

CHAPTER 391

SECURITY SERVICE ACT

To make provision about the Security Service including provision for the issue of warrants and authorisations enabling certain actions to be taken and for the issue of such warrants and authorisations to be kept under review; to establish a procedure for the investigation of complaints about the Security Service and to make provision for the establishment of a Security Committee to scrutinise this Service; to prohibit the interception of communications and for connected purposes.

(26th July, 1996)
(6th September, 1996)*

Enacted by ACT XVII of 1996 as amended by Act XVI of 1997.

1. This Act may be cited as the Security Service Act.

Short title.

2. (1) In this Act-

Interpretation.

"address" means any postal or telecommunication address;

"the Commissioner" means the Commissioner who holds office in terms of section 12 of this Act;

"copy", in relation to intercepted information, means any of the following, whether or not in documentary form -

- (a) any copy, extract or summary of the information; and
- (b) any record of the identities of the persons to or by whom the information was sent,

and cognate expressions shall be construed accordingly;

"external communication" means a communication sent or received outside Malta;

"interception", in relation to a warrant, includes the obtaining possession of, disrupting, destroying, opening, interrupting, suppressing, stopping, seizing, eavesdropping on, surveilling, recording, copying, listening to and viewing of communications and the extraction of information from such communications;

"the Minister" means the Minister from time to time designated by the Prime Minister as being responsible for the Security Service;

"person" includes a body corporate established by law;

"postal" includes anything which in terms of the Post Office Act is transmissible by post as well as anything which is covered by section 21 of the Official Secrets Act;

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"senior government official" is a reference to a Permanent Secretary and the Cabinet Secretary;

"telecommunication" means the transmission of messages or of

*See subsection (2) of section 1 of the Act as originally enacted, which subsection has been omitted under the Statute Law Revision Act, 1980, and Legal Notice 141 of 1996.

sound or visual images by wire activated by electricity or by radio waves or by any other electromagnetic energy or by optical energy or by a combination of any two or more of such systems and shall include telegraphy and telephony;

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"wireless telegraphy" has the same meaning as in the Wireless Telegraphy Ordinance;

"working day" means any day other than a Saturday or a public holiday.

(2) For the purposes of this Act a communication which is in the course of its transmission otherwise than by means of a wireless telegraphy or telecommunication system shall be deemed to be in the course of its transmission by means of such a system if its mode of transmission identifies it as a communication which -

- (a) is to be or has been transmitted by means of such a system; and
- (b) has been sent from, or is to be sent to, a country or territory outside Malta.

(3) For the purposes of this Act conduct which constitutes or, if it took place in Malta, would constitute one or more offences shall be regarded as serious crime if, and only if -

- (a) it involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose; or
- (b) the offence or one of the offences is an offence for which a person who has attained the age of eighteen and has no previous convictions would be liable on conviction to imprisonment for a minimum term of not less than three years; or
- (c) the offence or one of the offences being a crime is an offence which has been scheduled as such by the Prime Minister by notice in the Gazette.

The Security Service.

3. (1) There shall continue to be a Security Service (in this Act referred to as "the Service") under the authority of the Minister.

(2) The function of the Service shall be to protect national security and, in particular, against threats from organised crime, espionage, terrorism and sabotage, the activities of agents of foreign powers and against actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means.

(3) It shall also be the function of the Service to act in the interests of -

- (a) the economic well-being of Malta; and
- (b) public safety, in particular, the prevention or detection of serious crime.

4. (1) The operations of the Security Service shall continue to be under the control of a head of the Service appointed by the Prime Minister.

The head of the Security Service.
Amended by:
XVI. 1997.8.

(2) The head of the Service shall be responsible for the efficiency of the Service and it shall be his duty to ensure -

- (a) that there are arrangements for securing that no information is obtained by the Service except so far as necessary for the proper discharge of its functions and that no information is disclosed by it except so far as necessary for that purpose or for the purposes of any criminal proceedings; and
- (b) that the Service does not take any action to further the interests of any political party.

(3) The arrangements mentioned in paragraph (a) of subsection (2) above shall be such as to ensure that information in the possession of the Service is not disclosed for use in determining whether a person should be employed, or continue to be employed, by any person, or in any office or capacity except in accordance with provisions in that regard approved by the Minister.

(4) Without prejudice to the generality of paragraph (a) of subsection (2) above, the disclosure of information shall be regarded as necessary for the proper discharge of the functions of the Service if it consists of -

- (a) the disclosure of records subject to the approval of the Minister and in accordance with the National Archives Act; or
- (b) the disclosure, subject to and in accordance with arrangements approved by the Minister, of information to the Auditor General personally for the purposes of his functions in relation to the Service.

