ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER F26

FINANCIAL INTELLIGENCE UNIT ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 38/2020, in force 16 December 2020

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FINANCIAL INTELLIGENCE UNIT ACT

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FINANCIAL INTELLIGENCE UNIT ACT

PART 1
PRELIMINARY

Interpretation

1. In this Act—

"benefit" has the meaning given in the Proceeds of Crime Act;

"Court" means the High Court;

"Director" means the person appointed as the director of the Unit pursuant to section 13;

"document" means a document in any form and includes—

(a) any writing or printing on any material;

(b) any record of information or data, however compiled, whether stored in paper, electronic, magnetic or any other non-paper based form;

(c) any storage medium, including discs and tapes;

(d) books and drawings;

(e) a photograph, film, tape, negative or other medium in which one or more visual images are embodied so as to be capable with or without the aid of equipment of being reproduced; and

(f) any court application, order and other legal process;

"Egmont Group" means that group of Financial Intelligence Units which subscribe to the Egmont Principles for Information Exchange and Financial Intelligence for Money Laundering cases;

"financial crimes" means any offence involving money or other benefits and includes any offence involving fraud, dishonesty, money laundering or financing of terrorism pursuant to the Proceeds of Crime Act;

"financial institution" has the meaning given in the Proceeds of Crime Act;

"financial intelligence unit" means a central public body responsible for receiving and, where permitted, requesting, analysing and disseminating disclosures of financial information—

(a) concerning the proceeds of crime or the suspected proceeds of crime;

(b) required by any law for the purposes of combatting money laundering; or

(c) concerning any other financial crime;

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"foreign financial intelligence unit" means a financial intelligence unit of a country or territory outside of Anguilla, which performs in a country or territory, functions corresponding to the functions of the Unit;

"property" includes money and all other property, real or personal, including things in action and other intangible or incorporeal property;

"public body" means—

(a) any Ministry, Department or other agency of Government; or

(b) a statutory body;

"Reporting Authority" has the same meaning as is given in the Proceeds of Crime Act;

"terrorism" has the meaning given in the Anti-money Laundering and Terrorist Financing Regulations;

"Unit" means the Financial Intelligence Unit established pursuant to Part 2;

"Unit officers" means the persons referred to in section 4(1)(c) to (e).

Savings for mutual assistance and exchange of information

2. Nothing in this Act affects—

(a) the provision of assistance under the Mutual Legal Assistance in Criminal Matters Act and regulations; or

(b) the exchange of information under the Tax Information Exchange (International Cooperation) Act and regulations.

PART 2

ESTABLISHMENT OF FINANCIAL INTELLIGENCE UNIT

Establishment of Financial Intelligence Unit

3. The Financial Intelligence Unit is established and shall comprise—

(a) the Intelligence Division; and

(b) the Investigations Division.

Administration and staff

4. (1) The Unit shall comprise—

(a) a Director;

(b) a Deputy Director;

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(c) two or more financial analysts;

(d) two or more financial investigators; and

(e) such other officers and agents as may be necessary for the efficient operation of the Unit, who are employed by secondment, appointment or on a contractual basis.

(2) The persons referred to in subsection (1) shall be—

(a) appointed by the Governor; and

(b) responsible for the due administration and the performance of the Unit's functions under this Act or any other Act.

Employment and secondment of police officers and other public officers

5. (1) Notwithstanding anything contained in any other enactment and subject to subsection (2), where a person who immediately prior to 16 December 2020 was employed in the public service or the Royal Anguilla Police Force and was attached to the Reporting Authority pursuant to the Proceeds of Crime Act, but has subsequently resigned, the Governor, after consultation with the Public Service Commission may appoint such person on terms and conditions that are no less favourable to those enjoyed by that person in the public service or the Royal Anguilla Police Force prior to his or her resignation.

(2) The Governor shall not appoint any person under subsection (1) if that person has indicated expressly his unwillingness to be so employed.

