



SUPPLEMENT No. 2
TO
THE SOVEREIGN BASE AREAS GAZETTE
No. 1467 of 23rd July 2007
LEGISLATION

ORDINANCE 16 OF 2007

THE CRIMINAL PROCEDURE (DISCLOSURE) ORDINANCE 2007

An Ordinance to make provisions for disclosure in criminal proceedings

R. H. LACEY
ADMINISTRATOR

16th July 2007.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

Part 1
Preliminary

1. Short title

This Ordinance may be cited as the Criminal Procedure (Disclosure) Ordinance 2007.

2. Interpretation

In this Ordinance-

“prosecution material” means-

- (a) any information or object of any description which the prosecutor proposes to rely on in the case for the prosecution against the accused; and
- (b) any information or object of any description which is in the prosecutor’s possession and-
 - (i) came into his possession in connection with the case for the prosecution against the accused; and
 - (ii) which in the opinion of the prosecutor may be relevant to the proceedings, including any information or object which may undermine the case for the prosecution or assist the case of the accused.

Part 2
Disclosure

3. Application of this Part

This Part applies where an accused has been charged with a criminal offence.

4. Disclosure of prosecution material

- (1) The prosecutor will, subject to section 5, disclose to the accused any prosecution material which has not previously been disclosed to him—
 - (a) where it is reasonably practicable to do so, not less than 7 days before his first appearance before a Court;
 - (b) in any event as soon as reasonably practicable after the entry of a plea of not guilty.
- (2) The duty imposed on the prosecutor under subsection (1) applies for the duration of the criminal proceedings against the accused.
- (3) Where prosecution material consists of information which has been recorded in any form the prosecutor discloses it for the purposes of this section –
 - (a) by securing that a copy is made of it and that the copy is given to the accused; or
 - (b) if in the prosecutor’s opinion that is not practicable or not desirable, by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so.
- (4) A copy for the purposes of subsection (3) may be in such form as the prosecutor thinks fit and need not be in the same form as that in which the information has already been recorded.
- (5) Where prosecution material consists of information which has not been recorded the prosecutor discloses it for the purposes of this section by securing that it is recorded in such form as he thinks fit and—
 - (a) by securing that a copy is made of it and that the copy is given to the accused; or
 - (b) if in the prosecutor’s opinion that is not practicable or not desirable, by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so.
- (6) Where the prosecution material does not consist of information the prosecutor discloses it for the purposes of this section by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so.
- (7) Where there is no prosecution material of the kind referred to in section 2(b), the prosecutor will give to the accused a written statement of that fact.
- (8) If the accused has at any time reasonable cause to believe that there is prosecution material which has not been disclosed to him he may apply to the Court for an order requiring the prosecutor to disclose such material to him.

5. Withholding of prosecution material

- (1) Prosecution material will not be disclosed in accordance with section 4 to the extent that the Court, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly.
- (2) The factors that a court may take into account in determining whether it is in the public interest to disclose any prosecution material include the following, whether –
 - (a) there are grounds for fearing that disclosure might lead to any person on whose evidence the prosecutor proposes to rely in the proceedings being intimidated, or an attempt being made to intimidate him;
 - (b) it deals with matters of domestic or international security;
 - (c) it is by, or discloses the identity of, a member of the security services who would be of no further use to those services once his identity became known;
 - (d) it is by, or discloses the identity of an, informant or undercover police officer and there are grounds for fearing that disclosure of his identity would put him or his family in danger;
 - (e) it contains information upon the strength of which search warrants were obtained;
 - (f) it contains details of persons taking part in identification parades;
 - (g) it contains details supplied to a police officer during a criminal investigation which relates to a child or young person and which has been generated by any person or organisation charged with matters of child welfare and protection;
 - (h) it contains details which, if they became known, might facilitate the commission of other offences or alert someone not in custody that he was a suspect;

