

PROTECTION OF state INFORMATION IN COURTS

Protection of state information before courts

[46.] 55. (1) In any proceedings where an official or a functionary of an organ of state intends to file a record that contains classified information, that official or functionary must alert court officials and the court of the classification of the information and request court officials to protect the record or parts of the record that contain classified information from disclosure or publication pending a court determination on the proper handling of such information during the course of the legal proceedings.

[(1)] (2) Classified information that is **[placed before a court]** filed in the manner contemplated in subsection (1) may not be disclosed to persons not authorised to receive such information unless a court, in the interests of justice, and upon considering issues of national security [, **national interest security of the Republic as referred to in section 11 and any other law**], orders full or limited disclosure, with or without conditions.

[2] (3) Unless a court orders the disclosure of classified information or orders the limited or conditional disclosure of classified information, the court must issue directions for the proper protection of such information during the course of legal proceedings, which may include, but not limited to—

- (a) the holding of proceedings, or part thereof, *in camera*;
- (b) the protection from disclosure **[and]** or publication of those portions of the record containing the classified information; or

(c) the implementation of measures to confine disclosure to those specifically authorised to receive the state information.

[(3)] (4) A court may not order the disclosure of classified information without taking reasonable steps to obtain the written or oral submissions of the classification authority that made the classifications in question or alternatively to obtain the submissions of the Director-General of the Agency.

[(4)] The submissions referred to in subsection (3) may not be publicly disclosed and any hearing held in relation to the determination referred to in subsection (1) must be held *in camera* and any person not authorised to receive such state information may not attend such hearings unless authorised by a court].

(5) If it appears to a court that it would, in any hearing held in relation to the determination referred to in subsection (2), be in the interest of national security or in the interest of justice that such hearing be held *in camera* or that the submission referred to in subsection (4) be not publicly disclosed, the court may direct that the hearing must be held *in camera* and that any person not authorised to receive such state information may not be present at such hearing.

[(5)] (6) A court may, if it considers it appropriate, seek the written or oral submissions of interested parties, persons and organisations but may not disclose the actual classified information to such persons or parties prior to its order to disclose the state information in terms of subsection (1).

[(6)] (7) A classification authority or the Director-General of the Agency, as the case may be, in consultation with the relevant Minister, must declassify state information required in legal proceedings, either in whole or in part, unless it is strictly necessary to maintain the classification in terms of this Act.

[(7)] (8) In addition to the measures set out in this section, a court in criminal proceedings has the same powers as those conferred upon a court under section 154(1) and (4) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and the said section applies with the necessary changes.

[(8)] (9) Any person who discloses or publishes any classified information in contravention of an order or direction issued by a court in terms of this section is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 10 years.

[(9) (a)] The head of an organ of state may apply to a court for an order restricting the disclosure of unclassified state information that is part of, or is intended to be part of an open court record, which, if publicly disclosed or published, may undermine the national **[interest] security**.

(b) A court hearing such an application may determine its own procedures and may impose limitations on the disclosure of the **state information in question pending its decision**].

[(10)] (11) A court which acts in terms of this section must endeavour to accommodate the principle of open justice to as great an extent as possible without risking or compromising the national **[interest.] security**.

[(11)] At any court hearing relating to this Act it is mandatory that a minimum of three judicial officers preside over the matter.]