

**CATHOLIC CHURCH RECORDS, PRIVILEGED COMMUNICATIONS AND THE  
PROTECTION OF CHURCH FILES**

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1. The Code of Canon Law contains a requirement that every diocese must have an archive in which are kept the writings and other recorded sources which pertain to the spiritual and temporal affairs of the diocese. (cc. 486-488). In other words, all of the files of the diocese, including personnel files, are to be kept in a secure location, normally the administrative offices of the diocese.
2. Catholic dioceses (and archdioceses), parishes and religious institutes, are all required to keep and retain records and files in written or other forms, of events that take place. There is no detailed list of which files or documents to retain but fundamentally the canon or church law intends documentation on events that have happened in the diocese, personnel files on clergy, financial records and files on matter pertaining to the criminal law of the church contained in the Code of Canon Law.
2. The bishop is responsible for the archives (files). It is his responsibility to see that they are kept intact and secure. This is a very serious obligation as is obvious from the urgent tone of the pertinent canon (c. 486).
3. No one is permitted to remove documents from any of the archives without the consent of the bishop or the chancellor (c. 488). This *does not mean that documents in the archives are privileged, nor does it mean that access to them is restricted only to those allowed by the bishop*. Canon 487, 2 states that *interested parties* may obtain copies of documents that pertain to them. The interested person may do this directly or through a duly appointed proxy. This is a *right*, and not a favor to be arbitrarily granted by the bishop or one of the others with authority over the archives. The law specifically says that interested parties may obtain documents which are public by their very nature and which *pertain to the status of the person*. Most documents in a church archive are public. The exceptions would be restricted testimony in canonical trials, records of secret marriages or other documents that would cause serious harm to persons if disclosed.

## **SACRAMENTAL RECORDS**

4. Church law also requires that records of the reception of various sacraments be kept by parishes or other ecclesiastical entities at which such sacraments are received. Examples would be chapels, seminaries, colleges, and monasteries. A record must be kept of the reception of certain sacraments. The main register for most information is the baptismal registry which must be kept by every parish Church. The baptismal registry of the Church where a person was baptized contains a record of:
  - a. Baptism including date of birth, parents, sponsors, and date of baptism
  - b. Confirmation including date, sponsors and confirming prelate
  - c. Ordination to deacon and priesthood including date, place and name of ordaining bishop
  - d. Solemn profession of religious vows including religious institute, date and place,
  - e. Declaration of nullity of a marriage including date and tribunal that granted the annulment
  - f. Dispensation from religious vows
  - g. Laicization or change from the clerical to the lay state
5. In some countries the baptismal registry is considered to be an official document in civil law which means that it is a valid source to confirm certain facts about a person. Likewise in some countries the marriage register is considered a document recognized in civil law which means that the couple do not have to have a marriage registered in a civil registry.
6. Churches are also required to keep records of first Holy Communion. The name of the person, date and place of baptism, date of first Communion and name of priest administering the communion are required.
7. Every parish must also have a marriage record. This registry contains the names of the spouses, dates of birth, names of the two witnesses and the name of the officiant. The registry also contains notification of any special dispensations received by either party. If the marriage is later declared invalid by a Church tribunal, the official notification must be noted in the marriage record.

8. The reception of the sacrament of confirmation is recorded in a special registry. Though it is not required, many parishes traditionally kept a registry or record of those who received the sacrament of the sick, formerly known as Extreme Unction and also commonly known as *Last Rites*.
9. No records of any kind are ever kept of the reception of the sacrament of penance (confession) because it is, by its very nature, an internal forum sacrament.
10. Sacramental records are not confidential or private documents. Baptismal records are often used for civil verification of birth. It has also been customary in some places to publish the names of persons baptized, confirmed, and married. All information contained in sacramental registries is external forum information. The sacraments are public ceremonies and the reception of some of them has canonical effects for the recipient. Consequently, the fact of the reception of the sacraments is not confidential or private. Disclosure of the names of persons who receive sacraments cannot be construed to be a violation of privacy because the reception of the sacrament itself is a public matter.
11. There are a variety of circumstances wherein sacramental records are published. In some areas the names of persons baptized are published in religious or even secular publications. At times priests may use baptismal or marriage registries to compile a listing of every person whom the priest had baptized or married. Sometimes such lists are used to notify persons of the priests' anniversaries of ordination.
12. There is no general requirement that parish sacramental registries be duplicated on the diocesan level although many dioceses have such a practice for reasons of security.

