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FACEBOOK, CAMBRIDGE ANALYTICA AND THE RIGHT TO PRIVACY: A HALACHIC OVERVIEW

The recent Facebook data scandal, which broke this past March when several news outlets reported on Facebook's alleged sharing personal data of its users with Cambridge Analytica, a British political consulting firm, sent shockwaves throughout the world, serving as an alarming reminder of just how easily accessible our online personal information is. Social media

consumers in particular have a great deal of personal information online which they do not wish to be made public, and the illicit sharing of that information against their will is, understandably, a great cause of concern.

While we all instinctively find the unauthorized disclosure of private information distasteful and

inappropriate, it is worth exploring the specific halachic prohibitions involved. Which halachic prohibitions forbid a person from relaying private information about his fellow to somebody else? Must one assume that all personal information is private? If the subject never specified his desire to have the information kept confidential, may it be disseminated?

This article is an adaptation of the first chapter of this author's book *Headlines*, volume 2 (OU Press, 2017). In that chapter, there is an additional section relating to uncovering one's private information without sharing it.

Harei Hu B'Bal Ye'amer

The Gemara in *Maseches Yoma* (4b) explicitly establishes that one may not share a conversation he had with somebody without that person's consent. In the Gemara's words, *harei hu b'bal ye'amer* — the contents of the conversation may not be shared until permission is granted. The Gemara infers this concept from the fact that God related His commands to Moshe *leimor* — to then be told to *Benei Yisrael*. God expressly instructed Moshe to relay His commands to *Benei Yisrael* because otherwise, he would have to keep this information to himself. This demonstrates that when somebody is told something by his fellow, he may not pass it on to others without that person's expressed permission.¹

The Chafetz Chayim (*Hilchos Lashon Ha'ra* 2:13; *Be'er Mayim Chayim*, 27) notes that as this law is inferred from Moshe's prophecies, it must apply even when the disclosed information will not cause any harm to the individual. After all, God cannot be "harmed" in any way, and yet, it would have been forbidden for Moshe to relay the information told him to by God if God had not explicitly authorized him to do so. Necessarily, then, the law of *harei hu b'bal ye'amer* applies to everything told to a person, even if sharing it would not cause any harm to the speaker.

The question arises as to the relationship between this prohibition and the more famous prohibition of *lashon ha'ra*. The Rambam, in *Hilchos Dei'os* (7:5), defines *lashon ha'a* as spreading information about somebody which could cause him harm or distress:

המספר דברים שגורמים אם נשמעו איש מפי איש להזיק חברו בגופו או בממונו ואפילו להצר לו או להפחידו, הרי זה לשון הרע.

One who tells matters that, if they are heard one person from another, cause physical or monetary damage to his fellow, or even cause him distress or to be frightened, this constitutes lashon ha'ra.

The Chafetz Chayim asked, why did the Torah introduce a separate prohibition of *lashon ha'ra*, if sharing private information of any kind is already forbidden by force of the law of *harei hu b'bal ye'amer*? Once telling any personal information about somebody is forbidden, then what is added by the special prohibition against spreading negative information?

The Chafetz Chayim suggests that the rule of *harei hu b'bal ye'amer* was not stated as an outright prohibition, but rather as a guideline of etiquette and propriety (*middah tova b'alma*). The Torah prohibition of *lashon ha'ra* applies only to information that could cause a person harm or distress, but basic courtesy dictates that even other personal information should not be shared. The Chafetz Chayim observes that the Rambam makes no mention of *harei hu b'bal ye'amer* in his code of law, likely because he did not regard this rule as a bona fide halachic prohibition.²

The Chafetz Chayim also advances a second approach, proposing that even if the law of *harei hu b'bal ye'amer* constitutes an outright halachic prohibition, it perhaps applies only when the information was shared in private, indicating the speaker's desire for confidentiality. God conveyed His laws to Moshe inside the *Mishkan*, and ensured that His voice would not be heard outside.³ Under such circumstances, when a

person made a point of speaking to his fellow in private, expressing his desire for secrecy, then his fellow may not share the information with others, even if the information would not pose any risk of harm or distress. The prohibition of *lashon ha'ra*, by contrast, applies even when the information was not conveyed secretly, and forbids sharing it if it would cause the speaker any sort of damage or angst.

It thus emerges that sharing the content of personal correspondence may be halachically forbidden if there is reason to assume that the individual wants the content to remain private, and it might be deemed inappropriate (albeit not halachically forbidden) even if there is no reason to make such an assumption.

