Secrets and Lies

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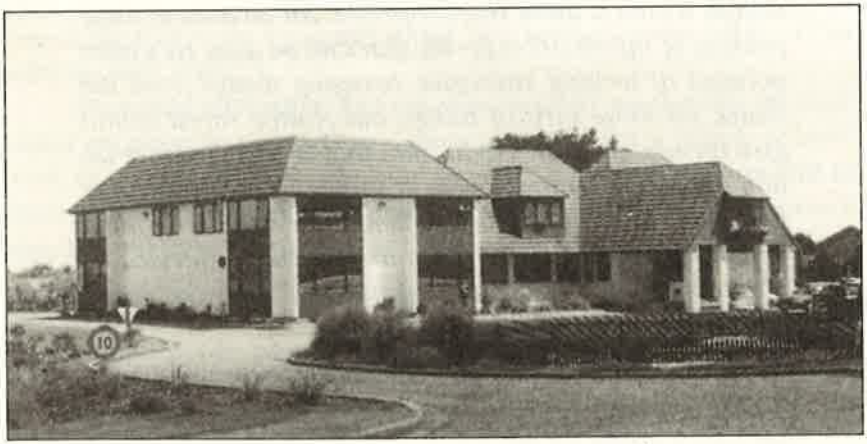
APPENDIX A

A Brief Guide to Leaking

PUBLIC INFORMATION is the number one requirement of a healthy democracy. Although we live in a so-called information age, governments and private companies have become increasingly adept at restricting and controlling public access to all sorts of important information. For a while there was movement towards greater freedom of information; in New Zealand this peaked in the early 1980s. During the New Right years since 1984, however, secrecy in government and private businesses has grown to become a dominant feature of government processes.

Because secrecy is now so entrenched, corporations and governments can do things they would not dream of doing if they thought the public might find out. As a result, the back rooms of many government



Timberlands' headquarters in Greymouth. The file rooms of many government and private organisations contain information at least as dodgy as the Timberlands Papers – information which the public should know about but which the organisations concerned keep secret to protect their reputations or interests. Leaking involves individuals deciding to make principled (but unauthorised) releases of information in the public interest.

and private organisations will contain information just as dodgy as the Timberlands Papers. If the filing cabinets of the country were more open to journalists, MPs and the public, it would make a profound and positive difference to the conduct of politics and business. Until the culture of government and business is improved, unauthorised leaking of information by public-spirited individuals is vital for defending democratic society.

Whenever institutions have become unreasonably secretive, principled people have reacted by making sure that information reaches the public anyway. These people play a vital role: exposing dishonest or improper behaviour, alerting the public to questionable policies, actions and plans and ensuring accountability by people in positions of authority who would prefer to avoid scrutiny. Leaking information helps to give the public a role in issues that affect their lives.

Some of the people who leak information choose to do so openly and courageously, as whistleblowers. Unfortunately, this commonly results in the persecution of such people to the point where they are forced to leave their jobs. There is some weak whistleblower legislation on the books in New Zealand and other countries, but it is of limited use in protecting whistleblowers from victimisation. Whistleblowing therefore often means that people must make a decision between public interest and personal career. In most instances, therefore, we recommend careful leaking in ways that cannot be traced so that the public interest is served and personal careers are protected.

This famous leak occurred just before the 1984 election, revealing a secret deal between the Muldoon government and France.

Leaking information in the public interest may be one of the most important and rewarding political acts of your life. There is a long and honourable international tradition of people leaking material that proved vital in exposing corruption, harmful social and environmental plans and political dishonesty. Do not underestimate the power of leaking. Plans are often kept secret so that the public is prevented from influencing decisions that could stop some undesirable development, law or action. Publicity of secret activities and plans can sometimes be enough to end such initiatives. All it takes is a principled person (or two) inside an institution; the Watergate leaks brought down a corrupt president.

How does a person leak information safely?

Some people get caught leaking information and suffer the same consequences as whistleblowers. By far the majority of people leak information safely. Some simple planning makes all the difference. The key issues in leaking safely are choosing someone sensible and trustworthy to give the information to, thinking through what can be leaked without being traced, passing on the information safely and thinking through the ethical issues involved.

Who is it safe to leak to?

