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Personnel Files,
Confidentiality
And The Right
To Privacy [2]

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PART TWO

1. SPECIFIC RECORDS AND PROTECTION OF RIGHT TO PRIVACY

The personnel records of a cleric might contain psychological reports focusing on a person’s sexuality and capacity for celibacy, or other assessment reports in the course of his formation.² All of this material is confidential. Personal health records are kept in the personnel file of each individual. They must be secured and not accessible except to those authorized.

1.1 – MEDICAL AND PSYCHOLOGICAL RECORDS

Seminarians and candidates for admission to the novitiate must present results of a general medical examination, any documents concerning diseases, or special treatments that have been necessary in the past. In various jurisdictions, one has to undergo an HIV/AIDS test and disclose the results. The use of psychological testing to verify certain facts about the individual also remains pertinent. One bishop has written:

1 Part 1 appeared in the February issue of *The Furrow* 74: 91-99.

2 Congregation for Catholic Education, *Guidelines for the Use of Psychology in the Admission and Formation of Candidates for the Priesthood*, 29 June 2008, no. 11, in *EV*, 25 (2011), 1271-1272. See cc. 241 § 1 and 1029. For irregularities for receiving orders, see cc. 1040-1041; for other impediments for receiving orders, see c. 1042. Canon 1044 addresses those who are irregular for the exercise of orders received and those impeded from the exercise of orders.

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There are a number of problems encountered in making a judgement about the suitability of a candidate For example, in discovering somewhere along the line that someone has an orientation toward homosexuality, the bishop must take very serious precautions and make sure that this man live out a life of priesthood and be faithful to his vows and his calling Most dioceses require some kind of psychological testing [...] Church law gives the bishop full discretion and authority to deal with these measures.³

The Instruction of the Congregation for the Clergy, *Gift of the Priestly Vocation*, states:

The bishop is responsible for admissions to the seminary, and with the help of formators, he is to evaluate the human, moral, spiritual, and intellectual qualities of the candidates, their physical and psychological health and their right intentions. In this sense, the guidelines for the use of experts in the psychological sciences must be taken into account, together with situations of transfer from another seminary, or institute of formation and the possibility of a candidates having homosexual tendencies.⁴

The psychologist should also recognize that candidates to the priesthood and religious life come from many cultures and ethnicities, and this should be considered when selecting tests and interpreting test data.⁵

Access to this material is limited to the bishop or the major superior and the rector of the seminary. Disclosure is regulated by the civil laws of each country and the ecclesiastical norms in force in each episcopal conference. No release of the information can be made without the consent of the person to whom it concerns, with the exception of a court order.

3 A.J. Maida, "The Selection, Training and Removal of Diocesan Clergy," in *The Catholic Lawyer*, 53 (1990), 55-56, cited in Cafardi, "Discovering the Secret Archives," 114.

4 Congregation for the Clergy, Instruction on the Gift of the Priestly Vocation *Ratio fundamentalis institutionis sacerdotalis*, 8 December 2016, Vatican City, L'Osservatore Romano, 2016. no. 189.

5 See P.C. Kleponis, review of the USCCB *Guidelines for the Use of Psychology in Seminary Admission*, in *The Linacre Quarterly*, 83 (2016), 221. Any psychologist who has been asked to evaluate candidates for the seminary or religious life should familiarize himself with the 2008 Guidelines for the Use of Psychology in the Admission and Formation of Candidates for the Priesthood by the Congregation for Catholic Education, the 2016 Instruction on the Gift of the Priestly Vocation *Ratio fundamentalis institutionis sacerdotalis* by the Congregation of the Clergy, and the guidelines developed by each particular Church or religious institute.

In religious institutes and societies of apostolic life, the major superior is responsible for admission to the novitiate (c. 641). The norms for the admission and formation of candidates to the religious institute (cc. 641-661) and the proper law must be observed. The major superior, in person or through others, gathers information about the candidates (c. 645) to establish that those admitted have good health, suitable character, and maturity (c. 642). Most of the information collected becomes part of the documents for the personnel file of the individual.