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(5) The head of the Security Service shall make an annual report on the work of the Service to the Prime Minister and the Minister and may at any time report to either of them on any matter relating to its work.

5. Members of the Service shall be appointed by the head of the Service under such terms and conditions as may be approved by the Minister and shall include -

Members of the Security Service.

- (a) any public officer;
- (b) any member of and any other person employed or appointed in or for the purposes of the armed forces of Malta;
- (c) any member of and any other person employed or appointed in or for the purposes of the Malta Police Force as well as of any other disciplined force of the State;
- (d) any person who, in terms of the Official Secrets Act is either:
 - (i) a member or employee of a prescribed body or a

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body of a prescribed class, a holder of a prescribed office or an employee of such a holder; or

- (ii) a government contractor;
- (e) any director of and any other person employed or appointed in or for the purposes of -
 - (i) any body set up by law;
 - (ii) any company where a majority of its voting shares are controlled by the Government;
 - (iii) any company providing postal, wireless telegraphy or telecommunication services;

for the time being required in writing by the Minister following a request by the head of the Service to assist the Security Service in carrying out its functions.

Warrants: general.

6. (1) No entry on or interference with property shall be unlawful if it is authorised by a warrant issued by the Minister under this section.

(2) No interception of or interference with communications in the course of their transmission by post or by means of a wireless telegraphy or telecommunication system or by any other means shall be unlawful if it is authorised by a warrant issued by the Minister under this section.

(3) The Minister may, on an application made by the Security Service, issue or modify a warrant under this section authorising the taking of such action as is specified in the warrant in respect of any property so specified or in respect of any communications so specified if the Minister -

- (a) thinks it necessary for the action to be taken on the ground that it is likely to be of substantial value in assisting the Service in carrying out any of its functions under this Act; and
- (b) is satisfied that what the action seeks to achieve cannot reasonably be achieved by other means; and
- (c) is satisfied that satisfactory arrangements are in force under this Act with respect to the disclosure of information obtained by virtue of this section and that any information obtained under the warrant will be subject to those arrangements.

Warrants:
interception.

7. (1) Subject to subsection (2) below, the interception or interference with communications required by a warrant shall be the interception of or interference with -

- (a) such communications as are sent to or from one or more addresses specified in the warrant, being an address or addresses likely to be used for the transmission of communications, to or from -
 - (i) one particular person specified or described in the warrant; or

-
- (ii) one particular set of premises so specified or described; and
- (b) such other communications (if any) as it is necessary to intercept or interfere with in order to intercept or interfere with communications falling within paragraph (a) above.
- (2) Subsection (1) above shall not apply to a warrant if -
- (a) the interception or interference required by the warrant is the interception or interference, in the course of their transmission by means of a wireless telegraphy or telecommunication system, of -
- (i) such external communications as are described in the warrant; and
- (ii) such other communications (if any) as it is necessary to intercept or interfere with in order to intercept or interfere with such external communications as are so described; and
- (b) at the time when the warrant is issued, the Minister issues a certificate certifying the descriptions of information the examination of which he considers necessary as mentioned in paragraph (a) of subsection (3) of section 6 above.
- 8.** (1) A warrant shall not be issued or modified except -
- (a) under the hand of the Minister; or
- (b) in an urgent case where the Minister has expressly authorised its issue or modification and a statement of that fact is endorsed on it, under the hand of a senior government official.
- (2) A warrant shall, unless renewed under subsection (3) below, cease to have effect -
- (a) if the warrant was under the hand of the Minister, at the end of the period of six months beginning with the day on which it was issued; and
- (b) in any other case, at the end of the period ending with the second working day following that day.
- (3) A warrant may at any time be modified.
- (4) If at any time before the day on which a warrant would cease to have effect the Minister considers it necessary for the warrant to continue to have effect for the purpose for which it was issued, he may by an instrument under his hand renew it for a period of six months beginning with that day.
- (5) The Minister shall cancel a warrant if he is satisfied that the action authorised by it is no longer necessary.
- (6) In the preceding provisions of this section "warrant" means a warrant under section 6 above.

Warrants:
procedure and
duration, etc.

Authorisation of
acts outside Malta.

