

MISUSE OF INFORMATION IN THE CIVIL AND PUBLIC SERVICE: LEGAL IMPLICATIONS AND POSSIBLE SOLUTIONS

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INTRODUCTION

The past few weeks have seen the wrongful communication of sensitive materials or confidential information, creating an embarrassment to state institutions and serving as an impediment to investigation, administration of policies and the dispensation of duties. Wrongful communication otherwise referred to as leaks or divulging in both the Civil and public service can be injurious to the integrity of any organisation or institution.

Information used in policy making and administration are deemed confidential and treated with utmost priority. The importance accorded to the confidentiality of information has enabled states institutions to establish extensive machinery for their protection. However, most times and quite recently in Sierra Leone, that machinery fails and information is disclosed to the public through wrongful and unauthorised communication by government employees creating an embarrassment for the state and/or the institution. This has led institutions like the Sierra Leone Police to reassert control through its investigative wing and seek appropriate redress at a competent court of jurisdiction.

WRONGFUL COMMUNICATION, DIVULGING OR INFORMATION LEAKS

Wrongful communication by a Civil or Public Servant employed by the state is the communication of sensitive classified state information not meant for public consumption. There are information that state institutions consider to be classified and choose not to disclose. Even though a Civil or public Servant reserves the right to express interest or opinion and contributing information to public discussion of issues of government, it should be noted that the government has several interest which may be threatened by the unauthorised communication of classified information¹.

¹ A M. Katz (1976)

Wrongful communication or divulging of information can endanger the integrity of state institutions that regulate communication of classified information in the interest of the state and the provision of security. Secondly, classified information are deemed sensitive as a result of the protection of the interest of the public and state institution. If encouraged, the divulging of information can threaten the interest of the institution in an open decision making process. It will be difficult if not impossible for policy makers to impose confidence in their employees or subordinate in government discussions when information is not protected. It will not foster efficient administration and would undermine the cooperative working relationship. It is most times argued that “judicially condoned leak would become a means of fighting for positions of power ... and would render government agencies incapable of working cohesively to carry out their functions”². More importantly is the need to preserve the confidence of people outside the state institutions. People dealing with state institutions will always want to be assured that the integrity of their dealings with state institutions is protected.³

Public officers should have a clear understanding of the embarrassment it will cause both on individual and institution when a document is divulged. They occupy a position that demands great confidence and trust and “operate in a work environment that prizes discipline and vilifies (wrongfully communication) as disloyalty”⁴. Public officers regularly interface with the public, receive confidential information that might be detrimental to the victim or witnesses if disclosed. The public expects that their information can be entrusted to a public officer which could be handled with utmost integrity and secrecy. It is therefore expected that public officers should understand the sensitive nature of their postings and the requirement of the public and the institution for every officer to maintain the confidentiality of every information they might be privileged to have. Wrongful communication could seriously impair the trust necessary for effective relationship between the officers of the state and public⁵.

SIERRA LEONE (CIVIL SERVICE) AND WRONGFUL COMMUNICATION

² A. M. Katz (1976) (California Law Review Vol 64 Pg 106)

³ A. M Katz (1976)

⁴ Pozen (2013 pg 531)

⁵ H. Laswell (1950)

Sierra Leone is not without measures in place to handle divulging or wrongful communication. Firstly, it should be noted that the state by the Treason and State Offences Act 1963 makes it a criminal offence for wrongful communication of state document. Section 7 (1) of the Treason and State Offences Act of 1963 states “If any person having in his possession or control any secret official code word, or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or anything in such a place, or which has been made or obtained in contravention of this Act or which has been entrusted in confidence to him by any person holding an office established by the constitution or a public office or which he has obtained or to which he has had access owing to his position as a person who holds or has held any such office as aforesaid or as a person who has who holds or has held a contract made on behalf of the Government, or as a person who is or has been employed under a person or has held any office or contract-

- (a) Communicates the code word, pass word, sketch, plan, model, article, note, document 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 state his duty to communicate it: or
- (b) Uses the information in his possession for the benefit of any external power or in any other manner prejudicial to the safety or interest of the state: or
- (c) Retains the sketch, plan, model, article, note or document 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 all directions issued by lawful authority with regards to the return or disposal thereof; or
- (d) Fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code or pass word or information,

Shall be guilty of an offence

(2) If any person having in his possession or control any sketch, plan, model, article, note, document, or information which relates to munitions of war, communicates it directly or indirectly to any external power, or in any other manner prejudicial to the safety or interest of the state, that person shall be guilty of an offence

(3) If any person receives any secret official code word, or pass word, or sketch, plan, model, article or note, document, or information, knowing or having reasonable ground to believe at the time when he receives it, that the code word, or pass word, sketch, plan model, article, note, document, or information is communicated to him in contravention of this Act, he shall be guilty of an offence unless he proves that the communication to him of the code word, pass word, sketch, plan, model, article, note, document or information was contrary to his desire⁶.

The penalty, if found guilty, is imprisonment not exceeding 5 years or to both fine and imprisonment⁷.