An applicant dismissed from one seminary or religious institute who seeks admission into another seminary or religious institutes must consent to the sharing of all relevant information from prior formation with the diocesan bishop or the major superior. All persons who receive or review this information are obliged to confidentiality (cf. c. 220). If such information is sought through interviews, for the sake of an accurate account of the interview, written notes should be taken and included in the applicant's permanent file.

Recourse to psychological testing is only possible with the informed and free consent of the person concerned, given in writing.⁶ The person may be permitted to approach an expert of his choice among those named by the competent authority, or his own choice may be accepted by the competent authority. "[A]fter preparing his report, and observing the civil laws in force, [the expert] will communicate the results of the test directly to the party concerned and only to those persons who have lawfully been authorized to receive this information by reason of office."⁷

The use of invasive tests, such as a polygraph, is prohibited. This is because they are constructed in such a way that the individual undergoing them may not be aware that he is revealing certain information about himself. Episcopal conferences are to issue norms to establish the way psychological tests are to be carried out, determining the retention period for the reports, with respect to the civil laws, confidentiality, and the right to privacy. Any information gained through psychological tests should be held with the highest degree of confidentiality.

6 Sacred Congregation for Religious and Secular Institutes, Instruction *Renovationis causam*, 6 January 1969, in *AAS*, 61 (1969), 103-120, § 10, III, as cited in G. Ingels, "Protecting the Right to Privacy When Examining Issues Affecting the Life and Ministry of Clerics and Religious," in *StC*, 34 (2000), 444. Pope Pius emphasized that, for the protection of the right to privacy, "If ... consent is unjustly extorted, any action of the psychologist will be illicit; if the consent is vitiated by a lack of freedom (due to ignorance, error, or deceit), every attempt to penetrate into the depths of the [individual's] soul will be immoral" (Pius XII, Address to the Participants at the 8th Congress of the International Association of Applied Psychology, 10 April 1958, in *AAS*, 50 (1958), English translation in *The Pope Speaks*, vol. 5, no. 1 (1958), 13.

7 *Ibid.*, no. 195.

In a 1998 decision, the Congregation for the Clergy prohibited a bishop from coercing or ordering his priest to submit to psychological tests.

It is the consistent teaching of the Magisterium that investigation of the intimate psychological and moral status of the interior life of any member of the Christian faithful cannot be carried on except with the consent of the one to undergo such evaluation, as is clearly written about in the instruction of the Secretariat of State in their 6 August 1976 letter to pontifical representatives.⁸ Therefore, this Congregation concludes that Your Excellency cannot, in this case, under pain of obedience, oblige your priest, to undergo psychological evaluation.⁹

It is illicit for a religious superior (see c. 630 § 5) or diocesan bishop to enter into the psychological or moral privacy of a person without the person's informed consent. A psychologist must not disclose to a religious superior or diocesan bishop knowledge obtained in therapy without the consent of the individual concerned. A psychologist is obligated to respect professional and ethical standards concerning confidentiality.¹⁰ Therefore, the ordinary or superior is to *invite* the individual to undergo psychological testing and to release the results. Explicit, free, and informed consent must be given, preferably in writing. The bishop or superior may encourage the priest to undergo psychological testing and treatment and perhaps share the results with a responsible authority. Records of these should be kept securely and confidentially apart from the priest's normal personnel file.

The ordinary or his delegate cannot compel a priest or a religious to undergo psychological assessment, nor to release the results of the test. The individual must be informed, however, that if he does not, decisions will be made using other tools of assessment. "The ordinary is free to seek consultation of an expert of his own choice, and direct that an assessment of the individual

8 On 6 August 1976, Cardinal Villot, Secretary of the Secretariat of State, issued an instruction to pontifical representatives throughout the world following the address by the United Nations Economic and Social Council questioning psychological methods and related treatment which were being used in certain nations (Instruction of the Secretariat of State, 6 August 1976, Prot. No. 311157, cited in G. Ingels, "Protecting the Right to Privacy," 440.

