

# **Privacy, Ethics and the Public Interest: Should the South African Media have Reported on Durban Businessman Glyn Taylor's Infamous Death in 1999?**

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The notion of privacy is a cognitive construct of enormous importance in the information society in which moral judgements characterise the content of the mass media. Making ethical decisions has been a concern of journalists at least since the early twentieth century, when many reporters wanted to be considered among the emerging groups of professionals. (Folkerts *et al.* 1998:388). However, attempts to determine exactly what standards of conduct and moral judgement constitute ethical behaviour have resulted in a continuing debate rather than absolute standards

This is perhaps most clearly illustrated through the debate on privacy versus the people's need to know. The ability of governments, journalists and businesses to invade the lives of private citizens has dramatically increased in recent years for many reasons, including advanced technological bugging devices and cameras, credit files, medical files, tax payment records, and many other kinds of formerly private information. The advent of the World Wide Web has greatly facilitated the flow of information. But perhaps more especially is the belief among many media professionals since the 1960s that there are times when the public's right to know takes precedence over the right of privacy of an individual (Folkerts *et al.* 1998:407).

In South Africa, hand in hand with the new political dispensation in 1994 came sudden government transparency. For the first time in decades, all government officials including the police had the ability to provide

journalists with details of all cases and incidents that were not *sub judice*. But where does transparency end and privacy begin?

As our ability to tap into information concerning people's private lives has increased, it could also be argued that our desire to know more intimate details about people has increased. This poses an extremely difficult question for media practitioners: how can we decide, and by what criteria, when an invasion of privacy is morally justified?

Although some reporters believe that personal life has nothing to do with business or politics, others think that personal actions illuminate character. A candidate who breaks a solemn vow to someone as important as his or her spouse might also break promises to constituents (Folkerts *et al.* 1998:407).

How much of a public person's private life do people need to know? What constitutes 'the public's right to know' is an ethical question that media workers and the public share.

It was a question that provoked enormous debate when Durban businessmen Glyn Taylor's death in 1999 became headline news. *The Independent on Saturday*—Independent Newspapers Saturday newspaper in KwaZulu-Natal—was overwhelmed with public criticism after they ran a story highlighting his involvement with a prostitute at the time of his demise.

The Taylor controversy is clearly what Bugeja (1996:256) would describe as a 'taste-related privacy problem'. The story was gained through the mundane task of gathering information from the weekly police reports in KwaZulu-Natal.

The task may be mundane, but the details in such reports or documents often are stark. When published, they can cause great pain to family and friends (Bugeja 1996:256).

According to *Independent on Saturday* journalist Melanie Peters—the reporter responsible for investigating the story—*The Mercury* ran with the story first on Thursday May 13 1999. The article was carried on the front page, just below the fold.

No 'juicy' details were included. The headline stated 'Top businessman Glyn Taylor dies', and the story simply stated that he had died from heart attack in a flat in Norge Road.

However, the implication of peculiar behaviour is there. 'Mr Taylor visited the flat at 2.15pm on Tuesday. While he was there, he keeled over clutching his chest. Efforts to resuscitate him failed'.

And the most telling implication: 'Police spokesman Bala Naidoo confirmed that Mr Taylor had died of natural causes, but would not comment on the circumstances surrounding his death'.

Peters said that *The Mercury* was fully aware that there was strange circumstances surrounding Taylor's death, but both they and the *Daily News* had taken an editorial decision not to investigate further. She said the police had indicated that they had been reluctant to tell Taylor's widow about the circumstances as they were worried 'she wouldn't be able to handle it', and had told journalists that if they wanted further information, they would have to pursue the story independently.

*The Independent on Saturday* subsequently discussed the situation at an editorial meeting. They knew that *The Sunday Tribune* was working on the story, and there was a strong feeling in the news team that they should pursue the story.

Taylor was a public figure, outstanding and moralistic, Peters said. The newspapers were filled with comment about how he had helped society. We wanted to inform the public about how he met his death, and so we did.

Once assigned to the story, Peters began to investigate and went to the address given by the police. She began to look for the prostitute the police had told her was involved. She discovered that his heart attack had emerged during a 'session' with a Point Road prostitute, after Taylor offered her R50 for her services.

The prostitute told Peters that Taylor 'was not after intercourse', but wanted to 'watch me play with myself' while he masturbated. She said it had been the first time she had met him, but 'people around here have seen him before' (*The Independent on Saturday* May 15 1999).

