

# Law Commission review on protection of official data

## SUBMISSION FROM TRANSPARENCY INTERNATIONAL UK

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### Introduction

In this submission, Transparency International UK (TI-UK) provides a response to the Law Commission consultation on protection of official data. Unfortunately as a relatively small charity, we do not currently have the resources to respond in detail to your consultation. However, we do have some specific points regarding aspects of the proposals that relate to the Official Secrets Act (OSA) and whistleblowing.

### Principles for reform of the Official Secrets Act

Transparency International UK supports the following principles drawn up by Public Concern at Work and other civil society organisations:

**The proposals will inhibit public scrutiny:** They threaten to have a chilling effect on whistleblowers and journalists, thereby reducing scrutiny of the Executive.

**Any reform needs to include a public interest defence:** The UK's courts and laws already grapple with the public interest test and are well placed to apply this defence.

**There is a need to prove damage in prosecutions for disclosure:** There is a need for the prosecution to prove damage in cases of disclosure of classified information. There will be no route to defend disclosures in light of public interest arguments in OSA trials if this is not required and the public interest defence is not valid.

**The case for extending protected information to economic matters has not been made:** The argument has been made that economic information should be added to the list of sensitive information protected by the OSA where it "*relates to national security*", but there is no clear rationale for this move. Such a move would mean that past OSA reforms would be reversed, with a negative impact on progress made regarding openness and transparency.

**The proposed increase in prison terms is excessive:** There is a proposal to reverse the OSA reforms made in 1989 which replaced wide ranging offences that conflated espionage with disclosures with a tighter drawn set of offences. It can thus be argued the proposals bring back the previously discredited offences but with greater personal jeopardy for those affected.

**Journalists and editors should not face prosecution for handling secret data:** The handlers, recipients and journalists involved with sensitive information would be captured by the proposed reforms. This is a serious threat to the freedom of the press and should be resisted if we are to maintain this vital element of our democratic system.

## About Transparency International UK

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

We work in the UK and overseas, challenging corruption within politics, public institutions, and the private sector, and campaign to prevent the UK acting as a safe haven for corrupt capital. On behalf of the global Transparency International movement, we work to reduce corruption in the high risk areas of Defence & Security and Pharmaceuticals & Healthcare.

We are independent, non-political, and base our advocacy on robust research.

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