
THE CRIMINAL PROCEDURE (DISCLOSURE) RULES 2007

In exercise of the powers vested in him by section 13 of the Criminal Procedure (Disclosure) Ordinance 2007(a), the Administrator, with the advice and assistance of the Presiding Judge, makes the following Rules –

Citation and Commencement

1. These Rules may be cited as the Criminal Procedure (Disclosure) Rules 2007, and come into force on the day that they are published in the Gazette.

Interpretation

2. In these Rules, references to numbered sections are references to sections of the Criminal Procedure (Disclosure) Ordinance 2007.

Application of Rules

3. The provisions of any rules of procedure of any court that are in force at the time these Rules are made have effect subject to these Rules.

Application by prosecutor under section 5(1)

4. (1) Notice of an application under section 5(1) must be served on the Registrar for the court trying the offence to which the prosecution material relates and must specify the nature of the material to which the application relates.

(2) Subject to paragraphs (3) and (4), the prosecutor must serve on the accused a copy of the notice of application.

(3) Where the prosecutor has reason to believe that to reveal to the accused the nature of the material to which the application relates would have the effect of disclosing that which the prosecutor contends would not be in the public interest to disclose:

- (a) paragraph (2) does not apply, and
- (b) the prosecutor must notify the accused that an application to which this rule applies has been made.

(4) Where the prosecutor has reason to believe that to reveal to the accused the fact that an application has been made would have the effect of disclosing that which the prosecutor contends would not be in the public interest to disclose, paragraph (2) does not apply.

Hearing of application under section 5(1)

5. (1) Subject to paragraph (2) and to rule 8(5), where a copy of the notice of application has been served on the accused in accordance with rule 4(2) –

- (a) the Registrar must give notice of the date and time when and the place where the hearing will take place, to the following persons, such notice to be in writing unless the court orders otherwise:
 - (i) the prosecutor,
 - (ii) the accused, and
 - (iii) any person claiming to have an interest in the material to which the application relates who has applied under section 5(5) to be heard by the court;

- (b) the hearing is to be inter partes; and
- (c) the prosecutor and the accused are entitled to make representations to the court.

(2) Where the prosecutor applies to the court for leave to make representations in the absence of the accused, the court may for that purpose sit in the absence of the accused and any legal representative of his.

(3) Subject to rule 8(5), where there is no obligation to serve a copy of the application on the accused under rule 4(2):

- (a) the hearing must be ex parte;
- (b) only the prosecutor is entitled to make representations to the court; and
- (c) the accused must not be given notice of the date and time when and the place where the hearing will take place.

Making of an order under section 5(1)

6. (1) On making an order under section 5(1), the court must state its reasons for doing so.

(2) In a case where such an order is made following –

- (a) an application to which rule 4(3) applies, or
- (b) an application, notice of which has been served on the accused in accordance with rule 4(2), but the accused has not appeared or been represented at the hearing of that application,

the Registrar must notify the accused that an order has been made.

Review of order made under section 5(1)

7. (1) This rule applies to an application made under section 5(6).

(2) An application to which this rule applies must be made by notice in writing to the Registrar for the court trying the offence to which the prosecution material relates and must specify the reason why the accused believes the court should review the question referred to in section 5(6).

(3) A copy of the notice referred to in paragraph (2) must be served on the prosecutor at the same time as it is sent to the Registrar.

(4) On receipt of an application to which this rule applies, the Registrar must take such steps as he thinks fit to ensure that the court determining the application has before it any document or other material which was available to the court which made the order under section 5(1).

(5) Subject to paragraphs (6) to (8) and to rule 8(5), the hearing of an application to which this rule applies is to be inter partes and the accused and the prosecutor are entitled to make representations to the court.

(6) Where the court considers that there are no grounds on which it might conclude that it is in the public interest to disclose material to any extent, it may determine the application without hearing representations from the accused, the prosecutor or any person claiming to have an interest in the material to which the application relates.

(7) Where, after hearing the accused's representations, the prosecutor applies to the court for leave to make representations in the absence of the accused, the court may for that purpose sit in the absence of the accused and any legal representative of his.

(8) Subject to rule 8(5), where the order to which the application relates was made following an application of which the accused was not notified under rule 4(3) or 4(4), the hearing is to be ex parte and only the prosecutor is entitled to make representations to the court.

(9) The Registrar must give notice in writing of the matters listed in paragraph (10) to:

- (a) the prosecutor;
- (b) except where a hearing takes place in accordance with paragraph (8), the accused; and
- (c) any person claiming to have an interest in the material to which the application relates who has applied under section 5(5) to be heard by the court.

(10) The matters in relation to which notice must be given under paragraph (9) are:

- (a) the date and time and place when the hearing of an application to which this rule applies will take place; and
- (b) any order which is made by the court following its determination of the application.