(3) The Governor may, subject to such conditions as he may impose after consultation with the Public Service Commission, and with the consent of the officer, approve appointment or secondment of an officer in the public service or the Royal Anguilla Police Force to any office within the Unit and an officer so appointed or seconded shall, in relation to pension, gratuity or other allowances, and other rights as a public officer, be treated as continuing in service in the public service in Anguilla.

(4) Nothing contained in subsection (1) shall have any bearing or relevance to an agreement between the Government of Anguilla and an individual concerning employment with the Unit.

Functions of the Unit

6. (1) The Unit is the primary institution in Anguilla with responsibility for the maintenance of intelligence and conducting of investigations concerning financial crimes including—

(a) terrorism and terrorist financing; and

(b) proliferation financing.

(2) Without limiting the foregoing and notwithstanding any other law to the contrary, the Unit shall have the power to—

(a) conduct separate or parallel investigations relating to financial crimes including cash seizures, civil and criminal recovery, money laundering, terrorist financing and financing of proliferation pursuant to the Proceeds of Crime Act or any other related enactment;

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(b) collect, request, receive, process, analyse and interpret—

(i) information and maintain intelligence databases in relation to activities outlined in subsection (2)(a),

(ii) suspicious activity reports and any other reports made to or received by the Unit under this Act, the Proceeds of Crime Act or any other related enactment, and

(iii) trends and typologies for the combating of financial crimes;

(c) manage, safeguard and maintain control over property seized, restrained or forfeited under this Act, the Proceeds of Crime Act or any other enactment, in connection with proceedings relating to financial crimes;

(d) inform persons and bodies including foreign financial intelligence units, that have made reports or provided information for the purposes of the Proceeds of Crime Act, or any other enactment, about measures that have been taken with respect to the report or information;

(e) subject to section 31, where the Director considers it necessary in relation to the investigation of a financial crime, disseminate the reports or disclose information referred to in subsection (2)(b) to—

(i) the Governor,

(ii) the Attorney-General,

(iii) the Commissioner of Police,

(iv) the Comptroller of Inland Revenue,

(v) the Comptroller of Customs,

(vi) the Chief Immigration Officer, or

(vii) any other public body, law enforcement authority or foreign financial intelligence unit;

(f) investigate, or cause to be investigated—

(i) at the request of the Attorney-General, the Commissioner of Police or any other public body, or

(ii) on the initiative of the Director,

any person who is reasonably suspected of being involved in the commission of a financial crime;

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(g) undertake measures to educate and inform public bodies, relevant authorities and supervisory authorities with respect to—

(i) the Unit's obligation under this Act,

(ii) the nature and extent of activities relating to financial crimes in Anguilla,

(iii) action taken to combat activities relating to financial crimes and the effectiveness of these actions, and

(iv) any other matter deemed necessary by the Director;

(h) formulate and implement management guidelines and policies and an annual plan approved by the Governor, for the control and prevention of financial crimes;

(i) collect, compile and publish annually in such manner and form as the Unit determines, statistical information relating to disclosures made to the Unit and any dissemination of such disclosures by the Unit; and

(j) carry out such other functions as may be specified in this Act, the Proceeds of Crime Act or any other related enactment.

(3) Subject to section 11, the Unit shall take such action as it considers appropriate in relation to information and reports referred to in subsection (2)(b).

(4) The Unit shall receive all disclosures of information, including information from a foreign financial intelligence unit, through the Egmont Group or by other means, which—

(a) concern the proceeds of crime, money laundering, terrorism or the financing of terrorism or the suspected proceeds of crime, suspected money laundering, suspected terrorism or the suspected financing of terrorism; and

(b) are relevant to its responsibilities as a financial intelligence unit.

(5) Where a constable receives a terrorist financing disclosure, he shall forthwith pass the disclosure to the Unit.

