
CRIMINAL PROCEDURE (DISCLOSURE)(AMENDMENT) ORDINANCE 2009

An Ordinance to amend the Criminal Procedure (Disclosure) Ordinance 2007 and for related matters.

J. H. GORDON
ADMINISTRATOR

6th May 2009.

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

1. Short Title

This Ordinance may be cited as the Criminal Procedure (Disclosure)(Amendment) Ordinance 2009.

2. Section 2 of the Criminal Procedure (Disclosure) Ordinance 2007 amended

Section 2 of the Criminal Procedure (Disclosure) Ordinance 2007(**a**) (the “principal Ordinance”) is amended by—

- (a) renumbering section 2 as section 2(1);
- (b) inserting the following after section 2(1)—
 - “(2) Where there is more than one accused in any proceedings this Ordinance applies separately in relation to each of the accused.”.

3. New sections 3A and 3B

The following new sections are inserted into the principal Ordinance after section 3—

“3A. Advance information

- (1) As soon as practicable after a person has been charged with an offence or served with a summons in connection with an offence, the prosecutor is to ensure that person has been provided with a notice in writing explaining the effect of this section and setting out the address to which a request under this section may be made.

- (2) If, in any proceedings in respect of which this Ordinance applies, before he is asked whether he pleads guilty or not guilty the accused, or a person representing the accused, asks the prosecutor to provide him with advance information, the prosecutor must, subject to section 3B, provide to the person making the request with the following information (“advance information”)—
 - (a) either—
 - (i) a copy of every part of every witness statement that contains information as to the facts and matters of which the prosecutor proposes to adduce evidence in the proceedings; or
 - (ii) a summary of the facts and matters of which the prosecutor proposes to adduce evidence in the proceedings; and
 - (b) if reference is made to a document in any part of the advance information provided under paragraph (a) and if the prosecutor proposes to rely on that document—
 - (i) a copy of that document; or
 - (ii) sufficient information to enable the person making the request to inspect the document or a copy of it.
- (3) In subsection (2) “written statement” means—
 - (a) a statement made by a person on whose evidence the prosecutor proposes to rely in the proceedings; and
 - (b) if such a person has made more than one written statement, one of which contains information as to all the facts and matters in relation to which the prosecutor proposes to rely, only that statement.

3B. Refusal of request for advance information

- (1) The prosecutor need not comply with section 3A in relation to that fact or matter if the prosecutor is of the opinion that disclosure of that fact or matter might lead to—
 - (a) any person on whose evidence the prosecutor proposes to rely in the proceedings being intimidated or an attempt to intimidate that person being made; or
 - (b) the course of justice otherwise being interfered with.
- (2) If, in accordance with subsection (1), the prosecutor considers that he is not obliged to comply with the requirements of section 3A in relation to any particular fact or matter, he must give notice in writing to the accused to the effect that certain advance information is being withheld by virtue of subsection (1).”.

4. Section 4 amended

Section 4(1) of the principal Ordinance is repealed and replaced by the following—

- “(1) Except to the extent that a Court orders that material need not be disclosed following an application under section 5, after a person is charged or served with a summons in connection with an offence and in respect of which he pleads not guilty the prosecutor must disclose to the accused any prosecution material which has not previously been disclosed to him.”.

5. Section 5 replaced

Section 5 of the principal Ordinance is repealed and replaced by the following—

- “(1) If the prosecutor is of the opinion that it is not in the public interest for any prosecution material to be disclosed he may make an application

to the Court for an order that the material need not be disclosed and following that application the Court may make one of the following orders—

- (a) an order that it is not in the public interest for the material which is the subject of the application to be disclosed and that such material need not be disclosed;
 - (b) an order that—
 - (i) it is not in the public interest for all of the material which is the subject of the application to be disclosed; and
 - (ii) to the extent that it is not in the public interest for such material to be disclosed, it need not be disclosed; or
 - (c) following an application by the accused under subsection (7), or on the Court's own motion under subsection (9), an order that—
 - (i) revokes an order made under paragraph (a) or (b);
 - (ii) replaces an order made under paragraph (a) or (b) with an order made under paragraph (b); or
 - (iii) an existing order is to continue in force.
- (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 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 provided 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 provided 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 is 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, a person other than the 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 is to 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, must make an order under subsection (1)(b).
- (5) If the Court is considering an application under subsection (1) a person (an “interested person”) may apply to the Court to be heard if that person—
 - (a) claims to have an interest in the material to which the application relates; and
 - (b) shows that he was involved (whether alone or with others and whether directly or indirectly) in bringing the prosecutor’s attention to that material.
- (6) The Court must not make an order under subsection (1) without giving an interested person an opportunity to be heard.
- (7) The accused may apply to the Court for a review of the question of whether it continues not to be in the public interest to disclose material which is the subject of an order under subsection (1)—
 - (a) after the Court makes such an order; but
 - (b) before the accused is acquitted or convicted or the prosecutor decides not to proceed with the case concerned.
- (8) If the Court makes an order under subsection (1) that it is not in the public interest to disclose material, the Court must keep under review the question of whether at any given time it is not in the public interest to disclose material that is affected by its order.
- (9) If the Court at any time concludes that it is in the public interest to disclose material to any extent it must make an order under subsection (1)(c)(i) or (ii) and notify the prosecutor of its order.

5A. Withholding of prosecution material: supplementary provisions

- (1) An order under section 5 may only be made by a Senior Judge and may be made and considered without a hearing in open Court.
- (2) If an application is made for an order under section 5, the condition in section 27(6)(c) of the Courts (Constitution and Jurisdiction) Ordinance 2007^(b) does not apply if the application is to be heard by live link.”.

6. Commencement

This Ordinance comes into force on 1st August 2009 and will apply in relation to all criminal proceedings commenced on or after that date.

Notes

- (a) Ordinance 16/07.
- (b) Ordinance 05/07.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

Introduction

1. This explanatory note relates to the Criminal Procedure (Disclosure)(Amendment) Ordinance 2009. It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. This note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So when a section or part of a section does not seem to require any explanation or comment, none is given.

Particular points

3. The Ordinance amends the Criminal Procedure (Disclosure) Ordinance 2007 (the “2007 Ordinance”).

4. The Ordinance removes the provision in the 2007 Ordinance requiring the prosecution to provide full disclosure of prosecution material to the accused where practicable not less than 7 days before that person first appears in Court. Instead, the prosecution must notify the accused that he is entitled to ask for, and receive, advance information before a plea must be entered.

5. The prosecution need not provide advance information if the prosecutor is of the opinion that provision of that information might lead to any person on whose evidence he proposes to rely being intimidated, to an attempt to intimidate him being made or to the course of justice being interfered with.

6. The Ordinance also replaces section 5 of the 2007 Ordinance with sections 5 and 5A. Section 5 relates to applications by the prosecution to withhold prosecution material from the accused. The purpose of the amendments is to clarify the nature of the orders which a Court may make following such an application. The amendment also includes provision for orders not to disclose prosecution material to be kept under continuing review. The Court can revoke an order of its own motion in relation to previously withheld material.