This act relates to everyone and not specifically to any institution or ministries. Notwithstanding that, various institutions have in their rules and regulations disciplinary measures to handle leaks.

THE CIVIL SERVICE

The Civil Service falls under the category of the Executive arm of government and comprises all employees of government, whether appointed on permanent or contract basis (other than holders of political positions, members of the judiciary, Armed forces, police, teachers in schools and tertiary institutions and staff of parastatals) that advice the ministers and implement all decisions and policies which are formulated by Government or laws enacted by the Legislature. The Head of the Civil Service is the Secretary to the Cabinet as established in 68 of the Constitution of Sierra Leone⁸.

The Civil Service is regulated by the Civil Service Code, Regulations and Rules 2011. The Civil Service, borrowing from the words of the former President, 'is the main machinery through which the government articulates and implements its policies and programs'. It is an important arm in the governance of a state. The Civil Servants are the Public Officials who advise and assist Government Ministers in the running of their departments. The Civil Service plays an important role by ensuring that state's policy is carried out; it is politically independent and serves the government of the day. Employees of Civil Service are

⁶ Treason and State Offences Act 1963

⁷ Sec 18 of the Treason and State Offences Act 1963

⁸ Civil Service code, Regulations and Rules 2011

employed by the government to implement the policies of the government. Employment is based on professional merit and institutional tenure survives transitions of political leadership and can only be removed in event of misbehaviour, corruption or gross inefficiency.

The rationale behind the security of tenure for the Civil Servant is to ensure that the nation is equipped with permanent experienced civil servants whose availability ensure continuity. The Principles of the Civil Service entail elements of Selflessness, Professionalism, Transparency and Accountability, Integrity and Impartiality.

Under the emblem of Professionalism and Integrity as established in the Civil Service Code, Regulations and Rules, the Civil Servants are expected to always be loyal to the Government and shall, to the best of their ability, implement Government's policies and decisions impartially, transparently and diligently at all times and shall not seek to frustrate or impede the implementation of the decisions or actions of Government. They should exhibit a high degree of competence and best practice in the discharge of their duties. The Civil Servant shall discharge their duties within the framework of the law and shall not knowingly follow a direction that is contrary to the law.

CRIMINAL IMPLICATIONS OF DIVULGING OR WRONGFUL COMMUNICATION IN THE CIVIL SERVICE

From regulation 11.1 of the Civil Service code, Regulations and Rules 2011, the disciplinary actions meted out against Civil Service in breach of the dispensation of their duties are established.

According to Regulation 11.1, Civil servants shall at all times act in accordance with the laws of Sierra Leone, the provisions of the Civil Service code, Regulations and Rules and Circulars issued by the Director-General. In carrying out their assigned duties, civil servants shall act with integrity, honesty, impartiality and objectivity. It should be noted that the failure to act in accordance with the requirement set out in Regulation 11.1 shall be considered to be official misconduct and shall result in disciplinary actions and by Regulation 11.3, misconduct within the context of regulation 11.2 means a specific act of wrong doing or an

improper behaviour which is inimical to the image of the service and which can be investigated and proved⁹.

Regulation 11.4 (Y) specifically relates to Divulging or Wrongful communication of classified document in the Civil Service. It establishes 'unauthorized or improper disclosure or use of classified or confidential information'¹⁰ as part of an act of misconduct. By this, any Civil Servant who, without authority, discloses confidential information has committed misconduct. It is also interesting to note that as established by the Regulation and Rules, every Civil Servant employed should familiarise themselves with their duties and obligations and the penalties officers may incur if they do not comply with the Civil Service Code and Regulations and Rules. By Rule 11.10, if the nature of the alleged misconduct by the officer is deemed to be a criminal offence and it is considered necessary that in the public interest, the officer should forthwith be prohibited from carrying his/her duties pending a disciplinary enquiry into the alleged misconduct, the head of Ministry/ Department may make recommendations to the Director General that the officer concerned be suspended from duty.

The above are just what have been established in the Civil Service Code, Regulations and rules 2011. According to the Treason and State Offences Act 1963 and as established above, it is a criminal offence to make wrongful communication of government document to the public. Civil Servants suspected of disclosing classified document shall be investigated, prosecuted and on conviction shall be liable to a fine or imprisonment.

THE SIERRA LEONE POLICE AND IMPLICATION FOR DIVULGING

A police officer who breaches confidentiality in the force shall be held accountable. The Sierra Leone Police Manual and the Police (Discipline) Regulations 2001 make it an offence against discipline for officers to divulge sensitive information received during the course of their duty except if it is required by their duties or by legal provisions.

A member of the force commits an offence against discipline under the 2001 regulation if he or she commits an offence under the Disciplinary Code.