- (i) it discloses, directly or indirectly, techniques and methods relied upon by a police officer in the course of the investigation such as covert surveillance;
 - (j) it contains information revealing the location of any premises or other place used for police surveillance, or the identity of any person allowing a police officer to use them for surveillance;
 - (k) it relates to other offences by, or serious allegations against, someone who is not an accused, or discloses previous convictions or other matter prejudicial to him;
 - (l) it is supplied in confidence.
- (3) Any doubt as to whether disclosure is in the public interest or not will be resolved in favour of disclosure.
- (4) In any case where the Court concludes it would not be in the public interest to make disclosure of any particular information or object in its entirety, it must consider whether a limited form of disclosure is possible and if so, will make an order for disclosure in such terms.
- (5) Where an application is made under subsection (1) and –
- (a) a person claims to have an interest in the material;
 - (b) that person shows that he was involved (whether alone or with others and whether directly or indirectly) in the prosecutor’s attention being brought to the material; and
 - (c) he applies to be heard by the Court,
- the Court must not make an order under subsection (1) unless the person applying under this subsection has been given an opportunity to be heard.
- (6) At any time –
- (a) after the Court makes an order under subsection (1); and
 - (b) before the accused is acquitted or convicted or the prosecutor decides not to proceed with the case concerned,
- the accused may apply to the Court for a review of the question whether it is still not in the public interest to disclose material affected by its order.
- (7) In a case where an application is made under subsection (6), the Court must review that question, and if it concludes that it is in the public interest to disclose material to any extent –
- (a) it will so order; and
 - (b) it will take such steps as are reasonable to inform the prosecutor of its order; and
 - (c) the prosecutor will act accordingly to disclose that material in accordance with section 4 (unless he decides not to proceed with the case concerned).

6. Confidentiality of disclosed material

- (1) If the accused is given or allowed to inspect any prosecution material under section 4 or 5(6) then, subject to subsections (2) to (4), he must not use or disclose it, or any information recorded in it.
- (2) The accused may use or disclose the object or information –
- (a) in connection with the proceedings for which purposes he was given the object or information or allowed to inspect it;
 - (b) with a view to the taking of further criminal proceedings (for instance, by way of appeal) with regard to the matter giving rise to the proceedings mentioned in paragraph (a); or
 - (c) in connection with the proceedings first mentioned in paragraph (b).
- (3) The accused may use or disclose –
- (a) the object to the extent that it has been displayed to the public in open Court; or
 - (b) the information to the extent that it has been communicated to the public in open Court,
- but the preceding provisions of this subsection do not apply if the object is displayed or the information is communicated in proceedings to deal with a contempt of Court under section 7.
- (4) If –
- (a) the accused applies to the Court for an order granting permission to use or disclose the object or information; and

- (b) the Court makes such an order,
the accused may use or disclose the information for the purpose and to the extent specified by the Court.
- (5) An application under subsection (4) may be made and dealt with at any time, and in particular after the accused has been acquitted or convicted or the prosecutor has decided not to proceed with the case concerned; but this is subject to any rules made under section 13.
- (6) Where –
 - (a) an application is made under subsection (4); and
 - (b) the prosecutor or a person claiming to have an interest in the object or information applies to be heard by the Court,
 the Court must not make an order granting permission unless the person applying under paragraph (b) has been given an opportunity to be heard.

7. Confidentiality contravention

- (1) It is a contempt of Court for a person knowingly to use or disclose an object or information recorded in it if the use or disclosure is in contravention of section 6.
- (2) The following Courts have jurisdiction to deal with a person who is guilty of a contempt under this section-
 - (a) the Resident Judge’s Court where the proceedings to which the contempt related were in that Court;
 - (b) the Senior Judges’ Court where the proceedings to which the contempt related were in that Court.
- (3) A person who is guilty of a contempt under this section may be dealt with as follows-
 - (a) the Resident Judge’s Court may commit him to custody for a specified period not exceeding six months or impose on him a fine not exceeding £5000 or both;
 - (b) the Senior Judges’ Court may commit him to custody for a specified period not exceeding two years or impose a fine on him or both.
- (4) If-
 - (a) a person is guilty of a contempt under this section; and
 - (b) the object concerned or a copy of it is in his possession,
 the Court finding him guilty may order that the object or the copy of it will be forfeited and dealt with in such manner as the Court may order.
- (5) The power of the Court under subsection (4) includes power to order the object or the copy to be destroyed or to be given to the prosecutor or to be placed in his custody for such period as the Court may specify.
- (6) If-
 - (a) the Court proposes to make an order under subsection (4); and
 - (b) the person found guilty , or any other person claiming to have an interest in the object, applies to be heard by the Court,
 the Court must not make the order unless the applicant has been given an opportunity to be heard.
- (7) An object or information will be inadmissible as evidence in civil proceedings if to adduce it would in the opinion of the Court be likely to constitute a contempt under this section; and “the Court” here means the Court before which the civil proceedings are being taken.
- (8) The powers of a Court under this section may be exercised either of the Court’s own motion or by order on complaint.

