

CONSTITUTIONAL REFORM ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7: General

Commentary on Sections

Section 139: Confidentiality

367. **Section 139** is a general confidentiality provision which applies to the selection and appointment of Justices of the Supreme Court under sections 26 to 31 in Part 3 of the Act and to the selection, appointment and discipline of judicial office holders under Part 4 and under any regulations and rules made under Part 4. All information which relates to an identified or identifiable individual is confidential and can be disclosed only with lawful authority. Disclosure without lawful authority is made subject to a civil action for breach of statutory duty.
368. Information may be lawfully disclosed with the consent of the person concerned; or where disclosure is necessary in order for a person to perform their functions in relation to the selection, appointment or disciplining of judicial office holders; or where disclosure is necessary in connection with the exercise of Parliamentary powers to remove a senior judge or a decision whether to exercise such powers; or where the disclosure is necessary in connection with the exercise of powers to remove, discipline or suspend a judicial office holder; or where the disclosure is required for the purposes of legal proceedings in order to comply with court rules or a court order.
369. Where confidential information has been provided by one identifiable person about another identifiable person, it relates to both, and may only be disclosed to the subject of the information with the consent of its provider.
370. Despite the confidentiality provisions, the Lord Chancellor and Lord Chief Justice may decide to disclose information about disciplinary action taken against an identifiable judicial office holder. Disclosure which would otherwise be prohibited by this section is also permitted if the information concerned is already available to the public from other sources, or has been so in the past.