

Rwanda

## Ministerial Order determining which Information could Destabilize National Security

Ministerial Order 5 of 2013

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# Ministerial Order determining which Information could Destabilize National Security

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## Rwanda

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## Ministerial Order 5 of 2013

Published in Official Gazette 2 on 13 January 2014

**Assented to on 19 December 2013**

**Commenced on 13 January 2014**

*[This is the version of this document from 13 January 2014.]*

### **The Minister of Local Government;**

Pursuant to the Constitution of the Republic of Rwanda of 04 June 2003 as amended to date, especially in Articles 33, 34, 120, 121 and 201;

Pursuant to Law n° 04/2013 of 08/02/2013 relating to access to information, especially in Article 5;

After consideration and approval by the Cabinet, in its session of 09/10/2013;

### **HEREBY ORDERS:**

## **Chapter One General provisions**

### **Article One – Purpose of this Order**

This Order determines which information could destabilize national security.

### **Article 2 – Definitions of terms**

In this Order, the following terms shall have the following meaning:

- 1° **Information:** facts, things intended to be done, speeches held in reports, documents to be published, pictures, mails, opinions advice, circulars, orders, logbooks, contracts, papers, samples, and any other material of public interests held in any form by a public organ and certain organs of private bodies;
- 2° **Classified information:** State information that has been determined under this Order that may be afforded heightened protection against unlawful disclosure;
- 3° **Classification authority:** the entity or person authorized to classify State information, and includes:
  - (a) a head of an organ of State;
  - (b) any official to whom the authority to classify State information has been delegated in writing by a head of an organ of State;
- 4° **Declassification authority:** entity or person authorized to declassify classified information;
- 5° **National Security:** protection, against internal and external threats, of national defence, national foreign relations and protection of national vital interests pertaining *inter alia* to national economy and national institutions of governance.
- 6° **Secret information:** sensitive information, the disclosure of which is likely or could reasonably be expected to cause serious harm to national security. Secret information shall also mean or refer to State Secrets.

### **Article 3 – Objectives of this Order**

The objectives of this Order shall be to:

- 1° regulate the modalities for protection of State information;
- 2° promote transparency and accountability in governance while recognizing that State information may be protected from disclosure in order to safeguard the national security interest;
- 3° define the nature and categories of information that may be protected from destruction, loss or unlawful disclosure;
- 4° provide for the classification and declassification of classified information;
- 5° harmonize the implementation of this Order with the promotion of access to Information Law.

## **Chapter II**

### **Classification and protection of harmful information to national security**

#### **Section One – Classification of information**

##### **Article 4 – Conditions for classification**

The decision to classify information must be based solely on the following conditions:

- 1° information classification is justified by the protection of national security;
- 2° State information is classified due to a clear, justifiable and legitimate need to do so or to a demonstrable need to protect it in the interest of national security.

##### **Article 5 – Classification level markings on documents and other materials**

Information, documents and other materials whose disclosure could be harmful to national security shall bear classification markings in accordance with the provisions of this Order.

The competent authority shall determine the classified information and non classified information on the basis of the time limit.

#### **Section 2 – Classification of classified information**

##### **Article 6 – Classified information levels**

Classified information levels shall be the following:

- 1° Top Secret as the highest level of classification of information of national security interest including vital State Secrets whose disclosure would cause extremely serious harm to national security and interests. The possible impact must be great, immediate and irreparable.
- 2° Secret including important State Secrets whose disclosure would cause serious harm to national security and interests.
- 3° Confidential including State Secrets whose disclosure would cause harm to national security and interests.
- 4° Restricted including such material that would cause undesirable and limited effects to national security.

## Article 7 – Classified information of the Top secret level

Information shall be classified as *Top Secret* when:

- 1° in case of its disclosure to unauthorized person, it would lead to the occurrence of extremely serious damages to the internal or external security of the State or provide great benefit to any other State which would form or may form a threat to the Republic of Rwanda;
- 2° it is related to plans and details of military and intelligence operations;
- 3° it is contained in highly important documents on policies relating to international relations, agreements, conventions and all discussions and studies therewith;
- 4° it is a very important information relating to arms, ammunition, military installations/infrastructure or any other information related to national security whose disclosure forms a threat to the internal or external security of the State;
- 5° In case of its disclosure to unauthorized persons, it would lead to the extreme detriment of the interests of the State, form serious embarrassment to it, causing administrative or economic difficulties for the State;
- 6° In case of its disclosure to unauthorized person, it would lead to death.

## Article 8 – Classified information of the Secret level

Information shall be classified as ‘Secret’ if its disclosure would seriously cause:

- 1° harm to national security and interest;
- 2° damage to the operational effectiveness of Rwanda’s security organs or allied forces;
- 3° damage to diplomatic relations;
- 4° international tension;
- 5° disruption of national infrastructure.

## Article 9 – Classified information of the Confidential level

Information classified as ‘*Confidential*’ shall include:

- 1° any documents relating to an administrative or criminal investigation, classified tenders, unless the disclosure of the content thereof is permissible by competent authority.
- 2° intelligence reports, unless they fall within another higher classification.
- 3° information which, if disclosed, may demoralize the citizens.
- 4° any information whose disclosure to unauthorized person would lead to shut down or substantially disrupt significant national infrastructure

## Article 10 – Level of classified information in case of doubt

When the level of classified information is doubtful, it shall be handled as restricted unless determined by a competent authority.