9. (1) If, apart from this section, a person would be liable under any law in Malta for any act done outside Malta, he shall not be so liable if the act is one which is authorised to be done by virtue of an authorisation given by the Minister under this section and is one which the Minister may authorise under this Act or consists in the arrest of any person or is an act done in furtherance of any of those acts or for the purpose of retrieving property of the Government of Malta to return the same to Malta.

(2) The Minister shall not give or modify an authorisation under this section unless he is satisfied -

(a) that any acts which may be done in reliance on the authorisation or, as the case may be, the operation in the course of which the acts may be done will be necessary for the proper discharge of a function of the Security Service; and

(b) that there are satisfactory arrangements in force to secure-

(i) that nothing will be done in reliance on the authorisation beyond what is necessary for the proper discharge of a function of the Security Service; and

(ii) that, in so far as any acts may be done in reliance on the authorisation, their nature and likely consequences will be reasonable, having regard to the purposes for which they are carried out; and

(c) that there are satisfactory arrangements in force under this Act with respect to the disclosure of information obtained by virtue of this section and that any information obtained by virtue of anything done in reliance on the authorisation will be subject to those arrangements.

(3) Without prejudice to the generality of the power of the Minister to give an authorisation under this section, such an authorisation -

(a) may relate to a particular act or acts, to acts of a description specified in the authorisation or to acts undertaken in the course of an operation so specified;

(b) may be limited to a particular person or persons of a description so specified; and

(c) may be subject to conditions so specified.

(4) An authorisation shall not be given or modified under this section except -

(a) under the hand of the Minister; or

(b) in an urgent case where the Minister has expressly authorised it to be given or modified and a statement of that fact is endorsed on it, under the hand of a senior government official.

(5) An authorisation shall, unless renewed under subsection (6) below, cease to have effect -

- (a) if the authorisation was given under the hand of the Minister, at the end of the period of six months beginning with the day on which it was given;
- (b) in any other case, at the end of the period ending with the second working day following the day on which it was given.

(6) An authorisation given under this section may be modified at any time.

(7) If at any time before the day on which an authorisation would cease to have effect the Minister considers it necessary for the authorisation to continue to have effect for the purpose for which it was given, he may by an instrument under his hand renew it for a period of six months beginning with that day.

(8) The Minister shall cancel an authorisation if he is satisfied that any act authorised by it is no longer necessary.

10. (1) The requirements of paragraph (c) of subsection (3) of section 6 are satisfied in relation to any information if each of the following, namely - Safeguards.

- (a) the extent to which the information is disclosed;
- (b) the number of persons to whom any of the information is disclosed;
- (c) the extent to which the information is copied; and
- (d) the number of copies made of any of the information,

is limited to the minimum that is necessary as mentioned in paragraph (a) of subsection (3) of section 6.

(2) The requirements of paragraph (c) of subsection (3) of section 6 are satisfied in relation to any intercepted information if each copy made of any of that information is destroyed as soon as its retention is no longer necessary as mentioned in paragraph (a) of subsection (3) of section 6 above.

11. Where it appears to him to be necessary to do so, the Prime Minister may exercise any of the powers of the Minister under this Act subject to the same review of the exercise of those powers as would apply to the exercise of those powers by the Minister. Powers of the
Prime Minister.

12. (1) The Prime Minister shall appoint as a Commissioner for the purposes of this Act a person who holds or has held the office of judge of the superior courts or who has held the office of Attorney General: The
Commissioner.

Provided that if a Commissioner is not so appointed by the Prime Minister the Attorney General shall automatically assume the functions of Commissioner until such time as a Commissioner shall be so appointed.

(2) The Commissioner shall hold office in accordance with the terms of his appointment and, in the case of a Commissioner who is

not a serving judge of the superior courts or the Attorney General, there shall be paid to him by the Minister such allowances as the Prime Minister may determine.

(3) (a) In addition to his functions under the subsequent provisions of this Act, the Commissioner shall keep under review the exercise by the Minister of his powers under sections 6 to 10 above.

(b) In the discharge of his functions under the Act, the Commissioner shall act in his individual judgment and shall not be subject to the direction or control of any other person or authority and shall not be liable to be questioned by any court.

(4) It shall be the duty of any person falling under one of the descriptions contained in subsection (2) of section 18 to disclose or give to the Commissioner such documents or information as he may require for the purpose of enabling him to discharge his functions.

(5) The Commissioner may at any time report to the Prime Minister on any matter relating to the discharge of his functions under this Act.

(6) The Commissioner shall make an annual report on the discharge of his functions.