Lo Selech Rachil B'Amecha

Revealing private information may also likely fall under the halachic prohibition of *Lo selech rachil b'amecha* ("You shall not go about gossiping among your people" – Vayikra 19:16), which the *Semag* (*lo sa'aseh* 9) defines as revealing information spoken to a person in private. It stands to reason that according to the *Semag*, this would apply not only to information which was told by somebody, but also to information which one discovered through other means, such as by searching through his computer or overhearing his private conversations.

This also appears to be the view of the Rambam, in *Hilchos Dei'os* (7:2), where he defines the term *rachil* to mean:

זה שטוען דברים והולך מזה לזה ואומר כך אמר פלוני, כך וכך שמעתי על פלוני, אע"פ שהוא אמת.



Why do we eat Dairy on Shavuot?

והנה המלאכים ביקשו שיתנו להם התורה ... ומשה רבינו נצחם ועיקר הנצחון היה במה שהמלאכים אינם יכולים לקיים מצות שבגוף ומש"ה בעצרת צריך לקיים המצוה דלכם מה שאין המלאכים יכולים לקיימה ... וזהו הענין שנוהגין בעצרת לאכול מאכל חלב, ועיקר הכוונה בזה דביר"ט מצוה לאכול בשר ... ובעצרת אוכלין גם חלב מקודם כדי לקיים ההבדל והזריזות שיש בין אוכל חלב לבשר והוא הקינוח והדחת הפה כדי לקיים מצוה שבאכילה, ועיין במדרש תהלים (מזמור ח) על פסוק מפני עוללים ויונקים יסדת עוז וע"ש שמסדר הויכוח של המלאכים על נתינת התורה ולבסוף אמר ה"ל אמר הקב"ה והלא אתם כשירדתם אצל אברהם אכלתם בשר בחלב ... ותינוק שלהם כשבא מבית הסופר ואמו נותנת לו פת ובשר וחלב ואומר היום לימדני רבי לא תבשל גדי בחלב אמו ... ומכאן יצא המנהג לאכול חלב כדי להראות הזריזות וההרחקה שבין אכילה זו לאכילת הבשר ולא כמו שעשו המלאכים שאכלו תיכף זה אחר זה.

The angels requested to receive the Torah ... and Moshe Rabbeinu defeated them (i.e. their claims), and his defeat was based on the fact that angels cannot fulfill commandments that require physical activity. For this reason, on Shavuot, the emphasis is on the physical, the aspects of Judaism that the angels cannot fulfill ... This is the idea behind eating dairy products on Shavuot. On the holidays, there is a mitzvah to eat meat ... but on Shavuot, we eat dairy products beforehand in order to fulfill the requirements between eating dairy and meat — wiping one's hands and rinsing one's mouth. The midrash states, regarding the dispute between the angels and God about God giving the Torah to humans, that God said to them: "When you went down to visit Avraham, you ate meat and milk ... but even a young child of theirs knows that when he comes home from school and his mother gives him meat and milk, that he won't eat it." ... From here developed the practice to eat dairy to show the care and caution between eating milk and meat, not like the angels who ate one right after the other.

Beit Halevi, Parshat Yitro

One who carries information and goes for one person to another saying, "So-and-so said such-and-such"; "I heard such-and-such about so-and-so" – even though it is true.

According to the Rambam, spreading private information about people transgresses the Torah prohibition of *Lo selech rachil b'amecha*.⁴

Similarly, the Meiri (*Sanhedrin* 31a) writes:

אף בכל דבר שמחבירו לחבירו חייב אדם שלא לגלותו ושלא להביא דבר מזה לזה, ועל כלם נאמר לא תלך רכיל בעמך.

Also in every matter from one person to his fellow, a person is obligated not to reveal it and not to bring information from one person to another. Regarding all of these it is said, Lo selech rachil b'amecha.

Rashi likewise seems to adopt this understanding of the prohibition of *Lo selech rachil b'amecha*. Commenting on the term *lishna t'lisai* with which the Gemara in *Maseches Arachin* (15b) refers to gossip, Rashi writes:

לשון הרכיל שהיא שלישיית בין אדם לחבירו לגלות לו סוד.

The tongue of the gossip, who is the third party, coming in between a person and his fellow to reveal his secrets to him.

The term *rachil*, according to Rashi, refers to a person who reveals other people's secrets, and thus revealing private information would, seemingly, violate the prohibition of *Lo selech rachil b'amecha*.

A different conclusion, however, appears to emerge from Rashi's Torah commentary (*Vayikra* 19:16), where he interprets *rachil* as referring to:

הולכים בבתי רעיהם לרגל מה יראו רע או מה ישמעו רע לספר בשוק.

Those who go to their friends' homes to check what negative information they see or hear which they can tell in the marketplace.