9 Congregation for the Clergy, decision, 8 October 1998, Prot. No. 980, cited in G. Ingels, "Protecting the Right to Privacy," 458. The decision was reached after a bishop attempted to coerce his priest to undergo psychological assessment under obedience.

10 Secretariat of State, Instruction to Pontifical Representatives, 6 August 1976, cited in Ingels, "Protecting the Right to Privacy," 440.

THE FURROW

be made based on the reports of the priest's behaviour which the ordinary has gathered."¹¹ The use of a report obtained in the course of psychological testing to assist an individual regarding his health or to determine suitability for ministry cannot be used in a penal matter. "Information arising from a psychological test conducted outside of the context of the penal forum is not admissible as proof in the process."¹²

The ordinary is guided by canon 1041, 1^o in ascertaining whether a priest is labouring under an impediment due to some form of amentia. He must consult experts before judging whether the candidate is unqualified to fulfill the ministry properly. Ingels notes: "when such conditions arise, there is a clear obligation on the part of the ordinary to investigate the allegations and make a determination whether or not the priest is capable of rightly exercising his priestly ministry and when appropriate, to provide him with the means of dealing with his problem."¹³ The consultation must be sought, and failure to do so invalidates his decision (c. 127 § 2, 2^o). The priest retains the right to challenge the decision, and the burden of proof resides with him.

1.2 – ACCESSING PERSONNEL FILES

Accessing one's file helps the concerned individual to refute false accusations and unsubstantiated claims. Diocesan personnel and members of religious institutes have the right to access their file, so that they can ascertain that information contained there is correct. If access to one's personnel file is restricted, it is impossible to rectify incorrect information, which might even have been collected without the person's knowledge.

Access to the file is restricted to the one to whom it concerns and those mandated by law. The individual whose documents are in the file has a right to privacy, which imposes an obligation on the ecclesiastical authority to treat such a file as confidential. Consequently, each diocese and religious institute should have policies regulating personnel files, which conform to applicable civil legislation.

At times, confidential information is transmitted from one person to another (e.g., when a new major superior comes into office). Francis Morrissey advises: "Personal notes composed by a superior (e.g., seminary rector, parish priest, director of works) are to be destroyed at the time of change of office. Where necessary, a

11 Ingels, "Protecting the Right to Privacy," 450.

12 *Ibid.*, 452.

13 *Ibid.*, 450.

verbal communication can be made to the successor in office, who can take notes from the conversation.”¹⁴

2. PRESS STATEMENTS AND PUBLICATION OF NAMES

The practice of transparency within the Church remains fundamental to prevent the spread of false or biased news that might harm the dignity and course of justice. Therefore, press statements must present the facts under scrutiny yet respect the concerned individual’s right to privacy. In the case of alleged criminal activity, a press statement should not absolve or condemn the accused before a canonical trial has concluded; instead, it must guarantee the right of the accused to be presumed innocent until proven guilty according to law.¹⁵ Cardinal Avery Dulles states: “When dioceses routinely announce that accused priests have been ‘removed from public ministry because of a credible accusation of sexual abuse of a minor,’ such priests are, in effect branded as guilty. When priests [or religious] are treated as guilty, they suffer the loss of their good name and as a consequence find it difficult in the future to function effectively in their God-given vocation, assuming that they are restored to ministry.”¹⁶ Therefore, if an allegation is unsubstantiated, every step possible must be taken to restore the accused’s reputation.

When communications by the institution do not respect the scope and aims of the institution, the communication can harm its public perception. It is crucial to maintain a balance between the extremes of information opacity (i.e., the situation when people have a right to know but information is not disclosed) and information overflow (i.e., when information is disclosed with no consideration of its appropriateness and effect on those to whom it pertains).¹⁷ Mendzoza Ovando observes that “[...] transparency in

14 Morrisey, “Confidentiality, Archives and Records Management,” 23. “Record” is defined as correspondence, documents, digital or printed, or any other media generated, distributed, or maintained by church personnel in the performance of their duties.