(6) For the purposes of this section—

"constable" has the meaning given in the Anti-terrorist Financing Order, but excludes the Unit;

"money laundering" means an act which—

(a) constitutes a money laundering offence; or

(b) would constitute a money laundering offence if done in Anguilla;

"money laundering offence" means—

(a) an offence under section 119, 120 or 121 of the Proceeds of Crime Act;

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(b) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a); or

(c) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a); and

"terrorist financing disclosure" has the meaning given in the Anti-money Laundering and Terrorist Financing Regulations.

Other investigatory powers not affected

7. The conferral of powers of investigation upon the Unit by this Act shall not be construed as affecting the exercise of any investigatory powers conferred upon any other Unit, or law enforcement agency in Anguilla, whether such powers are similar to these powers or not.

Powers of arrest, search and seizure

8. The Director, Deputy Director and the unit officers shall have the same powers of arrest and search and seizure as police officers and customs officers, pursuant to the provisions of the Anguilla Police Act and the Customs Act respectively, in relation to the carrying out of their duties and functions under this Act or any other Act.

Delegation

9. (1) The Director may delegate in writing, the exercise of any function conferred upon him under this Act to such person, hereinafter called the "delegate", as he thinks fit, but the person to whom the functions of the Director have been delegated may not delegate his functions to a third person.

(2) Any act done by or in relation to the delegate pursuant to the delegated function shall have the same effect as if done by or in relation to the Director.

(3) Every delegation under subsection (1) is revocable by the Director and the delegation of a function shall not preclude the performance of that function by the Director.

(4) For the avoidance of doubt, a delegation under subsection (1) shall also subject the delegate to the same obligations as would apply under this Act to the Director's exercise of such function, and accordingly, the delegate shall be liable for any wrongful act or omission of the delegate occurring in the exercise of that function.

Issuance of identification card

10. (1) The Governor shall issue the Director, Deputy Director and each unit officer an identification card containing such information as may be prescribed and the Director, Deputy Director and unit officer shall, on entering any place for the purpose of carrying out any functions pursuant to this Act or any other enactment, produce the identification card to the owner or the person in charge of such place.

(2) Where a person is no longer employed with the Unit, he shall immediately return the identification card provided to him under subsection (1).

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of $10,000 or to imprisonment for a term of six months or to both.

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Obligation of secrecy and oath

11. (1) Every person having an official duty or being employed in the administration of this Act shall—

(a) regard and deal with as secret and confidential, all documents or other information, relating to the functions of the Unit; and

(b) upon assuming such duty or employment make and subscribe an oath or affirmation before the Governor in the Form set out in the Schedule to this Act.

(2) Every person who formerly had an official duty or was formerly employed in the administration of this Act shall regard and deal with as secret and confidential, documents or other information relating to the functions of the Unit.

(3) Any person to whom information is communicated pursuant to this Act, shall regard and deal with such information as secret and confidential.

(4) Notwithstanding subsections (1) to (3), a person may disclose such documents or other information where such disclosure is required or permitted—

(a) by this Act or any other enactment;

(b) by a court order; or

(c) pursuant to an agreement or arrangement entered into for the exchange or disclosure of information pursuant to this Act.

(5) A person who contravenes this section commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of 12 months or to a fine of $20,000 or to both; or

(b) on conviction on indictment, to imprisonment for a term of 6 years or to a fine of $100,000 or to both.

(6) For the purposes of this section "information" includes information from which a person can be identified and which is acquired by the Unit in the course of carrying out its functions.

Protection of persons exercising functions under Act

12. (1) No—

(a) civil or criminal action, suit or other proceedings from breach of confidentiality may be brought;

(b) professional sanction for a breach of confidentiality may be taken;

against any person, who in good faith, under this Act or any other related enactment, provides or transmits information requested by the Unit or submits a report to the Unit.

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(2) No civil or criminal action, suit or proceedings may be brought or instituted personally against—

(a) the Director;

(b) the Deputy Director;

(c) a unit officer; or

(d) a person to whom a function is delegated under section 9;

for anything done or omitted to be done in the purported exercise of power or discharge of any function or duty under this Act or any other related enactment.