(7) The Prime Minister shall put before the Security Committee a copy of each annual report made by the Commissioner under subsection (6) above together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (8) below.

(8) If it appears to the Prime Minister, after consultation with the Commissioner, that any matter in a report would be prejudicial to the continued discharge of the functions of the Security Service, the Prime Minister may exclude that matter from the copy of the report as put before the Security Committee.

Investigation of
complaints.

13. (1) The Commissioner shall also investigate complaints about the Security Service in the manner specified in Schedule 1 to this Act.

(2) The decisions of the Commissioner under Schedule 1 to this Act shall not be subject to appeal or liable to be questioned in any court.

The Security
Committee.

14. (1) There shall be a Committee, to be known as the Security Committee, to examine the expenditure, administration and policy of the Security Service.

(2) The Security Committee shall consist of the Prime Minister, the Minister, the Minister responsible for Foreign Affairs and the Leader of the Opposition.

(3) Schedule 2 to this Act shall have effect with respect to the procedure of and other matters relating to the Security Committee.

(4) The Security Committee shall make an annual report of the discharge of their functions.

(5) The Prime Minister shall lay before the House of Representatives a copy of each annual report made by the Security Committee under subsection (4) above together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (6) below.

(6) If it appears to the Prime Minister, after discussion in the Security Committee, that the publication of any matter in a report would be prejudicial to the continued discharge of the functions of the Security Service, the Prime Minister may exclude that matter from the copy of the report as laid before the House of Representatives.

15. (1) Subject to the following provisions of this section, a person who intentionally intercepts or interferes with a communication in the course of its transmission by post or by means of a wireless telegraphy or telecommunication system or by any other means shall be guilty of an offence and shall be liable, on conviction, in respect of each offence to imprisonment for a term not exceeding two years or to a fine (*multa*) not exceeding five thousand liri or to both such imprisonment and fine.

Prohibition of interception.

(2) A person shall not be guilty of an offence under this section if -

- (a) the communication is intercepted or interfered with in obedience to a warrant issued by the Minister under section 6 above; or
- (b) that person has reasonable grounds for believing that the person to whom, or the person by whom, the communication is made or sent has consented to the interception or interference.

(3) A person shall not be guilty of an offence under this section if the communication is intercepted or interfered with for purposes connected with the provision of postal, wireless telegraphy or telecommunication services or with the enforcement of any enactment relating to the use of those services.

16. (1) A person engaged in the business of providing a postal, wireless telegraphy or telecommunication service who otherwise than in the course of his duty intentionally discloses to any person -

Disclosure of messages, etc.

- (a) the contents of any communication which has been intercepted in the course of its transmission by means of that service; or
- (b) any information concerning the use made of postal, wireless telegraphy or telecommunication services provided for any other person by means of that service,

shall be guilty of an offence.

(2) Subsection (1) above does not apply to -

- (a) any disclosure which is made for the prevention or detection of crime or for the purposes of any criminal proceedings;

- (b) any disclosure of matter falling within paragraph (a) of that subsection which is made in obedience to a warrant issued by the Minister under section 6 of this Act or in pursuance of a requirement imposed by the Commissioner under subsection (2) of section 12 of this Act; or
- (c) any disclosure of matter falling within paragraph (b) of that subsection which is made in the interests of national security, the economic well-being of Malta or public safety, or in pursuance of the order of a court.

(3) For the purposes of paragraph (c) of subsection (2) above a certificate signed by the Minister, or by the Attorney General, certifying that a disclosure was made in the interests of national security, the economic well-being of Malta or public safety shall be conclusive evidence of that fact; and a document purporting to be such a certificate shall be received in evidence and deemed to be such a certificate unless the contrary is proved.

(4) Any person who intentionally discloses the contents of any communication which has been intercepted in the course of its transmission by means of a postal, wireless telegraphy or telecommunication service, where he knows or reasonably ought to have known, that such contents have been unlawfully obtained, shall be guilty of an offence.

(5) A person guilty of an offence under this section shall be liable, on conviction, in respect of each offence to imprisonment for a term not exceeding one year or to a fine (*multa*) not exceeding five thousand liri or to both such imprisonment and fine.

No proceedings to be taken without sanction of the Attorney General.

Exclusion of evidence.

