Affirmative: Human Rights

By Steven Errico

Resolved: In democratic elections, the public's right to know ought to be valued above a candidate's right to privacy.

The premise of this case is simple. Any candidate who wishes to hold public office should be held to the same standard of accountability of the office to which they aspire. If they cannot hold up under scrutiny, they don’t deserve the office.

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Affirmative: Human Rights

It’s safe to say that most citizens value openness in their government. We want to know what’s going on and keep the government accountable. When we can’t do this, there’s a lot of room for corruption and abuse. The same is true with political candidates who aspire to hold office. In order for our system of democracy to uphold its duty to protect the rights of the people, voters must be able to examine every aspect of a candidate’s fitness for office, in the same way they should be able to examine the workings of every elected official.

DEFINITIONS

Right to Know

The American Heritage Dictionary “Right to Know” <https://www.ahdictionary.com/word/search.html?q=right+to+know>

Of or relating to policies and laws that make some governmental records and other information available to a person who can demonstrate a right or need to know the contents.

Right to Privacy

Merriam-Webster Legal “Right of Privacy” <https://www.merriam-webster.com/legal/right%20of%20privacy>

**:**the right of a person to be free from intrusion into or publicity concerning matters of a personal nature

VALUE: Human Rights

Definition

American Heritage Dictionary “Human Rights” [https://www.ahdictionary.com/word/search.html?q=human+rights](https://www.ahdictionary.com/word/search.html?q=human+rights&submit.x=34&submit.y=23)

The basic rights and freedoms to which all humans are considered to be entitled, often held to include the rights to life, liberty, equality, and a fair trial, freedom from slavery and torture, and freedom of thought and expression.

Reason to Prefer: Provided in the Resolution

The resolution is asking us to analyze these issues in light of the rights people have. Because of this it is necessary to look at human rights, the foundation of all of our basic rights.

CONTENTION 1: Voters have the right to be well informed

Personal Information can be relevant to voters

The Markkula Center for Applied Ethics 2017 (Hana Callaghan directs the government ethics program at the Markkula Center for Applied Ethics at Santa Clara University. Previously she managed statewide political campaigns in California.) “The Ethics of Opposition Research” <https://www.scu.edu/ethics/all-about-ethics/the-ethics-of-opposition-research/>

Where it gets less clear, however, is when campaigns try to dig up dirt on personal episodes in the candidate’s past. Is this type of research fair? Do the voters have a right to know? Does the candidate have a right to privacy? In this situation it really comes down to relevance—and what is relevant to some may be irrelevant to others. For example, does anyone truly care if a candidate received a DUI as a college student 20 years in the past? Is that past indiscretion relevant to how the candidate will comport himself or herself in office now?

On the other hand, past conduct may be relevant if the candidate has opened the door to questions about his or her past. For instance, if a candidate is touting success in business as a reason why he or she deserves your vote, the fact that the candidate was fired by the board of directors of his or her company may be relevant. If the candidate is running on a family values platform, the voters may want to know about domestic abuse charges. The question for the researcher would be, “Does the candidate’s past conduct conflict with current campaign positions?” Voters could argue that it is necessary to know about these discrepancies in order to determine if the candidate’s positions are sincere.

Application 1: The 2016 Election

PRI.org 2016 (The World is public radio’s longest-running daily global news program. Our goal is to engage domestic US audiences with international affairs through human-centered journalism that consistently connects the global to the local and builds empathy for people around the world.) “Do presidential candidates have a right to keep their health private” <https://www.pri.org/stories/2016-09-13/do-presidential-candidates-have-right-keep-their-health-private>

After Hillary Clinton left a 9/11 memorial ceremony this past Sunday — appearing, on video, to stumble as she did so — [**it was announced**](https://twitter.com/danmericaCNN/status/775080497508708352/photo/1?ref_src=twsrc%5Etfw) that the Democratic presidential nominee is being treated for pneumonia.

This incident followed weeks of Republican speculation about her health, and has further inflamed an ongoing question in the 2016 election season: Do presidential candidates have a right to keep their health private?

Clinton and Donald Trump, the GOP nominee, are two of [**the oldest candidates ever**](https://www.washingtonpost.com/news/on-leadership/wp/2016/07/14/clinton-and-trump-are-the-oldest-candidates-ever-no-one-seems-to-care/) to make a presidential bid — and neither has shared much information about their health.

Dr. Marc Seigel, Fox News medical correspondent, says that this is unacceptable in the age of information.

“I understand what campaigns are going through, because they want to make sure that information isn’t distorted," he says.

"But let me tell you what the problem is: If you have a vacuum of information, guess what, pundits and even physicians tend to fill that vacuum. They tend to speculate. They tend to say — and this was going on all day Sunday— 'It could be this! It could be that! Maybe it’s severe! Maybe it isn’t!' But that’s doing the public a disservice. Because the public here has a right to know about the health of candidates for president of the United States.”