(3) Where the Attorney-General has reasonable grounds to believe that such act or omission referred to in subsection (2) was in bad faith, the Attorney-General shall have power to institute and undertake criminal proceedings against any person, or discontinue any such criminal proceedings instituted by any other authority against any person, in the purported exercise of power or discharge of any function or duty under this Act.

PART 3

DUTIES OF DIRECTOR

Appointment and qualification of Director

13. (1) The Governor shall, after consultation with the Attorney-General, appoint a Director.

(2) The Director shall have experience and qualifications in criminal or financial investigation, financial crimes, law, law enforcement, national security or finance.

Disqualification for appointment

14. (1) A person is disqualified from being appointed as the Director and shall not be appointed or continue to be appointed as the Director if he—

(a) is or becomes a member of the House of Assembly;

(b) has been adjudged or otherwise declared as bankrupt, or has not been discharged;

(c) has been convicted of any offence involving dishonesty or moral turpitude;

(d) is or becomes a director, officer or employee of, or has a controlling interest in, any financial institution;

(e) is or becomes a registered member of any political party, and holds an office or position in such party;

(f) is or becomes a politically exposed person; or

(g) is of unsound mind.

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(2) For the purpose of this section a "politically exposed person" has the meaning given in the Anti-money Laundering and Terrorist Financing Regulations.

Tenure of office

15. Subject to this Act, a person appointed as a Director shall hold office for a period not exceeding five years, on such terms as may be specified in the instrument of appointment, and may be re-appointed for periods not exceeding five years at a time.

Removal from office

16. The Director may be removed from office—

(a) where any of the circumstances referred to in section 14 arises; or

(b) by the Governor acting after consultation with the Attorney-General.

Responsibilities of Director

17. (1) The Director shall be the chief executive officer and accounting officer of the Unit.

(2) As the chief executive officer of the Unit, the Director shall be responsible for—

(a) the day-to-day management and operation of the Unit;

(b) receiving, and where permitted by this or any other Act, requesting and analysing disclosures made to the Unit;

(c) the keeping of written records as required under this or any other Act;

(d) the formation and development of an efficient and performance-driven administration;

(e) the performance of the functions of the Unit under this Act and any other related enactment.

(3) The Director shall have the rank and all the powers of an Inspector of Police.

Reports

18. (1) The Director shall produce a quarterly report to the Attorney-General on the work of the Unit and, in particular, on matters that could affect public policy or the priorities of the Unit.

(2) The Director shall, within three months after the end of each financial year or within such longer period as the Attorney-General may in special circumstances approve, cause to be made and transmitted to the Attorney-General and the Governor an annual report dealing generally with the activities of the Unit during the preceding financial year.

(3) The Attorney-General shall cause a copy of the annual report to be laid before the House of Assembly.

(4) The Director shall not disclose any information pursuant to this section that would directly or indirectly identify any person who provided a report to the Unit, or a person about whom a report was provided, under this Act.

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Agreements and arrangements

19. (1) Subject to this Act, the Director may, with the approval of the Attorney-General enter into a contract, memorandum of understanding or other agreement or arrangement with a foreign financial intelligence unit, or association of such units, regarding the exchange of information or other cooperation with the Unit relevant to the investigation or prosecution of a financial crime.

(2) Agreements or arrangements entered into under this section shall provide that the information or other cooperation shall be exchanged on the basis of reciprocity or mutual agreement, and in a manner consistent with procedures accepted by the party making the request.

PART 4

PRODUCTION AND OBTAINING INFORMATION

Request for information

20. (1) The Unit may, by written notice, require any person to provide to the Unit information, other than information that is privileged material, for the purpose of—

(a) complying with a request made by a foreign financial intelligence unit; or

(b) conducting an investigation under this Act.

(2) Where information is disclosed pursuant to a request made under subsection (1) and such information needs clarification or amplification, the Unit may issue a notice referred to in subsection (1)—

(a) to the person who disclosed information to the Unit; or

(b) to any other person;

for the purpose of clarifying or amplifying the information first disclosed to the Unit.

