no information may be revealed to another unless explicit consent by the speaker to do so is granted.

THE SEVERITY OF REVEALING SECRETS

There is a story mentioned in the Talmud¹⁵ that indicates how very serious this prohibition was taken in Jewish practice. Hearing a secret, a student in the House of Study kept this secret for many years. But he believed that after twenty-two years, it would be permitted to finally reveal the information told to him in confidence by another student. However, when it became known to the rabbis that he revealed information spoken in confidence twenty-two years earlier, Rabbi Ami immediately banished him from the House of Study forever, and proclaimed this student a "revealer of secrets." Normally, with most crimes in society, there is a concept of statute of limitations, a time after which a person can no longer be punished for a crime. For more serious crimes, the limit is longer. Specifically, when it comes to information, the Freedom of information Act allows even secret information to become public after a certain number of years. But in Judaism, there is no statute of limitations for revealing secrets and no Freedom of Information Act. Anything spoken in confidence must remain so forever. Maimonides¹⁶ does not understand this Talmudic passage about the student as just a mere story or hyperbole, but cites it as a Jewish law.

Based on all of the above, Rabbeinu Yonah¹⁷ rules that 1) a person may never disclose secrets in general, 2) even if the person listening to the information about a third party promises not to say anything further, one is still prohibited from revealing information told by another individual and 3) even if one believes that there is no reason to keep it a secret anymore, he or she may still never reveal the information.

WHEN A JEW MUST REVEAL SECRETS

Although it is clear that revealing secrets or any information without permission is forbidden by Judaism in general, nevertheless, there are situations where a Jew is not only permitted to reveal a secret, but is also obligated to do so. Since there is a specific mitzvah-commandment obligating a Jew to offer testimony in a Jewish court of law,¹⁸ one must reveal any information when summoned to give testimony, even if it is a "secret" or harms a close friend.¹⁹ Even if a person takes an oath not to testify or reveal certain information, he must nevertheless reveal that information if summoned to a Jewish court of law, since any oath that contradicts a mitzvah (the prohibition against revealing secrets) is not considered a valid oath to begin with, both according to Maimonides²⁰ and Rabbi Moshe Isserles.²¹ (The general oath at Mount Sinai to keep all the commandments takes precedence over any subsequent oath.) The mitzvah to testify is so important in Judaism, that the Talmud²² cites three types of individuals who G-d especially despises. One is the person who possesses information to testify and help a friend, but nevertheless refuses to come forth to do so.

¹³ Exodus 25:1-2

¹⁴ Rashi commentary on Yoma 4b

¹⁵ Sanhedrin 31a

¹⁶ Maimonides, Hilchot Sanhedrin 22:7

¹⁷ Shaarei Teshuva 3:225

¹⁸ Sefer HaChinuch, Mitzvah #122 based on Leviticus 5:1

¹⁹ Maimonides, Hilchot Edut 1:1

²⁰ Maimonides, Hilchot Shavuot 5:15

²¹ Ramah on Shulchan Aruch, Yoreh Deah 228:33

²² Pesachim 113b

Another area where a person would be obligated to reveal confidential information is a case whereby refusing to divulge the information, will cause harm to an individual. According to Jewish law,²³ if an individual knows that people are plotting to harm or kill a particular person, and the individual with this knowledge refuses to divulge that information, even if obtained confidentially, that person has violated the prohibition of standing by while a brother's blood has been spilled.²⁴ Precisely how much harm and how immediate will the harm be in order to obligate a person to reveal a confidence, is discussed by the modern decisors.

A third area obligating a person to reveal information is based on the original prohibition of tale bearing. Since the sin of telling secrets is related to the sin of tale bearing, it would stand to reason that when one is permitted or obligated to say certain "gossip," in such a case one should, similarly, be allowed or obligated to reveal information. Chafetz Chaim²⁵ writes that when a person is about to enter a business partnership and you know information that shows the potential partner is untrustworthy and would ruin the other person financially, then you have an obligation to "gossip" and reveal the information before a contract is signed, even if the harmful information was obtained in confidence. This law falls under the category of "Thou shalt not stand by while thy brother's blood is being spilled."²⁶ Similarly, if two people are about to enter a marriage and you possess information that if the potential spouse would have know, he or she would certainly end the courtship, then a person is obligated to inform the bride or groom. This is not merely a law granting permission to tell, but it is an obligation to reveal that information.