This is the most important decision. If you choose the right person, they will make it their first priority to look after you and help you sort out what is safe and what would be reckless. Do not risk your job by going to someone who could put getting a good story ahead of looking after the source (you) or who might just act carelessly.

We recommend picking a journalist, writer or public interest researcher who, based on what you have heard or seen, you respect. Alternatively, you can go straight to an MP or lobby group that you think will use the information well. If you are uncertain where to go, you can approach John Stauber, Center for Media and Democracy, 3318 Gregory Street, Madison, WI 5371, United States; or the authors Nicky Hager, PO Box 16088, Wellington, New Zealand, or Bob Burton, PO Box 157, O'Connor, ACT 2602, Australia; and we will suggest who we think is most suitable.

Some leaks are simply done anonymously. The journalist opens a letter and finds the photocopied papers. The disadvantage of this approach is that it means the journalist cannot ask you questions to authenticate the documents and fill out the story. (A lot of 'leaking' to jour-

nalists is actually 'planting', where the government or organisation concerned arranges a selective leak to serve its purposes. So journalists need to be cautious about the authenticity of and motive behind a leak.) The journalist also cannot work out how best to protect an anonymous source. We have, however, had extremely useful anonymous leaks, so this can be a perfectly good option.

The best first step, after deciding to leak information, is usually to identify the trustworthy person and arrange a discreet meeting. Phone them (not from work) and ask to meet for a coffee or even turn up on their doorstep. Never leak information by e-mail as it can easily be, and often is, monitored by the host organisation. Logs of past messages can also be easily retrieved. Even records of web pages that are accessed from your computer can be collected from the server.

You must ensure that the person you choose will be responsible about not giving away their sources. We believe it is reasonable to ask a journalist to agree not to publicise anything without checking it with you first. You can also insist that they do not pass on your identity to anyone else (even their employers).

If someone bulldozes you, saying that they would need to talk about you to others, or if they seem concerned only about getting the story, find someone else. It is not their job at risk. There are good, responsible journalists so there is no need to put your trust in someone with whom you feel uncomfortable. Often a relationship of trust between a journalist and someone inside an organisation can last for years.

WHAT IS BEST TO LEAK?

Leaking does not need to involve top secret papers. Often a useful relationship can develop where you help a journalist write good stories by being able to check out their facts and ideas with someone inside the system. The information involved need not be classified – even with unclassified information it can be hard for journalists to get past the organisation's PR staff if the story might be critical. At other times, big secrets may be involved.

Sometimes you will not want to leak documents at all. That is fine. Often just tipping off a journalist about what is going on is enough to flush out an important story. But if a journalist has nothing solid, it is common for the government, organisation or company concerned simply to deny the story. 'That is ridiculous, we have no plans to…' is an easy reply, even for something they know will become public later. Any

specific details you can pass on make it harder to get away with a denial: dates of meetings, details of plans, exact figures and so on. Nicky Hager's book on secret intelligence systems, for example, was based almost entirely on interviews. It did not seem worth the risk of acquiring lots of documents. The level of detail provided in the interviews allowed the subsequent exposé to be credible in spite of the absence of documentary evidence.

Sometimes just suggesting some questions that should be asked and who should be quizzed about a topic is sufficiently useful information. If you are wary of leaking documents, simply suggesting what file should be sought from government agencies under the Official Information Act can be useful.

Leaking documents makes it easiest for a journalist to convince the news editors that the story is real and should be run. With documents, the big issue is choosing ones that are difficult to trace. If a particular report or memo could only have come from you and your immediate workmates, that creates a lot of pressure. The best papers are ones that have been circulated more widely, for instance around various government departments or to all Cabinet ministers or companies. This is where going to an experienced and trustworthy journalist is most useful, since you can talk through the best way to get the story out safely.

Sometimes information can safely be leaked out over time; sometimes the best thing is a big release, as with the Timberlands Papers, and then keeping your head down for a while. Another option is quietly to take papers home while you are in a job and pass them on only after you have left that position or organisation. There are many people who, as soon as they have some distance from a previous job, wish they had squirrelled away papers on the things that troubled them.