17. No prosecution for any offence against this Act shall be instituted without the authority of the Attorney General.

18. (1) In any proceedings before any court or tribunal no evidence shall be adduced and no question in cross-examination shall be asked which (in either case) tends to suggest -

- (a) that an offence under sections 15 or 16 above has been or is to be committed by any of the persons mentioned in subsection (2) below; or
- (b) that a warrant has been or is to be issued to any of those persons:

Provided that nothing in this subsection shall be deemed to preclude the disclosure in evidence of any information which may be disclosed in accordance with or under any other provision of this Act.

(2) The persons referred to in subsection (1) above are -

- (a) any member of the Security Service;
- (b) any public officer;
- (c) any person engaged in the business of providing postal, wireless telegraphy or telecommunications services;

- (d) any person who, in terms of the Official Secrets Act is either: Cap. 50.
- (i) a government contractor; or
 - (ii) a member or employee of a prescribed body or a body of a prescribed class, a holder of a prescribed office or an employee of such a holder.

(3) Subsection (1) above does not apply -

- (a) in relation to proceedings for a relevant offence or complaints proceedings before the Commissioner; or
- (b) where the evidence is adduced or the question in cross-examination is asked for the purpose of establishing the fairness or unfairness of a dismissal on grounds of an offence under section 15 above or of conduct from which such an offence might be inferred;

and paragraph (a) of that subsection does not apply where a person has been convicted of the offence under that section.

(4) In this section "relevant offence" means -

- (a) an offence under sections 15 and 16 above or under sections 46 and 47 of the Telemalta Corporation Act* Cap. 250.
or sections 50, 51 and 55 of the Post Office Act; Cap. 254.
- (b) an offence under section 3 of the Official Secrets Act relating to any sketch, plan, model, article, note, document or information which tends to suggest as mentioned in subsection (1) above; Cap. 50.
- (c) an offence under section 9 of the Official Secrets Act relating to any such information, document or article as is mentioned in subsection (3) of that section;
- (d) perjury committed in the course of proceedings for a relevant offence;
- (e) that offence committed by whosoever attempts, aids, abets, counsels or procures the commission of an offence falling within any of the preceding paragraphs; and
- (f) contempt of court committed in the course of, or in relation to, proceedings for a relevant offence.

(5) Notwithstanding the provisions of any other law, no warrant or other order shall be issued or made by any court restraining any person or authority from the exercise of any of the powers conferred by this Act.

*Repealed by the Telecommunications (Regulation) Act (Chapter 399).

SCHEDULES

SCHEDULE 1

(Section 13)

INVESTIGATION OF COMPLAINTS

Preliminary

1. Any person may complain to the Commissioner if he is aggrieved by anything which he believes the Security Service has done in relation to him or to any property of his; and unless the Commissioner considers that the complaint is frivolous or vexatious he shall deal with it in accordance with this Schedule.

Investigations by the Commissioner

2. The Commissioner shall investigate -
- (a) whether the Security Service has obtained or provided information or performed any other tasks in relation to the actions or intentions of the complainant; and
 - (b) if so, whether the Security Service had reasonable grounds for doing what it did.

Functions of the Commissioner in relation to complaints

3. (1) The Commissioner shall investigate, as the case may require -
- (a) whether a warrant was issued under section 6 of this Act in relation to the property or communications concerned; or
 - (b) whether an authorisation was given under section 9 of this Act to the doing of the act in question.
- (2) If the Commissioner finds that a warrant was issued or an authorisation was given, he shall determine whether the Minister was acting properly in issuing, modifying or renewing the warrant or, as the case may be, in giving, modifying or renewing the authorisation.

Report of conclusions

4. (1) Where the Commissioner determines under paragraphs 2 or 3 above that the Security Service or the Minister did not have reasonable grounds for doing what it or he did, he shall -
- (a) give notice to the complainant that he has made a determination in his favour; and
 - (b) make a report of his findings to the Prime Minister.
- (2) Where in the case of any complaint no such determination as is mentioned in sub-paragraph (1) above is made by the Commissioner, he shall give notice to the complainant that no determination in his favour has been made on his complaint.

Special references

5. If in any case investigated by the Commissioner -
- (a) his conclusions on the matters which he is required to investigate are

such that no determination is made by him in favour of the complainant; but

- (b) it appears to him from the allegations made by the complainant that it is appropriate for there to be an investigation into whether the Security Service has in any other respect acted unreasonably in relation to the complainant or his property,

he shall so investigate and report to the Prime Minister.