Peters said she also interviewed another prostitute who claimed that Taylor had visited her frequently. 'She said they saw him often, and he was liked by them, they said he was respectful and greeted everybody. They weren't cold about it all, they felt sorry for him' (Peters November 23 2001).

*The Independent on Saturday* ran the story on May 15 1999 as the left-hand shoulder story on page 3—a prominent position. It was met with an immediate public outcry.

Headlined 'Chairman's death: street woman talks', the story states that 'Taylor's untimely death due to a heart attack occurred during a 'session' with a Point Road prostitute'.

All the Independent newspapers in KwaZulu-Natal were inundated with letters and telephone calls, and Peters, as the journalist responsible for the story, also received 'quite a lot of abuse' (Peters November 23 2001). *The Independent on Saturday* subsequently lost about 250 newspaper subscribers.

The Taylor affair has raised some interesting questions about the invasion of privacy for the South African press. Though many people show interest in private information about others, many others are offended by journalists' conduct, and that has led to increased distrust of the press (Hodges 1994:196). For example, when we see reporters filming the distress of a mother whose child was the victim of a rape, poking a microphone into her face and asking for comment, we tend to feel morally outraged. Similarly with victims of car accidents or murders, journalists harassment of members of families for details provokes the argument that this is an unnecessary intrusion into private grief, and in poor taste.

The public outburst that followed the publication of detail surrounding Taylor's death was along these lines. Many people clearly felt that by publishing his relationship and sordid death in the company of a prostitute, the media was violating both his and his family's privacy, especially his wife (described by both Peters and the police as a 'lovely old lady') and children, causing them undue grief and embarrassment.

### **Was the Taylor Story an Invasion of Privacy?**

In order to establish whether the Taylor story constituted an invasion of privacy, it is necessary first to define an invasion of privacy.

According to Hodges (1994:197), the moral right to privacy consists of the power to determine who may gain access to information about oneself. Most people would agree that individual human beings need some measure of privacy in order to develop a sense of self and avoid manipulation by the state. In other words, privacy has to do with keeping personal information non-public or undisclosed, with personal information being that set of facts about oneself that a person does not wish to see disclosed or made public. Archard (1998:84) states that most of us would probably think of our sexual and financial affairs as 'properly private'.

Thus in its most elemental form, privacy can be defined as an individual's right to be let alone. It has also been defined as the right to peace of mind, in contrast to defamation, which is an attack on one's reputation (Gordon 1999:148).

What all of these definitions clearly do is highlight the difficulty of pinning down privacy as a concept. It takes little common sense to see that while one individual might have no problem with certain personal information being revealed, another might be furious about the same revelations. And there is also a great deal of debate about the degree to which 'newsworthy' people must give up their right to privacy in the interest of providing information that the public either wants or needs to have (Gordon 1999:148).

As a result, confronting these issues often leaves journalists facing a difficult moral dilemma. Goodwin and Smith argue that the question for journalists is not whether to invade privacy, but when and how much. In other words, journalists must be able to answer the question: At what point does an invasion of privacy pass from reasonable to unreasonable?

Archard (1998:82) believes there are four ways of determining whether a story or an image is an invasion of privacy. First, he argues that if information is obtained in a clearly impermissible way—for example, in some kind of clandestine way, or one which was illegal—then it could be argued that the subject of the story's privacy had been invaded. Similarly, if the journalist or photographer investigating the story had harassed anyone in any way in order to obtain the necessary information, this would also be wrong.

Archard also argues that if the publishing of information breached confidentiality of, say, a relationship with a source, this too would be clearly

wrong. And lastly, he argues that a publication of a story might cause moral concern if the choice of story or language used was clearly intended to humiliate, ridicule, belittle or unfairly stigmatise the subject.

There is a point at which Schadenfreude at another's failings, which may be regretted if not condemned, passes into unacceptably vindictive persecution (Archard 1998:83).

The Taylor story clearly crossed none of these four barriers. There was no underhand method employed in obtaining the information. The police provided the basic details, and Peters, as part of her routine work, went to the address given her and sought out the prostitute allegedly involved. There was no harassment of anyone connected to the story, including Taylor's wife or children. There was no breach of confidentiality and no vindictive persecution—this was the first time that any newspaper had ever questioned Taylor's integrity.