The case most often discussed today in this regard is a medical condition that is not known to the potential spouse. Chafetz Chaim²⁷ says that the person who becomes aware of this information must reveal it to the potential spouse. However, he stipulates four conditions for revealing this information. First, the danger to the person must be real and imminent. Thus, if the person has a disease whose symptoms will only be seen or felt in another thirty years, then one is not permitted to disclose such information. Second, it is forbidden to exaggerate the information when divulging it to either the potential spouse or business partner. So, for example, if a person was unfortunately diagnosed with cancer, one may not tell the future spouse that the person will die in six months, since this may or may not be the truth. One can only reveal the specific condition, the cold facts. Third, the motive for revealing the information must be only to help the receiver of the information, and may not be undertaken for personal gain, i.e. merely for revenge or because you do not like the person, or feel "he or she has it coming to them." Fourth, one must be certain that this information will greatly affect the relationship. If a person knows in advance that the couple is so much in love that they will marry anyway, then it is forbidden to reveal the information.

It should be noted that in all these cases where one must expose confidential information, if the person can accomplish the same goal without having to break confidence, then one may not repeat the facts received confidentially. Thus, if the person has the ability to talk that individual out of the marriage because of a different reason, i.e. the personality of the other person is somewhat lacking (if it really is), then one should do so without revealing the private information.

²³ Shulchan Aruch, Choshen Mishpat 426:1

²⁴ Leviticus 19:16

²⁵ Sefer Chafetz Chaim, Hilchot Lashon Hara 4:11

²⁶ Sefer Chafetz Chaim, Hilchot Rechilut, chapter 9, Be'er Mayim Chaim comment #1

²⁷ Sefer Chafetz Chaim, Hilchot Rechilut, chapter 9:2, with Be'er Mayim Chaim, commentary #8

PRACTICAL CASES AND APPLICATIONS

Rabbi Eliezer Waldenberg²⁸ writes of a case where a doctor with privileged information about a patient is summoned to testify in a Jewish court and wishes to withhold that information based on doctor-patient confidentiality. After discussing the various sources mentioned earlier, he concludes that the doctor would have to testify, nonetheless, because of the mitzvah to testify in a Jewish court. Even though the doctor took a Hippocratic Oath not to reveal patient confidences, Rabbi Waldenberg says that the oath of Sinai came first and takes precedence.

Based on what was discussed earlier regarding danger, a doctor would be required to inform the Motor Vehicle Department that a patient who applied for a driver's license that the person is an epileptic, and a lawyer would have to tell a bus company if an epileptic client was about to be hired as a bus driver. Since an epileptic could have a seizure while driving and hurt or kill himself and others, the danger overrides the need to preserve confidentiality.

Rabbi Moshe Feinstein²⁹ discusses whether a teacher can force his or her students to reveal information about a classmate who violated a serious rule or committed a crime, and no adult knows who it is. He concludes that the teacher should not put children in such a position to tell on a friend because the information can often be obtained through other means, thus prohibiting the revealing of information. Furthermore, forcing students to reveal information would falsely teach the students that such practice is the "Jewish way" (this was a Jewish school and an Observant teacher), which violates the general Jewish principle of confidentiality.

What is not so clear from the sources is the case of the professional who depends on confidentiality as part of the profession (doctor, lawyer, psychiatrist, social worker or psychologist) who, by revealing a confidence, even where required by Jewish law, will eventually lose his job by losing future clients and income, or will be disbarred or removed for violating professional ethics within the industry. Since all these professionals are doing a mitzvah each time they assist a person in need in their respective professions, it is truly debatable whether Jewish law would require that they end their careers by revealing a confidence. Besides the lost income, they would not be able to continue to do these mitzvot-commandments of helping others in the future, as a result of breaking a confidence. Thus, it is as yet unclear what is the proper Jewish response in these cases, and each situation must be viewed separately with its own details and outcome.

Although it is clear that sometimes a person must reveal private information when necessary, in most situations where people want to tell others some private details about someone else, it is their Jewish obligation to remain silent.

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²⁸ Responsa of Tzitz Eliezer, sec. 12, no. 81:17

²⁹ Igrot Moshe, Yoreh Deah, Section 2, 103:4

Jewish heritage for five hours weekly. Rabbi Amsel previously served as the Educational Director of Hillel in the Former Soviet Union. He lives Jerusalem with his wife and has four children and three grandchildren.