Often the most important leaks have come from people who did not even know they were sitting on a big story. If you are uncomfortable with what is going on where you work and want to do something about it, we recommend making contact with a journalist or someone in a public interest group. After talking, it may emerge that you can play an important role. It may be that you do not realise what papers and information around you are most politically significant. You may be able to add the crucial bit of confirmation or detail to allow publicity of a story they already know about. Or you may work in a non-controversial part of an organisation and not realise that you can help with issues of high public interest elsewhere in the organisation. Any serious journalist or researcher will welcome receiving a copy even of something as

seemingly routine as an internal telephone directory or an index to the files. These can be useful for someone outside the organisation in understanding how things work, what goes on, where to look for information and who should be accountable.

Alternatively, you may be able to help the journalist over time with non-secret but hard-to-access information and insider insights. If there is a chance you will one day leak something, still choose the journalist or researcher with care and make contact discreetly, or you may not feel safe about passing on information later.

PASSING ON THE INFORMATION SAFELY

As secrecy has grown, so too have systems within organisations to try to keep the secrets in. But even in the most security obsessed organisation, common sense will help you to leak information safely.

Obviously you should not meet a journalist in the café next to your work or in their newsroom. Once you trust them, meeting at your or their home may be simplest, or in an out-of-the-way café. The wide availability of photocopiers makes it easier to copy papers. Usually it is not a good idea to leak original papers – go for 'sharing' rather than 'stealing' (unless you have copies of papers that no one in the organisation knows you have). The best option may be to take some papers away from work during lunch or overnight and copy them at a library or copy shop. Because of scratches on the glass, photocopiers sometimes leave little marks that could allow the leaked document to be traced back to your office photocopier. If you do photocopy at work, remember to take out the original when you finish. (This is by far the most frequent slip made by nervous people copying at the office!)

You may want to take identifying marks off documents, such as fax marks or e-mail details at the top or bottom of pages and handwritten notes and underlining. Often, though, this information can be important for verifying the authenticity of the document or revealing the date it was sent or received. It is best to remove this information only when essential or after it has been viewed.

If the document is a numbered copy, remove the numbers from *every* page. The simplest thing may be to copy the papers quickly first, then later take off all the marks and photocopy them again. Be aware that fingerprints can be detected on paper. If in doubt, allow the journalist (and maybe their editor) to view the documents, write down what they want to use and maybe photograph a page as an illustration – but on the understanding that they then give the papers back to you with-

out taking copies. If you are the source, you have a right to control how the information is used.

Never give away your only copy of any document. No matter how important a document may be, sometimes material gets lost. Always try to keep a back-up copy in a safe location. Sometimes it may be worth ensuring that copies are distributed widely.

Speaking from experience, if you take these precautions then, when the information comes out in the news, it is very hard for the source ever to be traced. We have been involved in many leaks, large and small, and the people who provided the information have always remained anonymous. Of course you should be very careful and, at the time of the publicity, mentally prepared so that you do not give away your role. But there is no need to feel paranoid. Information leaks happen quite often. The organisations concerned may go through the motions of a 'witch hunt' to prove to their superiors they are serious about security, but then things settle down again. Remember all the famous leakers in history who have helped their countries and got away with it.

THE ETHICS OF LEAKING

When people leak information, they are deciding to put public interest and moral considerations above their obligations to maintain secrecy. It is important that they and the journalists think through the ethical issues involved.

There is plenty of information which, although it could create a news splash and help sell that day's newspapers, it is not ethical to leak. This includes information that intrudes on individuals' privacy. Even famous or notorious people have a right not to have their personal affairs publicised by the people in positions of trust around them. This involves telling the difference between the attraction of gossip and serving the public interest.

Except in special circumstances, the only staff in an organisation it is reasonable to identify are those at senior levels who should be accountable for the decisions or actions in question. There is a strong obligation to check that information is correct and up-to-date. Also, both the person considering leaking and the journalist, researcher or political person receiving it, need to be clear about the motive for the leak. Issues of public interest and justice should be the guide, not vindictiveness towards a difficult employer.

Various ethical issues will arise in particular circumstances. The main point is that those who take responsibility for leaking information

also need to consider the ethical issues at stake. Often, after some thought and discussion, it is a straightforward decision. The current government and business culture of secrecy and the lack of respect for democratic processes mean that there are very many areas where leaking is justified and urgently needed. The individuals who choose to leak in these circumstances deserve, albeit anonymously, our respect and thanks.

Leakers come in all shapes and sizes, from the highest to the lowest levels of organisations and from both the public and private sectors. You, too, may have a role to play.