Here, Rashi appears to limit *rechilus* to negative personal information, such that disclosing personal information which is not unflattering would not fall under the prohibition of *Lo selech rachil b'amecha*.

In any event, according to the aforementioned *Rishonim*, disclosing a person's private information would violate the Torah prohibition of *Lo selech rachil b'amecha*. Support for this view may, at first glance, be drawn from the Mishna's ruling in *Maseches Sanhedrin* (29a) that after a *Beis Din* issues its decision, a judge should not publicize the fact that he felt the defendant was innocent while the majority determined he was guilty. Although this announcement does not entail negative information about his colleagues, a judge should not publicize this fact, as his colleagues likely prefer keeping their decisions

private. The Gemara (31a) cites as the source of this prohibition the verse *Lo selech rachil b'amecha*, clearly indicating that this verse forbids disclosing other people's personal information which they prefer keeping secret.⁵

We may, however, refute this proof, and distinguish between the case of a judge revealing his colleagues' decisions and other cases of *rechilus*. Publicizing a judge's opinion could evoke the ire of the defendant or losing party, thereby potentially endangering the judge. Hence, the application of *Lo selech rachil b'amecha* in such a case does not necessarily dictate that it applies to information which poses no harm to the individual. Second, the Rambam, in his commentary to the Mishna (there in Sanhedrin), explains this halacha as intended to ensure that people look upon judges fondly and admiringly. As such, no conclusions can be reached on the basis of this halacha with respect to general situations of disclosure of private information.

Regardless, at least according to several *Rishonim*, one who discloses somebody's personal information which he presumably wishes to be kept private transgresses the Torah prohibition of *Lo selech rachil b'amecha*.⁶

Revealing Secrets as an Ethical Breach

Beyond the strict halachic prohibitions entailed, numerous sources indicate that disclosing private information constitutes a severe breach of Torah ethics.

Rabbenu Yona writes in *Sha'arei Teshuva* (3:228):

והייב אדם להסתיר הסוד אשר יגלה אליו
חברו דרך סתר אעפ"י שאין בגילוי ההוא ענין
רכילות, כי יש בגילוי הסוד נזק לבעליו וסבה
להפר מחשבתו... והשנית כי מגלה הסוד אך
יצא יצא מדרך הצניעות והנה הוא מעביר על
דעת בעל הסוד.

A person is obligated to conceal a secret revealed to him by his fellow in a secretive manner, even if revealing it would not involve rechilus, because revealing the secret causes damage to the owner and results in the foiling of his plan... and, secondly, one who reveals a secret deviates from the path of modesty and violates the wish of the secret's owner.

Rabbenu Yona writes explicitly that irrespective of any practical harm caused by disclosing private information, it constitutes a breach of trust and violates appropriate standards of *tz'nius* ("modesty," or discretion).

Another relevant source is a responsum of Mahari Weil⁷ addressing the case of a person who revealed to a number of people disparaging information about his wife, and then strictly ordered them not to disclose the information. Mahari Weil ruled that those who heard the report were required to come testify before *Beis Din*, because *divrei harav divrei hatalmid divrei mi shom'in?* — their obligations to the Almighty supersede their pledge to the husband. The underlying assumption, of course, is that their pledge of secrecy was binding, albeit it was overridden by the halachic requirement to give testimony. Clearly, then, disclosing information about a person which he wants kept secret is forbidden, either as a strict halachic prohibition or on the level of general ethical conduct.

Perhaps the most striking expression of Chazal's condemnation of

spreading private information appears in a Midrashic passage (*Bamidbar Rabba*, Masei 23) discussing the disturbing story of King David and Uriya, a soldier in his army. As we read in *Sefer Shemuel II* (11), King David ordered his general, Yoav, to assign Uriya to the front lines during a fierce war against Amon, in order that Uriya would be killed. After Uriya's death, the Midrash relates, the military officers were incensed at Yoav for causing Uriya's death, and threatened to kill him. Yoav defended himself by showing them the note he had received from David, ordering him to place Uriya in the front lines. The Midrash comments that Yoav deserved to be punished for publicizing a personal letter from the king. Although this was done in self-defense, the Midrash nevertheless censures Yoav for disclosing personal information. This underscores the severity with which Chazal viewed violating one's fellow's trust by sharing personal information with others.⁸

Violating Privacy for Public Safety

We should note that numerous sources state explicitly that revealing somebody's secrets is allowed to protect other people. Commenting on the sixth of the Ten Commandments — *Lo tirtzach* (Shemos 20:12) — Ibn Ezra writes that the Torah prohibition against murder applies even to certain forms of indirect murder, including withholding secret information which is needed to save lives:

או שנגלה לך סוד שתוכל להצילו מן המות אם
תגלהו לו, ואם לא גלית אתה כמו רוצח.
*Or, if a secret was revealed to you and
you can save someone from death by
revealing it to him — if you do not reveal
it, you are like a murderer.*

Additionally, several commentators⁸ note that the Torah (Vayikra 19:16) juxtaposes the prohibition against gossip (*Lo selech rachil b'amecha*) with that of *Lo sa'amod al dam rei'echa* – sitting idly while one's fellow faces danger – to teach that the former is suspended for the sake of the latter. If a person has confidential information that could save a life, he is required to divulge it.