(3) A disclosure made in compliance with a notice issued by the Unit under subsection (1) or (2) shall be treated as a protected disclosure for the purposes of section 128(2) and (3) of the Proceeds of Crime Act.

(4) A person who, without reasonable excuse, fails to comply with a notice issued by the Unit under subsection (1) or (2) is guilty of an offence and is liable—

(a) on summary conviction, to a fine of $25,000; or

(b) on conviction on indictment, to imprisonment for a term of 2 years or a fine of $50,000 or to both.

Requirements for complying with a request

21. (1) Upon receipt of a request made by a foreign intelligence financial unit or association of units, the Unit may, subject to subsection (2), disclose information or provide other cooperation in compliance with such request.

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(2) The Unit may disclose information, or provide other cooperation, with a foreign financial intelligence unit or association of units where the Director—

(a) has, in accordance with section 19, entered into a contract, memorandum of understanding or other agreement or arrangement with such foreign financial intelligence units or association of units;

(b) is satisfied that the assistance requested by the foreign financial intelligence unit or an association of such units is required for the purposes of the functions of such unit, including the conduct of civil, criminal or administrative investigations or proceedings to enforce laws administered by such unit;

(c) has reasonable grounds to believe that the information or other cooperation would be relevant to an investigation or a prosecution for a financial crime under the laws of Anguilla;

(d) has received an undertaking from the foreign financial intelligence unit or an association of such units in relation to its contribution towards the cost of the exercise, as the Director considers appropriate; and

(e) has received an undertaking by the foreign financial intelligence unit or an association of such units that such units will not disclose the information provided, without the consent of the Director.

(3) Where the Director is not satisfied that one or more of the requirements set out in subsection (2) have been complied with, the Director may decline to comply with a request made by a foreign financial intelligence unit.

(4) Where information is disclosed under this section, the Director may impose such conditions as the Director deems necessary, having regard to—

(a) the purpose for which the disclosure is to be made; and

(b) the interests of third parties.

Disclosure to a law enforcement agency in Anguilla

22. (1) The Unit may, on the approval of the Attorney-General, disclose any information received by the Unit under this Act or any other related enactments to any law enforcement agency in Anguilla.

(2) The secrecy obligations outlined in section 11 apply to all officers of any law enforcement agency in Anguilla who receive information under this Act.

Restriction on use of information

23. (1) No foreign financial intelligence unit, association of units or law enforcement agency in Anguilla shall, without the prior written consent of the Unit, transmit or use information or other cooperation provided under this Act for purposes other than those relating to the investigation or prosecution of financial crimes.

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(2) A person who, pursuant to this Act or an agreement or arrangement, receives confidential information shall not transmit or use the information for any purpose, except those within the scope of the agreement or arrangement.

(3) A person who fails to comply with this section commits an offence and is liable—

(a) on summary conviction, to imprisonment for a term of 12 months or to a fine of $20,000 or to both; or

(b) on conviction on indictment, to imprisonment for a term of 6 years or to a fine of $100,000 or to both.

Application to the Court

24. Where, in the opinion of the Director, it appears necessary, in relation to any request for information received from a foreign financial intelligence unit or an association of such units, to invoke the jurisdiction of the Court, the Director shall—

(a) immediately notify the Attorney-General of the particulars of the requests; and

(b) send to the Attorney-General, copies of all documents relating to the request;

and the Attorney-General shall be entitled to appear or take part in any proceedings, or in any appeal from such proceedings, arising directly or indirectly from such request.

Part 5 of the Proceeds of Crime Act to apply to this Act

25. The investigative powers outlined in Part 5 of the Proceeds of Crime Act apply for the purposes of this Act.

Power to continue investigation despite legal proceedings

26. The Unit may, with the approval of the Attorney-General in writing, initiate or continue any investigation and report thereon under this Act, notwithstanding any civil legal proceedings relating to the subject matter of the investigation.