Interested persons

8. (1) Where the prosecutor has reason to believe that a person who was involved (whether alone or with others and whether directly or indirectly) in the prosecutor's attention being brought to any material to which an application under section 5(1) or section 5(6) relates might claim to have an interest in that material, the prosecutor must give:

- (a) to the person concerned notice in writing of the application; and
 - (b) to the Registrar notice in writing of his belief and the grounds for it.
- (2) For the purpose of paragraph (1), notice in writing must be given:
- (a) in the case of an application under section 5(1), at the same time as notice of the application is served under rule 4(2); or
 - (b) in the case of an application under section 5(6), when the prosecutor receives a copy of the notice referred to in rule 8(4).
- (3) An application under section 5(5) must:
- (a) be made by notice in writing to the Registrar as soon as is reasonably practicable after receipt of the notice referred to in paragraph (1)(a) or, if no such notice is received, after the person concerned becomes aware of the application referred to in that sub-paragraph; and
 - (b) specify the nature of the applicant's interest in the material and his involvement in bringing the material to the prosecutor's attention.

(4) A copy of the notice referred to in paragraph (3) must be served on the prosecutor at the same time as it is sent to the Registrar.

(5) On the hearing of an application under section 5(1) or 5(6), a person who has made an application under section 5(5) in accordance with paragraph (3) is entitled to make representations to the court.

Application by accused under section 4(8)

9. (1) This rule applies to an application by the accused under section 4(8).

(2) An application to which this rule applies must be made by notice in writing to the Registrar and must specify:

- (a) the material to which the application relates;
- (b) that the material has not been disclosed to the accused;
- (c) the reason why the material is relevant to the proceedings; and
- (d) the date of service of a copy of the notice on the prosecutor in accordance with paragraph (3).

(3) A copy of the notice referred to in paragraph (2) must be served on the prosecutor at the same time as it is sent to the Registrar.

(4) The prosecutor must give notice in writing to the Registrar within 14 days of service of a notice under paragraph (3) that:

- (a) he wishes to make representations to the court concerning the material to which the application relates; or
 - (b) if he does not so wish, that he is willing to disclose the material;
- and a notice under sub-paragraph (a) must specify the substance of the representations he wishes to make.

(5) Subject to paragraphs (6) and (7):

- (a) the Registrar must give notice in writing to the prosecutor and the applicant of the date and time when and the place where the hearing will take place;
- (b) the hearing is to be inter partes; and

(c) the prosecutor and the applicant are entitled to make representations to the court.

(6) The court may determine the application without hearing representations from the applicant or the prosecutor unless:

(a) the prosecutor has given notice under paragraph (4)(a) of this rule and the court considers that the representations should be made at a hearing; or

(b) the court considers it necessary in the interests of justice to hear representations from the applicant or the prosecutor for the purposes of determining the application.

(7) Where the prosecutor applies to the court for leave to make representations in the absence of the accused, the court may for that purpose sit in the absence of the accused and any legal representative of his.

(8) A copy of any order under section 5(8) must be served on the prosecutor and the applicant.

General

10. (1) Any hearing held in pursuance of or in accordance with these Rules may be adjourned from time to time.

(2) Any hearing referred to in paragraph (1) may be held in private.

Dated this 9th day of August 2007.

By the Administrator's Command,

P. D. Draycott,
Chief Officer,
Sovereign Base Areas.

(SBA/AG/2/CR/152/1)

Notes

(a) Ordinance 16/07.

EXPLANATORY NOTE

(This note does not form part of the Rules)

Introduction

1. This note relates to the Criminal Procedure (Disclosure) Rules 2007. The note has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Rules. It is not a part of the Rules.
2. The note should be read in conjunction with the Rules. It is not, and is not meant to be, a comprehensive description of the Rules. So when a rule or part of a rule does not seem to require any explanation or comment, none is given.

The Rules

3. These Rules of Court prescribe the procedure to be followed in relation to applications made to court under the Criminal Procedure (Disclosure) Ordinance 2007. That Ordinance concerns the disclosure of prosecution material (evidence and unused material) in criminal proceedings.
4. Rule 4 prescribes the notice that a prosecutor must give when making an application under section 5(1) for an order that the disclosure of specified prosecution material would not be in the public interest. Rule 5 prescribes when the hearing of such an application should be ex-parte and when it should be inter partes.
5. Rule 6(1) obliges the court to state its reasons when making such an order. Where the accused was not present or represented at the hearing, despite having been served notice, rule 6(2) obliges the Registrar to notify him that an order has been made. It also so obliges him where rule 4(3) applies, that is to say, where the prosecutor has reason to believe that revealing to the accused the nature of the material to which the application relates would have the same effect as disclosing the material. However, where rule 4(4) applies, there is no such obligation.
6. Where a section 5(1) order has been made, the accused may apply under section 5(6) for the court to review the question of whether non-disclosure is in the public interest. Rule 7 concerns such applications.
7. Rule 8 concerns applications made under section 5(5) by an interested person (a person who has an interest in the prosecution material and was involved in drawing the prosecutor's attention to it), to be heard by the court before it makes a section 5(1) order, or before the it carries out a review under section 5(6), as the case may be.
8. Rule 9 concerns applications by the accused under section 4(8) for an order that prosecution material be disclosed.