⁹Civil Service Code Regulations and Rules

¹⁰Civil Service Code, Regulations and Rules 2001

Section 32-34 of the Second Schedule of the Discipline Code provide that it is an offence against discipline if a member of the Sierra Leone Police “32. divulges any matter or thing which is his duty to keep”; “33 improperly conveys information directly or indirectly to any person of any warrant or summons which has been issued or is about to be issued against such person”; “34. Communicates to any unauthorized person, matters connected with the force without leave from the superior police officer under whom he is serving”¹¹.

Guidelines of officers working at the Family Support Unit (a unit created to handle Sexual and Gender Based Violence Cases) dictate that officers owe a duty of confidentiality to victims of Sexual and Gender Based Violence. Officers can be held accountable for Divulging or Wrongful Communication, if they disclose sensitive information about victims/witnesses to the public or friends and family members. Documents made public about victims or family members should ensure the removal of the victim’s identity including all personal information. No officer has any right to disclose the name and personal identity of a victim to any other person without the prior approval of the victim. In most situations, especially involving Sexual and Gender based violence, victim’s personal information shared without prior consent can be a violation of professional ethics and very traumatizing for the victim

Investigating officers of Sierra Leone Police including but not limited to the Criminal Investigations Department and the Transnational Organised Crime Unit also have a duty of confidentiality to every victim and case under investigation. The conduct of investigation should be displayed with the highest level of integrity and professionalism. No sensitive document including warrant or summons or classified information can be divulged or communicated without the direction of authorities and supervisors. All interviews conducted in relation to every matter should be strictly confidential and every officer has a duty of care to behave in a professional manner so as not to bring the relevant Department and Institution to disrepute.

THE SIERRA LEONE POLICE COMPLAINT DISCIPLINE AND INTERNAL INVESTIGATIONS DEPARTMENT (CDIID)

The CDIID is tasked with the mandate to investigate conduct of police officers contrary to the dictate of the Institution. It receives and handles complaints about police misconduct

¹¹ The Police (Discipline) Regulations 2001

and applies the Police (Discipline) Regulation 2001 (Constitutional Instrument No 2 of 2001) which establishes the general duties of members of the force, the disciplinary process and their sanctions.

On an allegation and report for any misconduct, the CDIID conducts a hearing after gathering enough evidence. The Department can recommend dismissal of an officer or other punishment in accordance with the Regulation (after the hearing) if a police officer is found to breach the regulation. If in the conduct of an internal investigation, it is realised that the offence is also criminal, the officer can be investigated by the Criminal Investigations Department and charged. It is never a case of Double Jeopardy for a person to be investigated and disciplined through an Internal Complaint Division and thereafter investigated and charged to court for trial by the Criminal Investigations Department. "All Agencies have undoubted authority to conduct their own investigations into suspected (divulging or wrongful communication) and to impose a wide range of sanctions including removal, suspension without pay, and denial of access to classified information".¹² A typical matter that can require both an investigation by CDIID and CID is a case of Divulging or Wrongful Communication.

ADDRESSING WRONGFUL COMMUNICATION

Many people do not know that divulging government information is a criminal offence. Most Civil servants do not even know that a law exists which makes Wrongful Communication an offence. Therefore, widespread education should be of prime concern. The increase and advancement of technology has advanced illiteracy and sycophancy in social media. People now quickly take photos of documents and disseminate them at the slightest possibility not knowing the legal implication. Supervisors should ensure they comply with the rules to educate civil and public servants on their rights and duties as servants of state and how they can adequately handle confidential documents. Civil and Public servants are part of the system of administration and must be seen to dispense administration judiciously and with professionalism.

Secondly, the established legal state and institutional provisions that criminalise wrongful communication has to be backed up with clear guidelines for the use and protection of

¹² The Leaky Leviathan pg 540

confidential information and due to the advancement of technology it is equally important for these guidelines to keep pace with developments in communication and other new technology. Policy formulation and implementation on established protocols when handling information should be clearly drafted and popularised in all departments dealing with investigations in the Sierra Leone Police. Added to that, the Sierra Leone Police has despatch offices in every station to handle the despatch of confidential materials. These offices should have a policy to guide the handling and dissemination of confidential or classified information. Also, assignment of police officers to departments should be precipitated by a thorough training on handling confidential information and these trainings should be an ongoing training conducted intermittently.

In addition, monitoring of communication and enforcement of the legal provision can serve as a deterrent to this embarrassing act. It should not be enough for institutional investigation and sanctions. Offenders should be criminally investigated and prosecuted. Most times, the legal provisions of the state are under-enforced to such an extent that people think that there are no laws sanctioning such act. A conviction can serve as a deterrent to any negative future actions. Moreover, a review of the Treason and State Offences Act 1963 dealing with Wrongful Communication should be done to bring in contemporary action and more vigorous enforcement.

CONCLUSION

Wrongful Communication is rapidly increasing in both state institutions creating an embarrassment to both the institution and the state. Adequate measures should be implemented and tailored towards the formulation of guidelines and policies to support established Legislations and the Prosecution and conviction of offenders to create an understanding to the populace that wrongful communication in state institutions is a criminal offence and can attract both institution and state sanctions without amounting to a double jeopardy.

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