Siegel argues that before information could be distributed so quickly, important medical information was kept from voters. Look at [**FDR’s polio**](http://amhistory.si.edu/polio/howpolio/fdr.htm) and [**JFK’s Addison’s disease**](http://articles.latimes.com/2009/sep/05/science/sci-jfk-addisons5).

“Before, many generations ago, we had things going on like Woodrow Wilson having a stroke in office and nobody knew about it. Imagine how that would feel now!”

There’s a recent precedent for presidential candidates releasing significant medical records, with President Barack Obama as a notable exception.

When Senator Bob Dole ran in 1996 at the age of 73, the oldest candidate to run for president, he released his full health records under pressure from President Bill Clinton’s campaign. This continued on to the 2000 and 2004 elections. “President Bush did reveal his full health records, with [Secretary of State] Kerry releasing a little less than that,” says Siegel.

And then, in 2008, Senator John McCain set what Seigel hoped would be a precedent. Given McCain’s history with melanoma, and his age (over 70) at the time, the presidential hopeful responded to [**the public’s interest in his health**](http://www.ksat.com/news/clinton-trump-fall-short-of-john-mccain-health-standard). “Senator McCain released his full records for a limited viewing [by] journalists and physicians in Arizona.” Seigel remembers. “I was lucky enough to attend that.”

But the 2016 campaign, with its aging candidates, is not rising to McCain’s example.

For Trump’s campaign, which been putting forward conspiracy theories about Hillary’s health, Clinton’s pneumonia is an important talking point. Trump has said he will release new medical records later this week, and has further stated he will fully disclose his medical records if Clinton does so first.

But Siegel says Trump’s track record on health disclosure isn’t great either. So far, Trump has only [**released a letter**](https://www.donaldjtrump.com/images/uploads/trump_health_record.pdf) from his physician of 25 years, Dr. Harold Bornstein. Bornstein wrote, “If elected, Mr. Trump, I can state unequivocally, would be the healthiest individual ever elected to the presidency.” The letter's hyperbolic language — and Bornstein himself — have been widely mocked; Bornstein said he wrote it while Trump's limo sat outside, waiting.

If elected, Trump would also be the oldest president ever.

“I’m troubled by the letter from Donald Trump’s physician,” Siegel says. “Certainly, he appears on video to be healthy. But look, that’s part of the problem. I don’t think diagnoses or diagnostic impressions or speculations should be made [based] on video. He is 70 years old. I think he should release his full records as well.”

As for Clinton: Her campaign says the pneumonia diagnosis came Friday, yet the candidate kept a full schedule through the weekend. And when she did run into trouble Sunday, the campaign initially said she'd overheated — only later acknowledging the pneumonia diagnosis. That raised questions about her transparency with the public.

Siegel calls both candidates medical releases insufficient, “an aberration.” “I think the public has a right to full disclosure. I think given the age of the candidates and the health history of at least one of the candidates, we should be seeing a lot more. And I think, in the past, we did see a lot more.”

Impact: Voters ought to know how capable the candidates are of governing.

CONTENTION 2: Government privacy harms human rights

Lack of accountability leads to abuse and distrust

Toby Mendel 1999 (Toby Mendel is the Head of ARTICLE 19’s Law Programme.) “The Public’s Right to Know” <https://www.article19.org/data/files/pdfs/standards/righttoknow.pdf>

Information is the oxygen of democracy. If people do not know what is happening in their society, if the actions of those who rule them are hidden, then they cannot take a meaningful part in the affairs of that society. But information is not just a necessity for people – it is an essential part of good government. Bad government needs secrecy to survive. It allows inefficiency, wastefulness and corruption to thrive. As Amartya Sen, the Nobel Prize-winning economist has observed, there has not been a substantial famine in a country with a democratic form of government and a relatively free press. Information allows people to scrutinise the actions of a government and is the basis for proper, informed debate of those actions. Most governments, however, prefer to conduct their business in secret. In Swahili, one of the words for government means “fierce secret”. Even democratic governments would rather conduct the bulk of their business away from the eyes of the public. And governments can always find reasons for maintaining secrecy – the interests of national security, public order and the wider public interest are a few examples. Too often governments treat official information as their property, rather than something which they hold and maintain on behalf of the people.

Application 1: Australia

Press Freedom Australia 2019 (Author Paul Murphy is the chief executive of MEAA — the Media, Entertainment & Arts Alliance — the union and industry advocate for Australia’s journalists.) “The public’s right to know” <https://pressfreedom.org.au/the-publics-right-to-know-3aee204f9036>

In Australia, waves of new laws are passed in the name of “national security” but are really designed to intimidate the media, hunt down whistleblowers, and lock-up information. We saw it when attempts to control asylum seeker boats sailing to Australia, a customs and immigration issue, became militarised as Operation Sovereign Borders.