However, it is clear that there were many people, including many editors and journalists, who felt that there was something wrong in publishing the story. Members of the public repeatedly expressed the belief that the press had no business revealing details about what Taylor did in private with another consenting individual, thus clearly invoking the notion of a wrongful invasion of privacy.

A common thread between the hundreds of letters sent to *The Independent on Saturday*, is that Taylor's indiscretions were 'no one's business but his', and the details published did little more than provide members of the public with a salacious thrill, while causing his family and friends unbearable hurt.

### **Private Lives versus Public Interests**

This brings us to the question of 'newsworthy' people losing their absolute right to personal privacy.

*Firstly*, there is no doubt that Taylor was a prominent public figure and both a community and business leader. He spent 26 years with Illovo Sugar, 15 of them as chairman. Although he retired in 1997, he still retained a seat on the Illovo Sugar Board at the time of his death.

Taylor also served as chairman of both the Sugar Millers' Association and the South African Sugar Association, representing the latter on the International Sugar Association. He was the South African employers' representative at the International Organisation of Employers in Geneva for nine years. He was also a patron of the arts, being particularly dedicated to the Playhouse Company in Durban.

Over and above these public roles, Taylor was also something of a philanthropist. He spent an enormous amount of time and effort raising money for the underprivileged, supported a number of small rural schools, and was reportedly always ready to help those who had fallen on hard times. There is no doubt that he was seen by many as a strong community leader, a highly respected and good family man. Public perception was that he was an upstanding, faithful, God-fearing family man.

So was it in the public interest that the details surrounding Taylor's death were published?

Hodges (1994:202) argues that the right to privacy is not absolute.

It stands beside a countervailing right of others to know quite a lot about us as individuals. These two legitimate rights – the individual right to a measure of privacy and the right of others to know some things about the individual – frame the moral issues.

He argues that because we are individual beings, we have a need (right) for privacy; because we are social beings, we have a need (right) to know. And people especially need to know quite a lot about those who have power over them – or indeed those who purport to be moral leaders within a community.

Hodges states that the privacy issue arises at two points in the reporting process. The first is at the point of gathering information, where decisions have to be made about intrusion by the journalist into the lives of subjects. The second is at the point of deciding what to publish, or in other words what private facts are appropriate for dissemination to the public. He suggests the following as a formal criterion: it is just for a journalist to violate the privacy of an individual only if information about that individual is of overriding public importance, and the public need cannot be met by any other means (Hodges 1994:203). In other words, morbid curiosity and prurient interest should not be taken into account when making ethical decisions (even if they do sell newspapers!)

I would argue in South Africa in particular, in the case of sexual misdemeanour, the touchstone for determining what to print about a public person's private life would seem to be the effect that private activity would have on the discharge of that person's public responsibilities

This criterion, however, does not tell us what information to publish in specific cases. Neither does it permit invasion of privacy to obtain and publish information that the public is interested in but that is not important for the public to know.

Similarly to Hodges, Archard (1998:86) states that there are three main reasons offered in justification of breaching an individual's privacy: when somebody is or becomes a public person he, by that very fact, loses his privacy; where a proven public interest can be shown to be served by the disclosure of the private; and where the public is interested in knowing what is private.

Interestingly, Archard argues that 'the idea that, in fairness or by agreement, public status comes with a loss of privacy is unpersuasive' (1998: 88). He argues that where sexual misdemeanours are concerned, people either feel that any kind of private immorality disqualifies a person from public office for no reason than adultery is wrong and fitness for public office requires a morally untarnished character, or that the adulterer is seen as a hypocrite and a man capable of breaking all vows if he is capable of breaking his marriage vows. Archard (1998:90) argues that this is fundamentally illogical.

Nothing in the pattern of human dissembling reveals the adulterer, simply in virtue of his adultery, to be any less trustworthy or reliable in general. Most people can recognise the difference—in moral significance and motivation—between a personal betrayal and public treachery.

This brings us to the third reason Archard suggests might be given for breaching an individual's privacy. This is simply that the public is interested in knowing—not that there is a public interest in knowing, but just that most people would like to know and would derive some pleasure from knowing.



Normally a clear distinction is made between a story being in the public interest and story being one that interests the public, and the latter is always quickly dismissed as a good reason for publication. Archard argues that 'this distinction and dismissal is too hasty'. He says that society's interest in knowing about the private lives of its public figures may have value and thus, in a way hitherto ignored, help to define the moral space in which the press operates.