15 R. Shaw, *Nothing to Hide: Secrecy, Communication in the Catholic Church*, San Francisco, Ignatius Press, 2008, 64.

16 A. Dulles, “Rights of Accused Priests: Toward a Revision of the Dallas Charter and the ‘Essential Norms,’” in *America*, vol. 190, no. 20 (2004), 2. The Australian Catholic Bishops Conference decreed in December 2000 that “All persons are presumed innocent unless and until guilt is either admitted or determined by due process. If church personnel accused of abuse are asked to step aside from the office they hold while the matter is pending, it is to be clearly understood that they are on leave and that no admission of guilt are implied by this fact. Unless and until has been admitted or proved, those accused should not be referred to as offenders or in any way treated as offenders” (cited in *ibid.*, 1-2).

17 See J.C. das Neves and A. Vaccaro, “Corporate Transparency: A Perspective from Thomas Aquinas’ *Summa Theologiae*,” in *Springer Science and Business Media*, 113 (2013), 645.

the Church should be translated into advancing its spiritual mission and creating ways to foster long-term information transparency in financial and personnel flourishing strategies.”¹⁸ Transparency with personnel affairs, though welcome, is a delicate matter which requires an appropriate approach to personal information. When the matter relates to a cleric or religious embroiled in some scandal, the press statement should communicate transparently the action that the institution has put in place or is putting in place to restore justice, to offer help to victims, and to punish the offender after due processes. The fundamental principles of right to defence (cc. 1720, 1723 §§ 1-2) and the presumption of innocence must be upheld.

Some dioceses and religious institutes publish the names of all those who have been accused of a reserved delict.¹⁹ The Pontifical Council for Legislative Texts responded to a question regarding such a publication of names:

[...] the legitimacy of rendering the status of an offender public cannot be set forth in general terms. In some cases, it will be legitimate, because there is a reasonable risk to other persons, while said publicity would not be legitimate when the risk was reasonable to be excluded. This latter [case] is to be observed, entirely, in the case of deceased delinquencies, in these cases there cannot be a proportionate reason or injury to reputation. In this case, the basing of the publication of information [pertaining to an offender] upon reason of transparency or reputation (unless the same subject be consenting) does not appear to be legitimate, because such a publication would in fact contradict c. 220.²⁰

Church institutions need to leverage the expertise of professionals to manage, for instance, press statements and website administration. Formation of these experts is paramount so that the principle of stewardship of the spiritual patrimony of the Church is preserved and perpetuated.

18 C. Mendoza-Ovando, “What Kind of Transparency for the Church? Proposing Operational Transparency for Processes, Solutions and Decisions in the Catholic Church,” in *Church, Communication and Culture*, vol. 5, no. 2 (2020), 225.

19 M. Vitioli, “Confidentiality and the Pontifical Secret,” in *Periodica*, 109 (2020), 18. Publication of names, specific accusations, cautionary measures, eventual civil convictions, experts’ reports, therapies, or photographs are published, for example, in the Diocese of Milwaukee. “List of Clergy Offenders – in line with the assurances given in the Charter for the Protection of Children and Young People, these are the names of diocesan priests of the Archdiocese of Milwaukee who have been (or would be if they were still alive) restricted from all priestly ministries, may not celebrate the sacraments publicly, or present themselves as priests in any way. In addition, in accordance with the canonical norms that have been established, the allegations against any living priest are sent to the CDF; <https://www.archmil.org/clergy-abuse-response/restricted-priests.htm>.