Suddenly the Navy was conscripted into “protecting” our borders from leaking sailing vessels and handfuls of pitiful refugees fleeing persecution, terror and war. Immigration officers became black-uniformed troopers in the newly named “Border Force”. And even though the high-ranking Defence Force officer held regular press conferences, little was ever said because the militarisation of immigration activities meant the military could simply cloak everything as “on-water matters” — refusing to say anything in order to defend national security. And so the public was kept in the dark.

What began with a muzzle regarding “on-water matters” soon extended to asylum seeker detention centres on Manus Island in Papua New Guinea and on Nauru. The governments of those countries wouldn’t comment on what took place in the Australian taxpayer-funded centres and new laws were implemented to punish any workers or aid agencies or their contracted organisations from talking openly about what they saw there. Journalists were refused access to the centres and their detained inmates.

Some refugees have managed to bypass the bans. MEAA is proud to have worked with Behrouz Boochani, a Kurdish journalist and refugee from Iran, who has determinedly produced outstanding and award-winning journalism from Manus. MEAA remains concerned that Behrouz’s courageous reporting, including his recent prize-winning book, places him in danger which is why we are campaigning to #FreeBehrouz so that he can resettle in safety in Australia. MEAA does so with the aim to bring more attention to all who are subject to Australia’s immigration detention regime and ensuring the public’s right to know.

Australia’s national security assault on press freedom has also worked to criminalise legitimate journalism in the public interest. The various tranches of national security legislation unleashed by the government in recent years, when applied to journalists and their journalism, clearly have little to do with protecting the nation and more with making sure the public is kept in the dark. Prison terms for reporting on the activities of government agencies and for handling certain information are now enshrined in law.

And journalists’ sources continue to be targeted. While new laws seek to provide some whistleblowers with protection, and only when placed under certain conditions and in defined circumstances, government is also willing to hound whistleblowers in court. The court actions mounted against Witness K and lawyer Bernard Collaery for revealing events that took place 14 years earlier, the threat of 161 years in prison being faced by Richard Boyle and the charges against former Defence Force lawyer David McBride all demonstrate that even when whistleblowers have told their stories to journalists and the public finally learns the truth, the truth tellers will still be pursued and punished.

Meanwhile, the government continues to equip itself with new weapons in the attack on whistleblowers. Having used the metadata laws to capture everyone’s telecommunications data, Journalist Information Warrants allow at least 21 government agencies to secretly access journalists’ and media organisations’ data for the stated purpose of identifying a journalist’s confidential source — thus placing the journalist in breach of their ethical obligation to protect the source’s identity.

The government has now embarked on new laws to decrypt encrypted communications. Again, the claim is made that this is in the name of national security but the government’s powers could put journalists at risk should sensitive, and potentially damaging, information land in their hands. The backdoor mechanism to break encrypted communications weakens the overarching system of encryption, creating a loophole that could easily be targeted by hackers and online criminals, and risk the safety of journalists.

The hasty response to the Christchurch shooting also demonstrates the government’s ill-thought-through use of badly drafted legislation. The *Criminal Code Amendment (Sharing of Abhorrent Violent Material) Bill 2019* has led to concerns about the lack of defences for individuals who may be whistleblowers or media companies who are publishing atrocities that they are trying to draw to the world’s attention. The law means whistleblowers may no longer be able to deploy social media to shine a light on atrocities or raise awareness of human rights abuses.

Impact: Disregarding the right to know covers up more human rights abuses

Negative Counter-Brief: Human Rights

In order to counter this affirmative case, you’ll have to turn the affirmative’s value arguments upside down. It’s a well-known principle that you shouldn’t violate human rights to protect human rights. So if you can establish that the human rights of a political candidate (protected in the Bill of Rights) includes their right to privacy, you can win the value.

More arguments in response to this affirmative case can be found in my negative human rights case.

Voters respect privacy above the utility of the information

Gallop 2004 (Results are based on one of two surveys. The telephone interviews with 1,005 national adults, aged 18 and older, were conducted June 21-23, 2004. For results based on the total sample of national adults, one can say with 95% confidence that the margin of sampling error is ±3 percentage points.) “Fit for Office: Is Presidential Health a Public Matter?” <https://news.gallup.com/poll/13558/fit-office-presidential-health-public-matter.aspx>

A Gallup Poll on the subject of presidential health conducted this summer\* reveals that most Americans (96%) feel that the health of the commander in chief is important to his ability to be a good president, with 70% saying "very important" and 26% saying "somewhat important." A majority (61%) also feels that a sitting president should have the right to keep his medical records private, rather than release all medical information that may affect his ability to serve. Nearly 4 in 10 Americans think that the president should publicly release that information rather than have the right to keep it private.