### **ARCHIVES AND SECRET ARCHIVES**

13. The canons do not give specific examples of documents that are to be kept in the ordinary diocesan archives. Also, there is no specific mention in the

canons of personnel files, although it is commonly known that every diocese keeps a personnel file on all clerics who are either incardinated in the diocese or on loan to the diocese. Often these files contain a wide variety of information: biographical and academic information, records of assignments, letters sent about clerics (with both good and bad information), medical and psychiatric records. There is no detailed listing of the documents that are to be kept in clergy personnel files. It is not unusual that a diocese or religious community create a special file for unfavorable information.

14. Furthermore, there is to be a *secret archive* in every diocese where more sensitive materials are kept (cc. 489-490). The canons specify very few specific items that must be kept in the secret archives. These include internal forum matrimonial dispensations (c. 1082), secret marriages (c. 1133), dispensations from impediments to holy orders (cc. 1047-1048), decrees of dismissal from religious life (c. 700) and documents relating to the loss of the clerical state by dismissal, invalidity of orders or dispensation (cc. 290-293). Also, the records of canonical penal trials involving matters of morals are to be kept in the secret archive.
15. The canons and other Church documents regularly use the word “Ordinary” or “local Ordinary”. The word refers primarily to the bishop of the diocese who is commonly known as the diocesan ordinary or the local ordinary. The word is a noun and not an adjective and has a specific meaning in Church law. The word is in reference the fact that two offices in the Church structure have power that originates in the office itself and is not delegated. These two offices are the papacy (the pope) and the office of the diocesan bishop. The word “Ordinary” pertains to a Church official who holds ordinary power or power in his own name and not delegated power from some other source.
16. Matters involving penal procedures are to be kept in the secret archive. When an allegation of an offense is made known to an Ordinary, he is obliged by the law to conduct a *preliminary investigation* either personally or through another (c. 1717). Canon 1719 refers to the acts of the investigation which are to be kept in the secret archives. The word “acts” is the ecclesiastical term for the official record of everything that happened in the course of the process. This canon presumes that a written record of the

investigation is made and retained. Any investigations of priests alleged to have committed sexual assault on children or anyone else would fall into this category.

17. The canons that discuss the archives and the secret archives do not provide a list of the types of documents that must be retained there. Both the 1917 and 1983 Codes make specific mention of only one category: documents pertaining to the penal (criminal) investigations and tribunal processes (trials) of persons accused of immoral behavior. The complete files of such cases are to be destroyed if the person has died or ten years after the date on which the definitive sentence was passed. A copy of the definitive sentence (the final decision) is to be retained as well as a summary of the case. If the canonical trial is terminated for any reason prior to the final steps of determination of guilt or innocence and imposition of sentence, the entire file must be retained. Nevertheless, there are canons in both the 1917 and 1983 Codes pertaining to other subjects not related to sexual abuse that stipulate that the pertinent documentation be retained in the secret archives. (Cf. Here I refer to the article by Fr. Ian Waters, "The Law of Secrecy in the Latin Church," in The Canonist (Vol. 7, no. 1), p. 80, for a listing of these canons.
18. When an allegation of an offense is made known to an Ordinary, he is obliged by the law to conduct a preliminary investigation either personally or through another (canon 1939 of the 1917 Code and canon 1717 of the 1983 Code). This investigation must be memorialized in writing and the documents retained in the secret archives (canon 1946 of the 1917 Code and canon 1719 of the 1983 Code). Any investigations of clerics alleged to have committed sexual assault on children or anyone else would fall into this category.
19. All documents in the general archives are to be retained and not destroyed. Certain documents from the secret archives are to be destroyed, however. These are the documents relating to criminal cases, that is, cases involving the allegation of the commission of a canonical crime (sexual abuse or violation of a minor by a cleric or religious order member is a canonical crime). The documents that are to be destroyed are those which pertain to a person accused of a crime who has died or documents pertaining to a criminal case, ten years after the case has been closed. Even when the

documentation is destroyed, a summary of the cases is to be retained along with the sentence of the tribunal if the case was subjected to a complete canonical trial. (canon 489).

20. The documents pertaining to penal or criminal cases must be destroyed *only* if there has been a canonical trial that has reached a final decision and issued a definitive sentence. If there is no canonical trial all documents and other evidence collected in the course of the preliminary investigation or in the course of a trial that is not completed, must be retained, and not destroyed. This information necessarily includes letters of accusation against a person whether they are signed or anonymous. Any other documents that pertain to an accusation of immoral behavior such as police reports or medical reports that are obtained in the course of investigating a report are part of the investigation and should be retained in the secret archives.

