

## **Duty of confidentiality**

A duty of confidence arises when one person ('the confidant') is provided with information by another ('the confider') in the expectation that the information will only be used or disclosed in accordance with the wishes of the confider.

A person who makes an application for an export licence for the export of cultural goods does so with the expectation that the information is provided in confidence. Accordingly, all information held for the purposes of processing an export licence application for the export of cultural goods is subject to the common law duty of confidentiality.

The Export of Objects of Cultural Interest (Control) Order 2003 (SI/2759) makes provision for the disclosure of information in limited circumstances: (i) where it is necessary to facilitate the application process; or (ii) to comply with a European or international obligation.

This means that, subject to the exceptions below, the information provided in an export licence application should not be discussed with anyone other than Arts Council England, the Department for Culture, Media and Sport (DCMS), the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest (RCEWA), the owner or the applicant.

- Information may be disclosed to an Expert Adviser where this is necessary to facilitate the export process, but the Expert Adviser must not disclose any details of the application to a third party, unless the owner and/or the applicant has given their prior agreement in writing to that disclosure.
- Information may be disclosed to persons attending a hearing before the RCEWA, where the disclosure of such information is necessary to conduct the hearing. However, all information (both written and oral) which is disclosed during the hearing is subject to the duty of confidentiality and must not be disclosed to a third party without the consent of the owner and/or the applicant.
- Information may be disclosed following a recommendation by the RCEWA, where its disclosure is necessary to facilitate the export process. The information which is normally disclosed is: the Case Note of the hearing, the Expert Adviser's statement and the Press Notice. The information contained in these documents is entered into the public domain and is therefore no longer subject to the duty of confidentiality.

If an Expert Adviser or any other person has any doubt about whether the disclosure of any information associated with an export licence application might breach the duty of confidentiality, the information should not be disclosed until Arts Council England has given clearance.

If there is a breach of confidence, the confider or any other person affected (for instance a person whose details were included in the information confided) may have the right to take action through the courts. The disclosure of 'personal data' may also result in a criminal offence under the Data Protection Act 1998 which is punishable with a fine.

3<sup>rd</sup> October 2011 (updated)