Part 3 Criminal Investigations

8. Introduction

- (1) For the purposes of this Part a criminal investigation is an investigation conducted by police officers with a view to it being ascertained-

- (a) whether a person should be charged with an offence, or
 - (b) whether a person charged with an offence is guilty of it.
- (2) In this Part references to material are to material of all kinds, and in particular includes references to-
- (a) information, and
 - (b) objects of all descriptions.
- (3) In this Part references to recording information are to putting it in a durable or retrievable form (such as writing or tape)

9. Code of Practice

- (1) The Administrator will prepare a code of practice containing provisions designed to secure-
- (a) that where a criminal investigation is conducted all reasonable steps are taken for the purposes of the investigation and, in particular, all reasonable lines of enquiry are pursued;
 - (b) that information which is obtained in the course of a criminal investigation and may be relevant to the investigation is recorded;
 - (c) that any record of such information is retained;
 - (d) that any other material which is obtained in the course of a criminal investigation and may be relevant to the investigation is retained;
 - (e) that information falling within paragraph (b) and material falling within paragraph (d) is revealed to a person who is involved in the prosecution of criminal proceedings arising out of or relating to the investigation and who is identified in accordance with prescribed provisions;
 - (f) that where such a person inspects information or other material in pursuance of a requirement that it be revealed to him, and he requests that it be disclosed to the accused, the accused is allowed to inspect it or is given a copy of it;
 - (g) that where such a person is given a document indicating the nature of information or other material in pursuance of a requirement that it be revealed to him, and he requests that it be disclosed to the accused, the accused is allowed to inspect it or is given a copy of it;
 - (h) that the person who is to allow the accused to inspect information or other material or to give him a copy of it decides which of those (inspecting or giving a copy) is appropriate;
 - (i) that where the accused is allowed to inspect material as mentioned in paragraph (f) or (g) and he requests a copy, he is given one unless the person allowing the inspection is of the opinion that it is not practicable or not desirable to give him one;
 - (j) that a person mentioned in paragraph (e) is given a written statement that prescribed activities which the code requires have been carried out.
- (2) The code may include provision-
- (a) that a police officer identified in accordance with prescribed provisions must carry out a prescribed activity which the code requires;
 - (b) that a police officer so identified must take steps to secure the carrying out by a person (whether or not a police officer) of a prescribed activity which the code requires;
 - (c) that a duty must be discharged by different people in succession in prescribed circumstances (as where a person dies or retires).
- (3) The code may include provision about the form in which information is to be recorded.
- (4) The code may include provision about the manner in which and the period for which-
- (a) a record of information is to be retained; and
 - (b) any other material is to be retained,
- and if a person is charged with an offence the period may extend beyond a conviction or an acquittal.

- (5) The code may include provision about the time when, the form in which, the way in which, and the extent to which, information or any other material is to be revealed to the person mentioned in subsection (1)(e).
- (6) The code may-
 - (a) make different provision in relation to different cases or descriptions of case;
 - (b) contain exceptions as regards prescribed cases or descriptions of case.
- (7) In this section “prescribed” means prescribed by the code.

10. Examples of disclosure provisions

- (1) This section gives examples of the kinds of provision that may be included in the code by virtue of section 9(5).
- (2) The code may provide that if the person required to reveal material has possession of material which he believes is sensitive he must give a document which-
 - (a) indicates the nature of that material; and
 - (b) states that he so believes.
- (3) The code may provide that if the person required to reveal material has possession of material which is of a description prescribed under this subsection and which he does not believe is sensitive he must give a document which-
 - (a) indicates the nature of that material; and
 - (b) states that he does not so believe.
- (4) The code may provide that if-
 - (a) a document is given in pursuance of provision contained in the code by virtue of subsection (2); and
 - (b) a person identified in accordance with prescribed provisions asks for any of the material,

the person giving the document must give a copy of the material asked for to the person asking for it or (depending on the circumstances) must allow him to inspect it.
- (5) The code may provide that if-
 - (a) a document is given in pursuance of provision contained in the code by virtue of subsection (3);
 - (b) all or any of the material is of a description prescribed under this subsection; and
 - (c) a person is identified in accordance with prescribed provisions as entitled to material of that description,