## **THE INTERNAL AND THE EXTERNAL FORUM**

21. *There are two fora or places for the exchange of information and for judgments on the status of persons in Catholic Church law:*
  - a. *the **external forum** concerning matters about which a record may be kept, and*
  - b. *the **internal forum**, concerning matters of conscience about which no records are ever kept with the exception of decisions and decrees of the Apostolic Penitentiary in Rome. The most common place for the internal forum is sacramental confession. No records are ever kept of sacramental confessions.*
22. All matters for which there is a record, whether this is considered a confidential record or not, are matters for the external forum. Records of all canonical trials, penal procedures and investigations are matter of the external forum. Matters in the external forum are not subject to the seal of the confessional. A bishop or other Church authority figure cannot, on his own authority, decide that a matter is a matter pertaining to the internal

forum.

23. Only matters which of their very nature are matters of conscience and are so designated, are matters of the internal forum. In other words, the *Seal of Confession* which prohibits a priest from ever disclosing in any way the identity of a person who has even approached him for confession and not completed the confession or who has actually participated in the sacrament as well as any information exchanged, is all part of the internal forum. It is not possible for a priest or a bishop to decide that a confirmation or information exchanged or learned outside of the sacrament of confession, is covered by the confessional seal or by the internal forum. There have been instances when bishops or higher have informed persons who reported sexual abuse by a cleric, that the entire matter is “under the seal of confession” and cannot be revealed by the person making the report. This is not only impossible to do and therefore an untrue attempt to silence someone, but it is a sacrilegious abuse of the seal of confession. It is also the illicit concealing of a report of a canonical crime which is also forbidden in canon law.
24. Judicial matters such as penal investigations, are not matters of the internal forum by the very fact that a record of the investigation is mandated by canon law. Similarly, the contents of a personnel file cannot be presumed to be information of the internal forum.
25. The communications between religious superiors and their subjects and bishops and their clergy are not presumed to be internal forum matters unless it is a question of communications received in the course of sacramental confession or spiritual direction or a communication which is explicitly understood to be in the non-sacramental internal forum. In general however bishops and religious order superiors are not to hear the confessions of their subjects except in an emergency.
26. Documents contained in the general archives are not to be removed unless there is permission to do so from the bishop or from both the moderator of the curia and the chancellor. Then they are only to be removed for a short period of time. (canon 488)
27. The information retained in the general archives and in the secret archives is

generally presumed to be confidential and sensitive to the extent that it is protected from public dissemination. However, the documents in the secret archives, including documents pertaining to sexual abuse cases involving clerics, are *not privileged* in either the canonical or secular law understanding of privilege. In canon law privileged information cannot be revealed by the recipient of that information under any circumstances or for any reason. The concept of privileged information is based on the canonical distinction between the internal and the external forum.

28. In regard to information shared by a penitent with a priest-confessor in the sacrament of confession, the seal of absolute confidentiality *applies only to the priest*. The person who made the confession is not bound by the seal, by confidentiality or by privilege, from revealing what he or she shared.
29. In the recent past certain dioceses have claimed that clergy personnel files and records of sexual abuse allegations are privileged information based on what they claim to be a *Formation Privilege*. No such privilege exists in Canon Law, Catholic theology or Catholic Tradition nor is there any evidence of such a privilege in any of the civil law documentation concerning the *priest (clergy) - penitent* privilege. Perhaps the most notable example of disclosure of archives and secret archives has been the surrender of such files by the Archdiocese of Boston in January 2002 by order of the court.
30. The above canons refer to the revised Code of Canon Law (1983). Similar legislation existed in the prior Code (1917) which went out of force upon the promulgation of the new Code.

### **DESTRUCTION, ALTERATION OR REMOVAL OF FILES**

31. Church files or archives are not the private property of the bishops even though the bishops are charged with safeguarding them. The bishop does not have the right to destroy or alter such files for personal or subjective reasons. The documents in the archives, both general and secret, belong to the diocese or archdiocese and not to the bishop. He may destroy or permanently remove them only when allowed by church regulations. In practice, Catholic Church entities (religious Orders, dioceses, archdioceses)



have traditionally kept detailed records especially records about clerics who have served in dioceses. Though files may be relegated to special storage areas after a number of years, there is no known policy contained in the general law of the Catholic Church that encourages or even condones regular destruction of files after a certain number of years. In this regard the “Document Destruction Policies” of some dioceses violate the norms of canon law.