Case by Case Basis

International Association of Privacy Professionals 2015 (Elena Stojanovska has an MA in Communication and years of experience in the field of privacy protection. Between 2005 and 2014 she worked as an international cooperation and public relations advisor at the Directorate for Personal Data Protection. Jovana Ananievska graduated from the Iustinianus Primus Faculty of Law of the Ss. Cyril and Methodius University. She continued her education with the Erasmus Mundus Master’s Programme in the field of International and European Law at the Louis Pasteur Faculty of Law at the University of Rouen, France, and the Faculty of Law at the Catholic University of Portugal in Lisbon.) “The Right to Privacy Versus The Public’s Right to Know” <https://iapp.org/media/pdf/resource_center/Privacy-and-Public-Interest.pdf>

Establishing balance between private and public interest is more than necessary, in order to simultaneously respect the right to privacy and the right to information, or the public’s right ‘to know.’ Considering the fact that there is no single formula according to which one could make a general assessment what is public and what is private interest, striking the balance is particular and should be done on a case-by-case basis. The responsibility for establishing balance is shared among the media and the supervisory bodies implementing the laws on personal data protection and on free access to public information. Hence, the following recommendations may be made:

Recommendations for the Media and Journalists

• Adopting internal privacy policies—internally focused tools that will aim to clarify how the media will abide by the principles for personal data protection in cases when the reports contain personal data on the individuals subject to media reporting;

• Establishing codes of conduct—self regulatory tools defining the common rules for the media in cases when private information should be released;

• Specifying standards for employing technical measures in the processing of information—obscuring faces and other personal data on the individuals subject to media reporting, distorting voices, using initials instead of full names;

• Obtaining consent to release personal data from the individuals subject to media reporting or their guardians any times it is possible;

• Journalists should not arbitrarily take and repost content from users’ social media and personal profiles, but be particularly mindful of how they use such data, if the invade the private lives of the individuals whose data they are releasing, if they have the necessary consent, and be careful when reusing such data, particularly if the events in question are tragic or distressing.

Recommendations for the Directorate for Personal Data Protection and the Commission for Protection of the Right to Free Access to Public Information

• Acting in favour of amending and supplementing the Code of Journalists and the Law on Media. It is the supervisory bodies that should indicate shortcomings and propose harmonisation with the laws on personal data protection and on free access to public information;

• Mounting targeted informative campaigns to raise the awareness of editors, journalists and other media professionals as a support of sorts for easier establishing balance between public and private interest, and

• Regular educational meetings with the media, as well as with journalism students, considering the fact that no journalism and communication studies curriculum includes material on personal data protection.

Some personal matters shouldn’t concern the public

The Guardian 2013 (Guardian US is renowned for the Paradise Papers investigation and other award-winning work including, the NSA revelations, Panama Papers and The Counted investigations.) “Unthinkable? Privacy for Politicians on Holiday” <https://www.theguardian.com/commentisfree/2013/jul/26/unthinkable-privacy-politicians-on-holiday-editorial>

Modern politicians assume, probably inevitably, possibly sensibly, that they are never off the record. But shouldn't an exception be made for their summer holidays? There is no public right to know where the Camerons, the Cleggs or the Milibands are heading over the next few weeks – and nor is it a matter of public interest. The assumption that politicians have to release the details of their holidays, or that the media have a right to report them, is not some ancient liberty conceded at swordpoint in 1215. Baldwin could go to Aix-les-Bains, Churchill to Monte Carlo, Attlee to north Wales and John Major to Portugal without their choices necessarily generating a news story. Today's politicians, by contrast, are either badgered into revealing where and how they spend their downtime or, even worse, calculate there may be some advantage in it, a trend Bill Clinton rashly started. It is true that Tony Blair's holiday destinations – the [Sharm el-Sheikh date with Mubarak](https://www.theguardian.com/world/2011/feb/11/hosni-mubarak-resigns-egypt-cairo), the Italian count's villa, the snaps with Berlusconi – confirmed his detractors' opinion of him, but they are perhaps best interpreted as proof that he didn't really care what they thought. As Gordon Brown was to discover when he ostentatiously took a holiday in Suffolk that he manifestly loathed in order to burnish his English credentials, ulterior holiday motives never work. It doesn't have to be this way. What politicians need right now, like the rest of us, is a break. So let's allow the Camerons and the rest to do their own thing while we also do ours.

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The Guardian 2013 (Guardian US is renowned for the Paradise Papers investigation and other award-winning work including, the NSA revelations, Panama Papers and The Counted investigations.) “Unthinkable? Privacy for Politicians on Holiday” https://www.theguardian.com/commentisfree/2013/jul/26/unthinkable-privacy-politicians-on-holiday-editorial