the person giving the document must give a copy of the material of that description to the person so identified or (depending on the circumstances) must allow him to inspect it.
- (6) The code may provide that if-
 - (a) a document is given in pursuance of provision contained in the code by virtue of subsection (3);
 - (b) all or any of the material is not of a description prescribed under subsection (5); and
 - (c) a person identified in accordance with prescribed provision asks for any of the material not of that description,

the person giving the document must give a copy of the material asked for to the person asking for it or (depending on the circumstances) must allow him to inspect it.
- (7) The code may provide that if the person required to reveal material has possession of material which he believes is sensitive and of such a nature that provision contained in the code by virtue of subsection (2) should not apply with regard to it-
 - (a) that provision shall not apply with regard to the material;
 - (b) he must notify a person identified in accordance with prescribed provisions of the existence of the material; and

- (c) he must allow the person so notified to inspect the material.
- (8) For the purposes of this section material is sensitive to the extent that its disclosure would be contrary to the public interest.
- (9) In this section “prescribed” means prescribed by the code.

11. Operation and revision of code

- (1) When the Administrator has prepared a code under section 9 he will publish it in the Gazette.
- (2) A code brought into operation under this section will apply in relation to suspected or alleged offences into which no criminal investigation has begun before the day so appointed.
- (3) The Administrator may from time to time revise a code previously brought into operation under this section and the preceding provisions of this section will apply to a revised code as they apply to the code as first prepared.

12. Effect of Code

- (1) A person other than a police officer who is charged with the duty of conducting an investigation with a view to it being ascertained-
 - (a) whether a person should be charged with an offence; or
 - (b) whether a person charged with an offence is guilty of it,will in discharging that duty have regard to any relevant provision of a code which would apply if the investigation were conducted by police officers.
- (2) A failure-
 - (a) by a police officer to comply with any provision of a code for the time being in operation by virtue of an order under section 9; or
 - (b) by a person to comply with subsection (1),will not in itself render him liable to any criminal or civil proceedings.
- (3) In all criminal and civil proceedings a code in operation at any time by virtue of an order under section 9 will be admissible in evidence.
- (4) If it appears to a Court or tribunal conducting criminal or civil proceedings that-
 - (a) any provision of a code in operation at any time by virtue of an order under section 9; or
 - (b) any failure mentioned in subsection (2)(a) or (b),is relevant to any question arising in the proceedings, the provision or failure will be taken into account in deciding the question.

Part 4 Miscellaneous and Final

13. Administrator’s power to make Rules of Court

The Administrator may, with the advice and assistance of the Presiding Judge, make Rules of Court as to the procedure to be followed in relation to any application to be made under the Ordinance including whether the application will be on notice or ex parte.

14. Repeal

Section 68(4) and (5) of the Criminal Procedure Ordinance are repealed(a).

15. Commencement

This Ordinance will come into effect on 1st September, 2007 and will apply in relation to suspected or alleged criminal offences into which no criminal investigation has begun before that date.

Notes

(a) Cap 155, Statute Laws of Cyprus revised edition 1959, as applied to and adapted in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom) and the Laws (Adaptation and Interpretation) (Consolidation and Extension) Ordinance 1968 (5/68).

EXPLANATORY NOTE

(This note is not part of the Ordinance)

Introduction

1. These explanatory notes relate to the Criminal Procedure (Disclosure) Ordinance 2007. They have been prepared by the office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. They do not form part of the Ordinance.

2. The notes need to be read in conjunction with the Ordinance. They are not, and are not meant to be, a comprehensive description of the Ordinance. When a section or part of a section does not seem to require any explanation or comment, none is given.

The Ordinance

3. The Ordinance provides a formal system of disclosure of 'prosecution material' (evidence and unused material) in criminal proceedings.

4. The Ordinance provides a right of disclosure of all prosecution material, as defined in section 2, unless the Court determines that disclosure would not be in the public interest (section 5). Section 5(2) of the Ordinance contains a non-exhaustive list of grounds which could constitute public interest.

5. Section 6 of the Ordinance imposes a duty of confidentiality in regard to material disclosed under the Ordinance, and section 7 provides penalties for contravention of these obligations.

6. The obligations relating to disclosure fall on the prosecutor, and apply for the duration of the criminal proceedings.

7. Section 9 of the Ordinance provides for the introduction of a code of practice for police officers and other investigators, relating to the conduct of criminal investigations, and the retention, recording and revelation of unused material to the prosecutor.

(SBA/AG/2/CR/152)