32. The bishop is the primary custodian of the files. He can exercise discretion as to what can be placed in the secret archives, other than those documents required by the canons (cf. Canons 489-490) but he cannot exercise wide discretion in terms of what may be destroyed and when. *The canons stipulate that documents from the archives are to be destroyed in one instance only: when they pertain to a judicial proceeding, or completed trial, in cases of morals when the convicted criminal has died or ten years after the sentence has been issued (canon 489).* The bishop cannot arbitrarily decide to destroy files especially if doing so would in some way amount to an obstruction of justice from a civil or canonical perspective.
33. The 1917 Code contained two canons that applied penalties to persons who tampered with the archives. Canon 2405 said that any church official (including bishops) or anyone who destroyed, hid, or substantially mutilated any document that pertained to the diocesan curia, that is, was part of the archives, could be automatically excommunicated and would lose any office held. The following canon (canon 2406) also referred to those who held an office which carried responsibility for maintaining archives. The full text reads:

*Par. 1: Whoever is bound by office to produce, inscribe or preserve acts, whether documents or books of ecclesiastical curias or parish books, dares to falsify, adulterate, destroy or hide them is deprived of office and shall be punished with other grave penalties by the ordinary according to the manner of fault.*

*Par. 2: Anyone who withholds legitimately sought acts, documents, or books, or who with malice refuses to copy, transmit, or display them, or who in any other way harms his duties, can be punished by*

*privation of office or suspension from the same and by fines left to the decision of the Ordinary according to the gravity of the case.*

34. The essential content of canon 2406 was retained in the 1983 Code in canon 1391. The canon deals with the falsification of documents:

*Can. 1391 The following can be punished with a just penalty according to the gravity of the delict:*

- 1. a person who produces a false public ecclesiastical document, who changes, destroys, or conceals an authentic one, or who uses a false or altered one;*
- 2. a person who uses another false or altered document in an ecclesiastical matter;*
- 3. a person who asserts a falsehood in a public ecclesiastical document.*

35. The files or archives retained by the Catholic dioceses and religious orders are essential documents not only for historical purposes but for matters involving the due process of law. Since these documents are not considered privileged in Canon law or in civil law, they are also of vital importance when the civil courts or law enforcement agencies become involved in investigations or other issues that pertain to the actions of officials or others who either work for or represent the institutional Catholic Church.
36. Under the authority of Pope Francis, the Holy See issued a ruling on December 17, 2019 concerning the confidentiality of legal (canonical) proceedings. This ruling states that Pontifical Secrecy no longer covers accusations, canonical trials and decisions involving accusations of sexual abuse by clerics or religious. It also states that confidentiality should not prevent the fulfillment of obligations laid down in all places by civil laws including any reporting obligations or the execution of the requests of civil judicial authorities. This means that if Church files are requested for a secular legal process whether it is criminal or civil in nature, these files are to be produced. The Church officials can no longer use the excuse that such files are privileged, which they never were, as an excuse for not producing them.

37. Concerning the matter of Pontifical Secrecy, this is the highest level of secrecy that can be imposed on a situation such as a Church trial, or on an individual. In canonical trials involving sexual abuse by clerics, Pontifical Secrecy formerly covered the entire process, from the beginning of the preliminary investigation to the conclusion of the process. The obligation to keep secrecy applied to all Church officials in any way connected to the trial including those officials assigned to the trial. Pontifical secrecy was also demanded of the witnesses but not the accused. In the recent past some witnesses, including the victim of abuse who is a witness, refused to take the oath of secrecy. In spite of this refusal that could not be excluded from testifying.
38. Pontifical secrecy did not cover every report of sexual abuse by a cleric. It covered reports that became part of the canonical process. Also, pontifical secrecy did not prevent the bishop or anyone else from reporting an incident to child protective services or to the police. Such reports could have been made and should have been made before any canonical process started. The decree of Pope Francis mentioned above removes pontifical secrecy from anything related to sexual abuse and also states that legitimate requests for Church files, were to be honored, e.g., requests for personnel files in the discovery process in civil or criminal matters.
39. Conclusions – Summary
- a. Church law requires that records be kept of the spiritual and temporal affairs of the diocese and all entities in the diocese such as parishes, schools and chapel.
  - b. Church law requires that every diocese and archdiocese have a secret archive for the retention of certain items specified in canon law and other items at the discretion of the bishop
  - c. No files in either the regular archives or secret archives are considered privileged files under canon law or civil law.
  - d. The files belong to the Church as a legal entity and not to the bishop. Consequently, the bishop does not have the authority to destroy, alter, purge or permanently remove any files or documents

from the archives.

e. The documents contained in the Church archives must be turned over to appropriate authorities in keeping with legitimate requests, e.g., civil court proceedings

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