

GUIDANCE PAPER

TRA Treatment of Confidential and Non-Confidential Information

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A Guidance Paper issued by the Telecommunications Regulatory Authority on its treatment of Confidential and Non-confidential Information

Purpose: To provide guidance on TRA treatment of confidential and non-confidential information, including how such information is used for the purposes of receiving and inspecting complaints



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1 Introduction

- 1.1 The Telecommunications Regulatory Authority (“TRA”) takes seriously the treatment of confidential information and its obligation not to divulge any confidential information under Section 23 of the law promulgated by Legislative Decree No. 48 of 2002 (“the Telecommunications Law”). A breach of confidentiality may lead to the penalties as described in the Telecommunications Law and Bahraini law generally.
- 1.2 When dealing with confidential information TRA is guided by these obligations and is committed to preserving the confidentiality of information therefore issues this Guidance Paper (“Paper”) on what it considers to be "المعلومات السرية" / “confidential information” for the purposes of Section 23 of the Telecommunications Law.
- 1.3 The Arabic text and English translation of section 23 of the Telecommunications Law is set out in the Annex to the paper.
- 1.4 Unless indicated otherwise the word “person” has the meaning of any natural or artificial person or public authority.
- 1.5 This Paper is provided as guidance only. It should not be considered as legal advice.

2 “المعلومات السرية” / “Confidential Information”

- 2.1 **TRA will generally consider any information received from users, subscribers, telecommunications operators or other persons to be non-confidential information.**
- 2.2 TRA will only consider that information possessed by a person is confidential to that person for the purposes of Section 23 where:
 - (a) the information is not or has not been publicly circulated or published by the person;
 - (b) the information is not readily accessible to persons in the telecommunications market or is not otherwise in the public domain; and
 - (c) the information has a commercial value or relates to personal particulars or private affairs of a natural person.

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- 2.3 In the event that the information provider notifies TRA in writing that it considers certain information to be confidential then TRA will consider the information provided and the provider's reasoning for the confidentiality and the criteria for confidentiality above to determine if TRA considers the information confidential. Failure by the provider to notify TRA that it considers information to be confidential will be considered to be an acknowledgment of non-confidentiality of the information.
- 3.4 However, TRA retains discretion to decide that information is confidential even when there is no such request from the information provider to keep information confidential.

3 Confidentiality with Respect to Complaints, Disputes and Related Documentation

- 3.1 In accordance with paragraph 2.1 above TRA will not ordinarily consider complaints or disputes to be confidential unless in accordance with paragraph 2.3 the information provider requests the information to be considered confidential and TRA determines that the information is confidential.
- 3.2 Upon receipt of a complaint TRA may determine whether to investigate the complaint and in doing so may, without the further written authorization of the complainant, inform the operator or person the subject matter of the complaint of the following information, unless that information is confidential:
- (a) Identity of the complainant;
 - (b) Nature of the complaint;
 - (c) Facts relating to the complaint;
 - (d) Allegations of the complainant with respect to the person or operator;
 - (e) The full text of the complaint (including Annexes).
- 3.3 If TRA determines that all or part of the information provided to TRA in the complaint is confidential information TRA may ask the complainant to waive its rights regarding the confidentiality.
- 3.4 TRA may decline to investigate a complaint where the complainant does not waive the alleged confidentiality and where as a result this will prevent TRA from properly investigating the complaint.

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3.5 **For the avoidance of doubt** the guidelines above will apply to all information related to the complaint or dispute, including responses to requests for information made under section 53 of the Telecommunications Law.

4 Exceptions to Prohibition on Divulging Confidential Information

4.1 TRA will divulge confidential information only in the following circumstances:

- (a) where the confidential information is required by law or by a court order to be provided to a government authority or other third party;
- (b) in accordance with section 3(d) of the Telecommunications Law where in order to effectively perform its functions and duties TRA is of necessity required to provide confidential information to contracted third parties such as consultants for the purposes of performing a task or prospective consultants for the purposes of quoting for the performance of a task and only after such third parties have signed binding confidentiality agreements subject to the law of the Kingdom of Bahrain in terms similar to section 23 of the Telecommunications Law and which also prohibit the third party from similarly subcontracting the task or request for a quote to any other party or person not employed by the third party.

