

OFFICIAL INFORMATION

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Official Information Act 1976

TABLE OF PROVISIONS

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Official Information Act 1976

TABLE OF AMENDMENTS

The Official Information Act 1976 No 16 was certified and commenced on 28 September 1976 (GN No 315/1976; Gaz 49/1976).

Amending Legislation	Certified	Date of Commencement
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

An Act to prohibit the unauthorised communication of certain official information and the use of official information for private gain, and for matters related thereto.

Enacted by the Parliament of Nauru as follows:

1 Short title and commencement

This Act may be cited as the *Official Information Act 1976* and came into effect on 28 September 1976.

2 Interpretation

In this Act:

‘contract’ means a contract between the Republic, or a Minister or a public officer in his or her capacity as Minister or public officer, or an official corporation, as one party thereto and a government contractor as the other party thereto for the supply of goods or the provision of services;

‘government contractor’ means a person with whom the Republic, or a Minister or a public officer in the course of his or her duties, or an official corporation, has entered into a contract and includes:

- (a) any person with whom a government contractor has entered into a contract for that person to make or supply any of the goods or to provide or facilitate the provision of any of the services, to which the contract relates;
- (b) a servant of a government contractor; and
- (c) where a government contractor is a corporation, a director or officer of that corporation;

‘official corporation’ means the Nauru Phosphate Corporation, the Nauru Phosphate Royalties Trust, the Republic of Nauru Finance Corporation, any other corporation wholly owned by the Republic or any other body corporate established by a written law of Nauru and prescribed by the Cabinet by notice in the Gazette as an official corporation for the purposes of this Act;

[*Note: ‘Official corporation’ is a reference to ‘instrumentalities of the Republic’ under the Interpretation Act 2011, or ‘State owned enterprise’ under the Public Enterprises Act 2019.*]

‘official information’ means any document or information which a person has obtained, or to which he or she has had access, by reason of his or her being, or having been, a public officer or a government contractor; and

‘public officer’ means every person holding an office of emolument under the Republic and every person constituting, alone or with other persons, or being a member of the board of directors of, or being employed by, an official corporation.

3 Application of Sections 4 and 5

- (1) Sections 4 and 5 apply to official information relating to:
 - (a) the defence and internal security of the Republic;
 - (b) the relations of the Republic with other countries and with international bodies of which the members are the governments of countries;
 - (c) the currency, financial reserves and economy of the Republic; and

- (d) documents submitted for the consideration of the Cabinet and documents recording the proceedings or decisions of the Cabinet.
- (2) Sections 4 and 5 also apply to:
 - (a) official information relating to the maintenance of law and order in the Republic, if the communication of that information is likely:
 - (i) to assist any person to commit an offence;
 - (ii) to assist any person to escape from lawful custody; or
 - (iii) to impede the prevention or detection of any offence or the apprehension or successful prosecution of any offender; and
 - (b) information received or recorded by a public officer in the course of his or her duties about a person, whether a natural person or a body corporate, the disclosure of which would constitute an unwarranted invasion of that person's privacy.

4 Unlawful communication of official information

- (1) A public officer or government contractor who unlawfully communicates to any other person any official information to which this Section applies is guilty of a cognizable offence and is liable to imprisonment for 2 years.
- (2) A person to whom any official information to which this Section applies is unlawfully communicated and who, knowing or having reason to believe that official information has been unlawfully communicated to him or her, unlawfully communicates that official information to any other person is guilty of a cognizable offence and is liable to imprisonment for 1 year.
- (3) For the purposes of this Section, official information to which this Section applies is deemed to have been communicated unlawfully unless it has been communicated:
 - (a) in accordance with any written law requiring or authorising such communication;
 - (b) in accordance with authority, if any, given by the Cabinet;
 - (c) by a public officer or a government contractor, in the proper performance of that public officer's duties as such or in the proper performance of the contract by that government contractor, as the case may be; or
 - (d) by a person to whom it has been unlawfully communicated, to the appropriate public officer.
- (4) For the purpose of subsection (3)(d), the appropriate public officer is:
 - (a) in the case of official information not relating only to the affairs of an official corporation, the Chief Secretary; and
 - (b) in the case of official information relating only to the affairs of an official corporation, the managing director or the secretary of that official corporation.