It is not that a presumption in favour of individual privacy can only be defeated by showing in some specific case that invasion of this person's privacy serves a particular public interest. It is that a general norm of privacy is shaped and constrained, in the first instance and at a prior level, by an opposing general norm of social interest in knowledge. The best way to appreciate this is by thinking of journalism as print gossip (Archard 1998:90).

Archard (1998:91) states that there are three valuable social purposes served by gossip which have been noted in anthropological studies. The first is that gossip plays a role in defining a community and maintaining its unity. The second (and for purposes of this article possibly the most important purpose) has to do with the shared values of the community in which it is conducted. Archard argues that there are a number of ways in which this is so, including the fact that gossip is a way of testing or rehearsing these values by exposing conduct they would seem to proscribe, and by doing so these values (and also the identity and unity of the group which professes them) may be reaffirmed. Gossip also exposes the wrongdoer to public shame or ridicule and consequently functions as deterrent to such wrongdoing.

The third purpose gossip serves, which I believe is closely linked to the second, is that it demystifies the pretensions of public status; it can expose the ordinariness of the famous by showing them to be no more and no less capable of avoiding the failings we know ourselves to display all too often.

## **Conclusion**

In conclusion I wish to make two points. First I would argue that the

KwaZulu-Natal media made the right decision. No doubt there were many individual journalists in the media who were saddened by Taylor's death, as he was widely known and came across to all involved as a man who loved his family dearly and cared deeply about both his province and his country. Judging by his involvement in the public sphere, he wanted to help make a difference to society. This was never in dispute, and judging by the media stories it was never the intention of the media to soil his reputation.

It has often been argued that journalists have not given enough thought to dealing with the conflicting pulls of privacy and public curiosity, of informing the public and showing compassion (Goodwin and Smith 1994:279). And there is no doubt that news stories can cause harm. As former *Washington Post* ombudsman Richard Harwood wrote,

the 'media' in their long history have shattered countless reputations and destroyed countless careers. We have driven people to suicide. We have caused immeasurable emotional pain, suffering and humiliation not only to individuals but to families and (if the testimony of many black Americans is credible) to entire communities as well (in Goodwin & Smith 1994:280).

It is clear this potential for harm is part and parcel of journalism, and can never be eliminated. What is important is that journalists need to balance this with the public interest factor. Goodwin and Smith argue that if no public interest is involved, reporters ought to leave people alone. However, they also make a clear distinction between ordinary people, and political and other leaders. 'We should also be able to expect public leaders to be honest about who they are' (Goodwin & Smith 1994: 281).

Taylor was a prominent public figure in KwaZulu-Natal, and as such there was legitimate public interest in the manner in which he met his death. I would thus argue that the media was not guilty of violating his right to privacy. Morally speaking, his right to privacy was limited by the need of others (the public) to know about him as an individual. I believe that the moment you go into public office there is no privacy. In that moment, as a single one you represent the many.

I would also argue that the standards of privacy for community and political leaders, and for ordinary people, are different. If no public interest

is involved, ordinary folk should be left alone. Political and community leaders, however, are different. These people are elected role models, and their public performance determines the direction of the nation or the community. I believe their characters and personalities shape the decisions they take in public life, and therefore voters are entitled to know what kind of people they are. Added to that, public leaders should be honest about who they are – a leader who portrays himself as a God-fearing family man should be one.

However, what is interesting to note is the media was not ready for the barrage of public criticism it received for running this story. It was clearly taken aback and had little to say in response, apart from a brief editorial in *The Independent on Saturday* (2 May 1999).

This leads me to the second point, which is that I believe journalists need to reconsider their approach to their craft.

Surveying the literature on the South African press and talking to those who work in it yield no clearly understood, explicitly stated, or widely accepted rationale for being a journalist (Jackson 225).

In other words, the culture of the press in South Africa lacks any concise articulation of its journalistic mission or what is expected of journalists. We still get periodic and eloquent defences of press freedom, but what is needed is perhaps something more fundamental: answers to the question of what journalism ought to be accomplishing in the first place, and according to which values. This is important, as ultimately all ethical decisions rest with the media professionals themselves, and not necessarily with what they feel 'society' expects them to do. Consequently, there is tension between two moral codes—that of the individual journalist, and the prevailing social mores. A more clear-cut sense of purpose for media professionals might help making decisions about stories such as that of Glyn Taylor's death.

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