5 Publication of Information received by TRA

5.1 In accordance with section 54 of the Telecommunications Law TRA shall publish, in such form and manner it deems appropriate, such of the information collected in accordance with the provisions of the Telecommunications Law as may appear to TRA to be appropriate, including such information and advice as it may be expedient to give to Subscribers and Users.

5.2 When fulfilling the obligation referred to in the preceding paragraph, TRA shall have regard to the need to exclude any information which relates to the private, special or particular affairs of a Person and information whose publication would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of any Person.

5.3 Whereas TRA considers that “information” referred to in this section of the Telecommunications Law is any information, including both confidential and non-confidential information, TRA considers that, by its very nature, non-confidential information generally cannot be considered as relating to the private, special or particular affairs of a Person nor can its disclosure seriously and prejudicially affect the interests of any Person.

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6 Meaning of “أمور خاصة”/ “private affairs”

- 6.1 “أمور خاصة”, which is translated as “private affairs” can be also translated as “special affairs” or “particular affairs”¹.
- 6.2 What is considered to be private, special or particular information will be assessed on a case by case basis and based upon facts available to TRA at the time of the assessment.

7 Meaning of “ضررا جسيما”/ “seriously and prejudicially affect”

- 7.1 “ضررا جسيما”², which is translated as “seriously and prejudicially affect” can also be translated as “serious damage” or “prejudicial damage”.
- 7.2 Therefore when considering whether to publish information TRA will consider whether such publication will have the effect of causing serious or prejudicial damage or harm to the interests of any Person, both natural and juristic.
- 7.3 What is considered seriously or prejudicially harmful or damaging will be assessed on a case by case basis and based upon facts available to TRA at the time of the assessment.
- 7.4 When considering whether publication will be seriously or prejudicially harmful or damaging TRA will also take into account whether the public interest in the disclosure outweighs the level of prejudice, harm or damage of the person’s interests that might follow disclosure, given the information available to TRA. This is to ensure that TRA meets with its overriding duties:
- (a) to protect the interests of subscribers and users under section 3(b)1 of the Telecommunications Law; and
 - (b) to promote effective and fair competition among new and existing licensed operators under section 3(b)2 of the Telecommunications Law.

¹ Munir Baalbaki, Dr. Rohi Baalbaki, *Al-Mawrid English Arabic and Arabic English Dictionary*, 9th Edition, Dar El-Ilm Lilmalayin, Lebanon, January 2005, “أمور” p. 168, “خاصة” p. 499.

ضررا جسيما: د. روجي البعلبكي، منير البعلبكي،، كانون الثاني/يناير ٢٠٠٥، قاموس المورد المزدوج (انجليزي عربي-عربي انجليزي) ،لبنان، دار العلم للملايين، الطبعة التاسعة، “أمور” ص: ١٦٨، “خاصة” ص: ٤٩٩.

² Munir Baalbaki, Dr. Rohi Baalbaki , *Al – Mawrid English Arabic and Arabic English Dictionary*, 9th Edition, Dar El-Ilm Lilmalayin, Lebanon, January 2005, “ضرر” p. 711, “جسيم” p. 423.

ضررا جسيما: قاموس المورد المزدوج (انجليزي عربي-عربي انجليزي) ، د. روجي البعلبكي، منير البعلبكي، دار العلم للملايين، الطبعة التاسعة، كانون الثاني/يناير ٢٠٠٥، ضرر ص: ٧١١، جسيم ص: ٤٢٣.

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ANNEX

Relevant Provisions of the Telecommunications Law relating to Confidentiality

Section 23 of the Telecommunications Law states that:

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TRA uses the following English translation of this section as a guide to the interpretation of the authoritative Arabic text:

"The General Director and staff members of the Authority shall not be permitted to divulge any confidential information to third parties which may come directly or indirectly to their knowledge during the course of their work. This obligation shall continue even after such Persons leave the service of the Authority."

Publication of Information

Section 54 of the Telecommunications Law states that:

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TRA uses the following English translation of this section as a guide to the interpretation of the authoritative Arabic text:

"(a) The Authority shall, at least once a year, arrange for the publication, in such form and manner it deems appropriate, of such of the information collected in accordance with the provisions of this Law as may appear to the Authority to be appropriate, including such information and advice as it may be expedient to give to Subscribers and Users.

(b) When fulfilling the obligation referred to in the preceding paragraph, the Authority shall have regard to the need to exclude any information which relates to the private affairs of a Person and information whose publication would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of any Person."