5 Failure to take reasonable care

- (1) A public officer or government contractor who is in possession of a document containing official information to which this Section applies and who fails:
 - (a) to take reasonable care to safeguard that document and to prevent it being read or copied by persons to whom that official information cannot lawfully be communicated; or

- (b) to return or dispose of that document in accordance with instructions given in writing by the appropriate authority and notified to him or her, is guilty of an offence and is liable to a fine of \$2,000.
- (2) For the purpose of subsection (1) the appropriate authority to give instructions for the return or disposal of any document is:
 - (a) the Cabinet; or
 - (b) unless expressly provided to the contrary by regulations made under this Act:
 - (i) in the case of a document not belonging to, or not relating only to the affairs of, an official corporation, the Chief Secretary or, where the document originated within a department of the public service to which the officer who is in possession of it belongs, the public service head of that department; and
 - (ii) in the case of a document belonging to, or relating only to the affairs of, an official corporation, that official corporation.

6 Using official information for private gain

- (1) A public officer who uses any official information or who communicates any official information to any other person with the intention of enabling that person to use that official information, for the gain of himself or herself or of any other person, other than the Republic, an official corporation, or the Nauru Co-operative Society, is guilty of an offence and is liable to imprisonment for 1 year.
- (2) A government contractor who uses any official information or who communicates to any other person any official information with the intention of enabling that person to use that official information, for the gain of himself or herself or of any other person, other than the Republic, an official corporation, or the Nauru Co-operative Society, except under and in accordance with the contract in respect of which that official information came into his or her possession, is guilty of an offence and is liable to imprisonment for 1 year.
- (3) A person to whom any official information has been communicated by a public officer or a government contractor in contravention of subsection (1) or subsection (2) and who, knowing or having reason to believe that official information has been communicated to him or her in contravention of either of those subsections, uses that official information for the gain of himself or herself or of any other person, other than the Republic, an official corporation, or the Nauru Co-operative Society, is guilty of an offence and is liable to imprisonment for 1 year.
- (4) For the purpose of this Section, official information is to be deemed to have been used for gain if it has been used for the purpose of making or of attempting to make a gain, or of avoiding or attempting to avoid a loss, in money or money's worth.

7 Classification of certain documents

- (1) The Cabinet may make regulations for documents containing any such official information as is referred to in Section 3 to be marked with the word "*Secret*" or the word "*Confidential*" and prescribing the manner in which documents so marked are to be kept and dealt with.

- (2) A public officer who:
- (a) makes a document required by regulations made under subsection (1) to be marked with the word “*Secret*” or the word “*Confidential*” and who fails to mark that document, or to cause that document to be marked, with that word in accordance with those regulations; or
 - (b) being in possession of any such document, fails to keep it as required by those regulations or deals with it in contravention thereof,
- is guilty of a disciplinary offence under Section 97 of the *Public Service Act 2016*.
- (3) Where a document containing official information and marked with the word “*Secret*” or the word “*Confidential*” comes into the possession of any person otherwise than in a manner authorised by regulations made under subsection (1), that person shall forthwith notify the appropriate authority that it is in his or her possession and shall deliver it or otherwise dispose of it in such manner as the appropriate authority instructs and if he or she fails to do so, he or she is guilty of an offence and is liable to a fine of \$1,000.
- (4) A person, who has in his or her possession a document marked with the word “*Secret*” or the word “*Confidential*”:
- (a) shall not dispose of it in a manner not authorised by regulations made under subsection (1) or by the appropriate authority;
 - (b) shall not make any copy of it or of any part of it unless authorised to do so by regulations made under subsection (1) or by the appropriate authority; and
 - (c) shall not communicate its contents to any other person except:
 - (i) in accordance with authority, if any, given by the Cabinet and notified in writing by the Secretary to the Cabinet; or
 - (ii) in the case of a public officer or a government contractor, in the proper performance of his or her duties as a public officer or in the proper performance of the contract, as the case may be.
- (5) A person who contravenes subsection (4), is guilty of a cognizable offence and is liable to imprisonment for 1 year.
- (6) For the purposes of this Section the expression “the appropriate authority” has the same meaning as in Section 5 and reference to a document marked with the word “*Secret*” or the word “*Confidential*” is to be taken as a reference to a document on which that marking has not been lawfully cancelled.