Accordingly, Rav Moshe Sternbuch (*Teshuvos Ve'hanhagos*, 1:869) ruled that if a doctor determined that his patient is physically unfit to drive – such as in the case of an ophthalmologist who diagnoses his patient with a visual impairment that compromises his ability to drive safely – he can and must inform the relevant government authorities. Although medical information is confidential, the doctor must break his trust of confidentiality for the sake of public safety. Rav Ovadia Yosef (*Yechaveh Da'as*, 4:60) issued a similar ruling concerning a patient with epilepsy. If the doctor determines that this condition makes it unsafe for the patient to drive, he must notify the authorities.

Another fascinating – albeit tragic – modern-day application of this ruling is the controversy that arose in the wake of the devastating shooting attack at the Inland Regional Center in San Bernardino, California in December, 2015. The perpetrators – Syed Farook and Tashfeen Malik – were found and killed by police in a shootout that same day, and two months later, on February 9th, the FBI announced that it had recovered Syed's iPhone, but was unable to unlock the device in order

to find clues of the shooter's possible accomplices and other important contacts. This information, the FBI claimed, was vital to the Bureau's ongoing investigation into the terrorists' motives and modes of operation. The FBI asked that Apple disable the phone's security system to enable them to access Mr. Farook's information, but the company refused, arguing that it needed to strictly uphold its commitments not to compromise its customers' security. The FBI then appealed to a federal judge, and a court order was issued ordering Apple to comply with the FBI's demands by February 26th. The brief legal battle came to an anticlimactic end on March 28th, when the Department of Justice announced that it succeeded in unlocking the device.

It stands to reason that given the international threat of Islamic terrorism, and the vital importance of intelligence information in identifying and capturing potential attackers and their accomplices, accessing the information on a terrorist's device would certainly appear to fall under the category of public safety, which, as noted, overrides the prohibition against invading privacy.

Endnotes

1 There is some discussion among the *Acharonim* as to whether this inference is made from the oft-repeated Biblical verse, וידבר ה' אל משה לאמר, or, as indicated by the version found in common editions of the Talmud, from the opening verse of Sefer Vayikra: וידבר ה' אל משה מאהל מועד לאמר.

2 Indeed, the Meiri, who generally adheres to the Rambam's rulings, writes explicitly in his commentary to *Maseches Yoma* that this rule was intended as a guideline for

refined conduct, and not as an actual halachic prohibition.

3 Rashi, Vayikra 1:1.

4 Surprisingly, the Chafetz Chayim (*Hilchos Lashon Ha'ra* 1:1, *Be'er Mayim Chayim* 4) understands the Rambam as referring specifically to somebody who tells people what others have said about them, as opposed to general personal information. This does not, however, appear to be the implication of the Rambam's remarks.

5 The Mishna and Gemara also cite a second source for this prohibition, namely, the verse in Mishlei (11:13), *holech rachil megaleh sod* ("One who goes around gossiping reveals secrets"). The citation of two Scriptural sources challenges us to identify the precise relationship between them. One possibility emerges from the Vilna Gaon's interpretation of *holech rachil megaleh sod* in his commentary to Mishlei: מנוועו, לזכר דלזוהל המוד אוה דוס הלגמה – הוש – "One who reveals secrets resembles one who goes around gossiping, and their iniquity is equal." This might mean that the verse in Mishlei introduces a new prohibition against disclosing private information, which is likened in severity to the prohibition of *rechilus*. Accordingly, we might explain that the Gemara cites both verses because the actual prohibition which one violates is *holech rachil megaleh sod*, but it is considered as grievous an infraction as a violation of *Lo selech rachil b'amecha*.

6 The *Midrash Gadol U'gedula* (published by Aharon Jelinek, vol. 3, p. 126) likewise comments, "Concealing a secret is great, for whoever reveals his fellow's secret is considered as though he shed blood, as it says, *Lo selech rachil b'amecha*."

7 *Nimmukei Rav Menachem MiRizburk, Dinei Boshes*.

8 *Moshav Zekeinim, Or Ha'chayim*, Netziv (*Ha'amek Davar*), and others.