20 Vitioli, “Confidentiality and the Pontifical Secret,” 18.

When required by civil law, the documents in the archive must be turned over in cases of civil and criminal trials. No files are privileged either in civil law or canon law. Pontifical secrecy in legal proceedings was excluded by Pope Francis' rescript to the Substitute for General Affairs of the Secretariat of State on 4 December 2019,²¹ which revised the offences of article 1 of the motu proprio *Vos estis lux mundi*.²² These norms apply to reports regarding clerics and members of institutes of consecrated life or societies of apostolic life concerning: a) delicts against the sixth commandment of the Decalogue consisting of i) forcing someone, by violence or threat, or through abuse of authority, to perform or submit to sexual acts; ii) performing sexual acts with a minor or a vulnerable person; iii) the production, exhibition, possession, or distribution, including by electronic means, of child pornography, as well as by the recruitment of or inducement of a minor or a vulnerable person to participate in pornographic exhibitions; b) conduct carried out by the subjects referred to in article 6, consisting of actions or omissions intended to interfere with or avoid civil investigations or canonical investigations, whether administrative or penal, against a cleric or a religious regarding the delicts referred to in section (a) above.

The information gathered relative to these offenses is to be maintained in a way that ensures its security, integrity, and confidentiality, to protect the good name, image and privacy of all involved.²³ Those who handle such information are required to guarantee security, integrity, and confidentiality and to disclose the information only to those involved in the case.²⁴ The exclusion from the pontifical secret of some criminal actions does not mean that those who possess such information may freely disclose it, as this would violate the right to reputation and the right to privacy of those involved.

21 Secretariat of State, Instruction on the Confidentiality of Legal Proceedings, 17 December 2019, <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2019/12/17/191217b.html>. Cf. John Paul II, Apostolic Letter m.p. *Sacramentorum sanctitatis tutela*, Norms on Grave Delicts reserved to the Congregation for the Doctrine of the Faith, 30 April 2002, in AAS, 93 (2001), 737-739, art. 6.

22 Pope Francis, Apostolic Letter m.p. *Vos estis lux mundi*, 7 May 2019, article 1 § 1, https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html.

23 *Ibid.*, no. 3.

24 Juan Ignacio Arrieta, Commentary on the Rescript of Pope Francis on the Confidentiality of Legal Proceedings, <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2019/12/17/191217f.html>.

The object of confidentiality is to protect the good reputation of persons and to safeguard the integrity of offices and processes in the Church.²⁵ The management of personnel files cannot be separated from confidentiality and the right to privacy. Elizabeth Kim Meng Ong rightly notes: “When something private or intimate is revealed about an individual, it is irreversible and the damage is irreparable.”²⁶ When privacy is lost, it is impossible to restore it. A good name, once lost, can be vindicated and somehow restored. The truth can vindicate the one whose name was maliciously defamed, by retraction of falsehoods. Furthermore, reparation and amends can be made to restore the dignity of the individual (c. 128). The violation of one’s privacy, however, cannot be undone.

25 J. DeCew, “The Priority of Privacy for Medical Information,” in A. Miller and J. Paul, *The Right to Privacy*, Cambridge, Cambridge University Press, 2000, 213.

26 E. Kim Meng Ong, “The Revised Canons 1390 and 1391: The Impact on the Rights to Good Reputation and Privacy,” in *The Canonist*, vol. 13, no. 1 (2022), 40.

Someone Else’s Shoes. If we were able to put ourselves in another’s shoes more often, how different our interactions and personal relationships might be! There is a passage in the Gospels that is highly instructive about the danger of judging other people when we don’t know them. A woman has been caught in adultery and is brought to Jesus by men who want to see what he, the teacher, will say. Her captors surround her expectantly, all set to stone her, as the law dictates, because she is guilty of deceiving her husband and violating the accepted codes of behaviour. We can easily imagine the judgements the men are muttering under their breath: ‘She should have thought first’, ‘She deserves it, the shameless hussy’ (and for shameless, replace this with other, less polite phrases), or ‘There’s no decency nowadays.’ In short, it’s quite clear that an unassailable barrier, constructed from their judgement and lack of empathy, separates this woman from her accusers. They – who are ‘pure’, ‘perfect’ and law-abiding, feel like they are the rightful judges of this unfaithful wife. The only thing they are waiting for is for Jesus to ratify their judgement. They’ve already filled their hands with stones.

– JOSÉ MARÍA R. OLAIZOLA S.J., *Dancing with Loneliness*, Dublin: Messenger Publications, 2023, p. 94.