8 Declassification of documents

- (1) The Cabinet may make regulations for the cancellation of the marking of the word “*Secret*” or the word “*Confidential*” made on any document in accordance with regulations made under Section 7(1).
- (2) A public officer responsible for keeping any document marked with the word “*Secret*” or the word “*Confidential*” in accordance with regulations made under Section 7(1) and who fails to cancel promptly the said marking when such cancellation is authorised by regulations made under subsection (1), is guilty of a disciplinary offence under Section 97 of the *Public Service Act 2016*.

9 Restriction on prosecution

- (1) A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions:
Provided that, in the case of a cognizable offence, a person may be arrested or a warrant for his or her arrest may be issued and executed, and he or she may be remanded in custody or on bail in accordance with the laws of the Republic, notwithstanding that the consent of the Director of Public Prosecutions to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.
- (2) Subsection (1) does not apply to the institution of disciplinary proceedings under the *Public Service Act 2016*.

10 Search

- (1) Where it appears to the Commissioner of Police that the case is one of such great emergency that the interests of the Republic would be imperilled by the delay which would result if application were made for a search warrant to be issued under Section 75 of the *Criminal Procedure Act 1972*, he or she may by a written order under his or her hand give to any police officer authority to search any building, ship, aircraft, vehicle, box, receptacle, place or person for any document in respect of which he or she has reason to believe that an offence under this Act has been, or is about to be, committed or for any thing on which has been recorded official information in respect of which an offence under this Act has been committed and any police officer to whom such authority is given shall have the same powers as he or she would have if authorised by a search warrant issued under Section 75 of the *Criminal Procedure Act 1972*.
- (2) Where a search warrant is issued by a magistrate under Section 75 of the *Criminal Procedure Act 1972* authorising a search for any such document or thing as is referred to in subsection (1), the warrant may also authorise the search of a person.

11 Exclusion of public from courtroom

In addition and without prejudice to any powers which a court may possess to order the exclusion of the public from any proceedings, where in the course of proceedings before a court against any person for an offence under this Act or the proceedings on appeal, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to any national interest of a kind such as is mentioned in Section 3, that all or any portion of the public shall be excluded from the courtroom during any part of the hearing, the court may make an order to that effect, but the passing of sentence shall in every case take place in public.

12 Offences by corporations

Where the person guilty of an offence under this Act is a corporation, every director and officer of the corporation is guilty of the like offence unless he or she proves that the act or omission constituting the offence took place without his or her knowledge or consent.

13 Extent of this Act and place of trial

- (1) This Act applies to every act or omission which is an offence under this Act and which is:
 - (a) committed by a person in the Republic; or
 - (b) committed in any place outside the Republic by a public officer or a government contractor.
- (2) A person who is alleged to have committed outside the Republic an offence under this Act as a public officer or a government contractor may be tried in the Republic.

14 Oath of secrecy

The Cabinet may make regulations:

- (a) prescribing the form of an oath of secrecy to be taken by public officers and government contractors, binding them not to communicate any official information in contravention of any provision of this Act;
- (b) requiring public officers and government contractors to take the oath in prescribed circumstances;
- (c) prescribing the circumstances;
- (d) prescribing by whom oath may be administered; and
- (e) providing for the maintenance and preservation of records of the oath having been taken.

15 Repeal

The *Official Secrecy Ordinance 1938-1967* is repealed.