## **Section 3 – Protection of classified information**

### **Article 11 – Handling of classified information**

Documents and other material that fall under the classification levels provided for in Article 6 of this Order shall be protected as follows:

- 1° they shall not be copied or extracted without approval by the State institution that determined their classification;
- 2° necessary security measures shall be taken for their dispatch, distribution and reception;
- 3° they shall be under the custody of few authorized staff.

### **Article 12 – Responsibilities of government institutions**

State institutions in charge of national security and foreign relations shall formulate security measures regarding the marking, receiving, dispatching, transmitting, use, copying, extracting, preservation and destruction of documents and other material and objects that include information of national security interests.

Any place used in connection with the maintenance of State security, pertaining to arsenals, military and intelligence establishments and other key Government installations shall be declared restricted places. No one shall decide to open it to the public without approval obtained in accordance with the relevant State regulations.

### **Article 13 – Protection of persons with classified information**

Unless proved for otherwise by a competent authority, no information officer shall be punished for failure to provide access to classified information or whose classification is in doubt.

### **Article 14 – Protection of information related to defense and security**

In the interest of national security, an information officer may refuse a request for access to information if its disclosure would:

- 1° prejudice the defense, security or sovereignty of the Republic of Rwanda;
- 2° reveal military tactics or strategy or military exercise or operations undertaken in preparation of hostilities or in connection with the detection, prevention, suppression or curtailment of subversive or hostile activities;
- 3° reveal the quality, characteristics, capabilities, vulnerabilities or deployment of weapons or any other equipment used for the detection, prevention, suppression or curtailment of subversive or hostile activities; or anything being designed, developed, produced or considered for use as weapons or such other equipment;
- 4° reveal methods of, and scientific or technical equipment for, collecting, assessing or handling information related to intelligence.

### **Article 15 – Protection of information related to foreign relations**

An information officer shall not disclose any information related to foreign relations if its disclosure would prejudice the diplomatic/foreign relations of the Republic of Rwanda. For the purpose of this Order, this information shall include:

- 1° an information supplied by or on behalf of the State to another State or an international organization in terms of an international agreement with that State or organization which requires the information to be held in secret;

- 2° information required to be held in secret, pursuant international Law;
- 3° information on the positions adopted or to be adopted by the state, another state or an international organization for the purpose of present or future international negotiations;
- 4° an information that constitutes diplomatic correspondence exchanges with another state or with an international organization or official correspondence exchanges with diplomatic missions or consular posts of the country with an express expectation of confidentiality;
- 5° any other information expressing confidentiality.

### **Article 16 – Protection of information related to critical economic interests and infrastructure security**

An information officer shall not disclose any information related to critical national economic interests and infrastructure if its disclosure would:

- 1° endanger the country's economy;
- 2° cause significant disruption of infrastructure;
- 3° expose the country's infrastructure to acts of sabotage and terrorism.

## **Section 4 – Declassification**

### **Article 17 – Declassification period**

Information classified as “*Top Secret, secret, confidential and restricted*” shall be deemed declassified respectively as follows:

- 1° Top Secret after a period of twenty five (25) years,
- 2° Secret after a period of twenty (20) years;
- 3° Confidential after a period of fifteen (15) years;
- 4° Restricted after a period of ten (10) years.

However, the periods referred to in Paragraph One of this Article could be extended or reduced by competent classifying authorities.

Classified information shall be automatically declassified upon the expiration of period referred to in Paragraph One of this Article unless these periods are extended or reduced by competent authorities.

## **Chapter III Prohibitions**

### **Article 18 – Prohibited acts**

The following acts shall be prohibited:

- 1° intentional revelation of State Secrets in any form and by any means with the intention to use such secrets against the Republic of Rwanda;
- 2° voluntarily revelation of a State secret and accessing to a State secret with a view to reveal it;
- 3° destroying or allowing another person to destroy anything that contains a State secret he/she obtained or accessed that should have been reported to competent authorities;

- 4° voluntarily revelation of a State secret that a person knows or knew in the course of his/her duties or functions, to any person not authorized or qualified;
- 5° spreading false information with intent to create a hostile international opinion against the Rwandan State;
- 6° publish, disseminate, transmit or reveal in any form classified information to a foreign country or its agents military operations on troops, arsenals, materials, ammunitions, air/marine navigation machines, installations belonging to Republic of Rwanda or for its defence and security;
- 7° inducing Rwanda Defence Forces to serve a foreign country;
- 8° exposing the Republic of Rwanda to hostility of a foreign country;
- 9° offering or accepting a price or favors with intent to cause hostilities in Rwanda;
- 10° undermining National Defence;
- 11° aiding and abetting terrorism.

### **Article 19 – Punishment of unlawful disclosure of classified information**

Any person who commits the following offenses with regard to unlawful disclosure information shall be punished in accordance with relevant provisions of the Penal Code:

- 1° unlawful copying, recording, or storage of classified information;
- 2° delivery of classified information through wired or wireless communication, and other public information networks;
- 3° Reference to any classified information of national security interest in private contacts or correspondence;
- 4° disclosing military and security operations that could undermine national security or undercover security agents that may expose their lives to danger.

### **Article 20 – Illegal acquisition of classified information**

Persons who steal, spy on, buy or acquire classified information contrary to provisions of this Order shall be punished in accordance with the Penal Code.

### **Article 21 – Illegal access to a restricted area**

Any person who gains unauthorized access to or assists any other person to gain unauthorized access to a restricted area that is custody to information of national security interest may be punished in accordance with the Penal Code.

## **Chapter IV Final provisions**

### **Article 22 – Repealing provision**

All prior provisions contrary to this Order are hereby repealed.

### **Article 23 – Commencement**

This Order shall come into force on the date of its publication in the Official *Gazette* of the Republic of Rwanda.