



Tonga

# OFFICIAL SECRETS ACT

1988 Revised Edition





# OFFICIAL SECRETS ACT

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# OFFICIAL SECRETS ACT

*Acts Nos. 8 of 1964, 2 of 1972 and 12 of 1986.*

## AN ACT TO IMPROVE SECURITY AMONGST GOVERNMENT OFFICERS AND EMPLOYEES

Commencement [16th September, 1964]

### 1 Short title.

This Act may be cited as the Official Secrets Act.

### 2 Interpretation.

In this Act —

“**document**” includes a part of a document;

“**Government Department**” for the purposes of this Act includes any board, commission, corporation or body that is an agent or an instrument of the Government; “**model**” includes a design, pattern or specimen;

“**sketch**” includes any mode of representing any place or thing, whether by photography or otherwise, and in particular a map.

*(Inserted by Act 12 of 1986. )*

**3 Failure to take reasonable measures for safety of documents, etc.**

- (1) If any person holding an office or employment in or under any Government Department of the Kingdom who is required by his duties to have any document, sketch, plan or model, or information in his possession or care —
  - (a) communicates the document, sketch, plan or model or information to any person other than a person to whom he is authorised to communicate it or a person to whom it is in the interest of the Kingdom his duty to communicate it;
  - (b) uses the information in his possession in any manner or for any purpose, prejudicial to the safety or interests of the Kingdom;
  - (c) retains the document, sketch, plan or model in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it, or fails to comply with any directions issued by lawful authority with regard to the return or disposal of it; or
  - (d) fails to take reasonable care of or so conducts himself as to endanger the safety of the document, sketch, plan or model or information, he is guilty of an offence and is liable on conviction on indictment to a fine not exceeding \$1000 and in default of payment thereof to imprisonment for not exceeding 12 months or to both the fine and imprisonment for 12 months.
- (2) On a prosecution under this Act, if, from the circumstances of the case or the conduct of the accused person or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the Kingdom, it shall be deemed that his purpose was such a purpose unless the contrary is proved, whether or not any particular tending to show such a purpose is proved against him.
- (3) If any document, sketch, plan, or model or information is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, it shall be deemed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the Kingdom unless the contrary is proved. (*Amended by Act 12 of 1986.*)

**4 Communicating information, etc., contrary to public interest.**

Any person who by means of his holding or having held an office or employment in or under any Government Department of the Kingdom has lawfully or unlawfully obtained any document, sketch, plan or model, or acquired any information, and at any time corruptly or contrary to his official duty communicates or attempts to communicate the same or any of them to any person to whom the same ought not in the interest of the State, or otherwise in

the public interest, to be communicated at that time, is guilty of the offence of breach of official trust and is liable on conviction on indictment to a fine not exceeding \$2000 or to imprisonment for not exceeding 2 years or to both. (*Amended by Act 12 of 1986.*)

**5 Communicating to a foreign state.**

Any person who makes a communication as described in section 4 of this Act to a foreign State shall be liable on conviction to imprisonment for any period not exceeding 10 years.

**6 Government officer or employee to take oath of secrecy.**

Any Government Officer or employee to whom this Act applies shall on being required to do so by the Head of the Department in which he is employed or about to be employed take the oath set forth in the Schedule to this Act in the presence of the Head of the Department concerned or other officer authorised by the Head of the Department concerned in that behalf.

**7 Inciting, etc. commission of offence.**

Any person who incites or counsels or attempts to procure another person to commit an offence under this Act shall be punishable on conviction as if he had committed the offence.

**8 Supreme Court to have exclusive jurisdiction.**

Notwithstanding any provision in any other Act the Supreme Court will have exclusive jurisdiction in all prosecutions brought under this Act. (*Inserted by Act 2 of 1972.*)

**9 Power of Court to exclude public from proceeding.**

In addition to and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings, if, in the course of proceedings before a Court against a person for an offence against 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 the safety or interests of the Kingdom, that all or any portion of the public should be excluded during any part of the hearing, the Court may make an order to that effect, but the passing of sentence shall in any case take place in public. (*Inserted by Act 12 of 1986.*)

**THE SCHEDULE**

**OFFICIAL SECRETS OATH**

I ..... swear by Almighty God that I shall not communicate any document or sketch, plan or model or information obtained by me by means of my holding or having held an office or employment in or under any Government Department to any person to whom the same or any of them ought not in the interest of the State or otherwise in the public interest to be communicated. So help me God.

Date..... Signature .....