Remedies

6. (1) Where the Commissioner gives a complainant notice of such a determination as is mentioned in sub-paragraph (1) of paragraph 4 above, the Commissioner may do one or more of the following, namely:

- (a) direct that the obtaining and provision of information in relation to the complainant or, as the case may be, the conduct of other activities in relation to him or to any property of his shall cease and that any records relating to such information so obtained or provided or such other activities shall be destroyed;
- (b) quash any warrant or authorisation which the Commissioner has found to have been improperly issued, renewed, given or modified and which he considers should be quashed;
- (c) recommend to the Prime Minister that the complainant be paid such sum by way of compensation as may be specified by him.

(2) Where the Prime Minister receives a report under paragraph 5 above, he may take such action in the light of the report as he thinks fit, including any action which the Commissioner has power to take or direct under the preceding provisions of this paragraph.

Procedure

7. (1) Subject to sub-paragraph (2) of paragraph 8 below, the Commissioner shall carry out his functions under this Act in such a way as to secure that no document or information disclosed or given to him by any person is disclosed without his consent to any complainant, or to any other person; and accordingly the Commissioner shall not, except in reports under item (b) of sub-paragraph (1) of paragraph 4 of this Schedule, give any reasons for a determination notified by him to a complainant.

(2) Subject to sub-paragraph (1) above, the Commissioner may determine his own procedure.

Staff and expenses

8. (1) The Prime Minister may, after consultation with the Minister responsible for finance, provide the Commissioner with such staff and shall defray such expenses as he thinks necessary for the proper discharge of his functions under this Act.

(2) The Commissioner may authorise any member of staff provided in terms of sub-paragraph (1) above, to obtain any documents or information on his behalf.

References

9. Any reference in this Schedule to a complainant's property includes -
- (a) a reference to any communication originated or received or intended to be received by him; and
 - (b) a reference to any place where the complainant resides or works.

Supplementary

10. The persons who may complain to the Commissioner under this Schedule include any organisation and any association or combination of persons.

Transitory

11. Any person who feels aggrieved by anything which he believes the Security Service has done in relation to him or to any property of his before the coming into force of this Act shall complain to the Commissioner within six months after the coming into force of this Act and the Commissioner may unless he considers that the complaint is frivolous or vexatious grant any remedy in accordance with paragraph 6 above as if such thing shall have been done by the Security Service pursuant to a warrant by the Minister under this Act.

SCHEDULE 2

[Section 14(3)]

THE SECURITY COMMITTEE*Procedure*

1. Subject to the following provisions of this Schedule, the Committee may determine their own procedure.
2. (1) The Committee shall be chaired by the Prime Minister.
- (2) If on any matter there is an equality of voting among the members of the Committee, the chairman shall have a second or casting vote.
- (3) The chairman may appoint one of the members of the Committee to act, in his absence, as chairman at any meeting of the Committee.
- (4) The quorum of the Committee shall be two.

Access to information

3. (1) If the head of the Security Service is asked by the Committee to disclose any information, then, as to the whole or any part of the information which is sought, he shall either -
- (a) arrange for it to be made available to the Security Committee subject to and in accordance with arrangements approved by the Prime Minister; or
 - (b) inform the Committee that it cannot be disclosed either -

-
- (i) because it is sensitive information (as defined in paragraph 4 below) which, in his opinion, should not be made available under item (a) above; or
 - (ii) because the Prime Minister has determined that it should not be disclosed.

(2) The fact that any particular information is sensitive information shall not prevent its disclosure under item (a) of sub-paragraph (1) above if the head of the Security Service considers it safe to disclose it.

(3) Information which has not been disclosed to the Security Committee on the ground specified in sub-item (i) of item (b) of sub-paragraph (1) above shall be disclosed to them if the Prime Minister considers it desirable in the public interest.

(4) The Prime Minister shall not make a determination under sub-item (ii) of item (b) of sub-paragraph (1) above with respect to any information on the grounds of national security alone and, subject to that, he shall not make such a determination unless the information appears to him to be of such a nature that, if he were requested to produce it before a Select Committee of the House of Representatives, he would think it proper not to do so.

(5) The disclosure of information to the Security Committee in accordance with the preceding provisions of this paragraph shall be regarded for the purposes of this Act as necessary for the proper discharge of the functions of the Security Service.

Sensitive Information

4. The following information is sensitive information for the purposes of paragraph 3 above:

- (a) information which might lead to the identification of, or provide details of, sources of information, other assistance or operational methods available to the Security Service;
 - (b) information about particular operations which have been, are being or are proposed to be undertaken in pursuance of any of the functions of the Security Service; and
 - (c) information provided by, or by an agency of, a foreign government where that government does not consent to the disclosure of the information.
-