PART 5

OFFENCES AND PENALTIES

Offences and penalties

27. (1) A person commits an offence if that person—

(a) wilfully delays, threatens, assaults or obstructs the Director, Deputy Director or unit officer acting in the execution of his duties or powers under this Act;

(b) without reasonable excuse, refuses or neglects to answer any question, or to furnish any information, or to produce such documents or other information required by this Act, when required to do so by the Director, Deputy Director or unit officer;

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(c) knowingly makes any false declaration or false statement of a material nature in relation to any document or other information provided under this Act;

(d) in purported compliance with a requirement imposed on him under this Act, provides documents or other information which he knows to be false or misleading in a material particular, or recklessly provides documents or other information which is false or misleading in a material particular; or

(e) without reasonable excuse, fails to keep any record or other document required by this Act, or the regulations.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term of 12 months or to a fine of $10,000 or to both;

(b) on conviction on indictment to a fine of $25,000 or to imprisonment for a term of 3 years, or to both.

Offence by body corporate

28. (1) Where an offence under this Act committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of any director, manager, secretary, or other similar officer of the body corporate or any person who was purporting to act in that capacity; or

(b) to be attributable to the failure of any such director, manager, secretary, or other officer or person, to exercise all such reasonable diligence as he ought in the circumstances to have exercised to prevent the offence, having regard to the nature of his powers and all the circumstances;

that person as aforesaid, as well as the body corporate commit the offence, and is liable to be proceeded against and punished accordingly.

(2) For the purposes of this section, a person is deemed to be a director of a body corporate if he—

(a) occupies in relation thereto, the position of a director, by whatever name called; or

(b) is a person in accordance with whose directions or instructions, not being directions or instructions in a professional capacity only, the directors and the body corporate, or any of them, act.

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PART 6

GENERAL

Director may require records to be kept

29. The Director may require any person to keep such documents or other information relating to the Unit, as may be prescribed.

Retention of information and Agreements

30. The Unit shall retain for a minimum period of 5 years a written record of—

(a) all information received, requested or disseminated by the Unit; and

(b) all contracts, memorandum of understanding agreements or arrangements entered into under this Act.

Attorney-General to be informed concerning the conduct of certain investigations

31. The Director shall keep the Attorney-General fully informed concerning the general conduct of the investigations of financial crimes and shall furnish the Attorney-General with such information as the Attorney-General may request with respect to any particular matter relating to such investigations.

Regulations

32. The Governor may make regulations generally for giving effect to the provisions of this Act and, without prejudice to the generality of the foregoing, the Regulations may—

(a) amend the Schedule;

(b) provide for the practice and procedure to be adopted in relation to investigations under this Act;

(c) require financial and other institutions as may be prescribed to establish and maintain procedures relating to the identification of clients, the keeping of records, the making of reports and training;

(d) prescribe identification cards to be issued to persons appointed under this Act;

(e) provide for the exchange of information relevant to the investigation or prosecution of a financial crime;

(f) prescribe such other matters as may be required by this Act to be prescribed.

Citation

33. This Act may be cited as the Financial Intelligence Unit Act, Revised Statutes of Anguilla, Chapter F26.

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SCHEDULE

(Section 11)

OATH TO BE TAKEN (AFFIRMATION TO BE MADE) BY PERSONS APPOINTED TO THE STAFF OF THE UNIT

I, A. B. , having been appointed (title of post) do solemnly (swear) (affirm) that—

(a) I shall bear true faith and allegiance to Anguilla and will uphold the Constitution and the law;

(b) I will conscientiously, impartially and to the best of my knowledge, judgment and ability, perform the functions assigned to me under the Financial Intelligence Unit Act; and

(c) I will not, on any account, at any time whatsoever, except in so far as provisions of the Act authorise it, directly or indirectly, reveal any information or the nature or contents of any documents communicated to me under this Act.

*So help me God.

*Delete if affirm

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