

The Legal Basis of Employee's Obligation to Maintain Job Secrets

By

Lect. Husham Mohammed Hamood

Faculty of Basic Education, Department of Al-Mustansiriya University-Iraq

Email: salma_law@uomustansiriyah.edu.iq

Lect. Salma gadban Hussein

Faculty of Administration and Economics, Department of Al-Mustansiriya University-Iraq

Corresponding Author's

Email: hushamlaw@uomustansiriyah.edu.iq

Abstract

The current paper deals with the legal basis for the employee's obligation to maintain job secrets. The disclosure of job secrets is an act and criminal behavior under the provisions of the Iraqi Penal Code. The commitment to keep job's secrets lies with the employee, or the person assigned to a public service, so they must keep all job secrets that they become aware of by virtue of their work, whether these secrets are documented in writing or electronically, in order to ensure the integrity of job work, and preventing harm to public social interests. An employee who gives information or documents that are not authorized to be published, and gives them to the press, his work is considered a violation of his job duty, which requires him to conceal job secrets. The criminal legislator focused his attention on two things, the first one represents maintaining the integrity of the entity of the state and society, and the second one represented by not neglecting the assets, rights and freedoms of individuals, and to find out the legal basis for the employee's obligation to preserve job secrets. It is necessary to define the types of job secrets, and then indicate the legal basis for the employee's obligation to keep job secrets, in addition to the penalty the legal consequences of violating these secrets, through the texts that included this.

Keywords: job secrets, legal biases, general employee, job commitment

Introduction

Job secrets affect the interest of the retired person. They are the basis from which the idea of confidentiality emerged because commitment is one of the means of protecting secrets between the parties of the contract through which they exchange information of a confidential nature that affect the interest of the parties of the contract. Therefore, this information must not be disclosed and kept confidential. This matter creates a confidential contractual obligation on the part of the person who has access to this information. Given the importance of the public job in the lives of members of society, it is necessary to pay attention to the employee who is the main pillar of the state in achieving its goals and implementing laws. The employee is the administration's interface with individuals and the representative of the administration in all activities. If the employee is corrupt, the administration will be corrupted. The employee has many obligations, such as maintaining the secrets of the job. Therefore, the commitment of the employee to maintain the secrets of the job, and not to disclose them, is one of the important duties that the employee must abide by, regardless of the nature of his/her work because all government jobs contain important confidential documents, information, and data that the employee sees by virtue of his/her daily dealings. These secrets may be personal or practical.

Accordingly, the employee must know his/her rights and abide by duties stipulated in the laws in force because breaching these duties may cause harm to the public utility that the employee participates in managing. Therefore, the employee's disclosure of job secrets is an act that is criminalized by all penal laws. The employee must preserve the secrets that he/she sees by virtue of his/her work in order to ensure the integrity of the job. Accordingly, the present study is divided into three sections. Section one tackles types of job secrets. Section two tackles legal basis for the employee's obligation to keep job secrets. Section three tackles legal penalty for breaching job secrets.

Based on the foregoing, we decided to put forward the following paragraphs

First: The importance of research

The importance of the current research lies in highlighting the statement of the legal basis for the employee's obligation to maintain job secrets, in which we will discuss the types of job secrets, as well as the legal basis for the employee's obligation to maintain the secrets of the public job. Then, we will show the penalty that entails for the employee in the event of a breach of commitment functional secrets. The importance of this research is highlighted by standing on the legal and practical problems encountered by the legal texts that regulate the types of job secrets by removing the ambiguity in these texts. In addition, to clarify the objective provisions for the confidentiality of job information and documents, and indicating the persons who must adhere to non-disclosure of job secrets in addition to Determine the scope of application of this obligation.

Second: The aim of the research

This research aims to clarify the legal basis through which the public employee in Iraq is investigated under the Disciplinary Law of State and Public Sector Employees No. 14 of 1991, reinforcing our research with the most important judicial decisions related to the subject of the research.

Third: Research methodology

We relied on the analytical approach in writing this paper, by analyzing the texts of the articles of law that pertain to the subject of our research, in addition to the comparative approach between Iraqi law and the laws of some countries that were included in the body of this research.

Fourth: research hypotheses

This research assumes that there is a defect on three levels:

- 1_ Legislative where there is a legislative deficiency in criminal treatment in the matter of disclosure of job secrets.
- 2_ judicial embodied in the lack of judicial decisions in this regard.
- 3_ Social, represented by the reluctance of individuals in society to resort to the judiciary, holding the employee who discloses job secrets accountable.

Accordingly, we will divide this research into the following claims.

The first requirement / types of job secrets.

The second requirement / the legal basis for the employee's obligation to keep job secrets.

The third requirement / the legal penalty resulting from the breach of professional secrets.

Section One

Types of Job Secrets

Job secrets are multiple. In the administrative work in general, they are divided in light

of the diversity of institutions, agencies, and state departments that has a great effect on determining the type of information and documents for these institutions. This diversity leads to the division of secrets of public office. In Iraq, the text of the Paragraph (7) of Article (4) From the State and Public Sector Employees Discipline Law No. (14) of 1991 on the employee's duty to conceal job secrets stipulates that the employee shall abide by withholding information and documents that he/she has access to by virtue of his/her position, or during his/her work if they are secret by nature or it is feared that their disclosure will cause harm to the state or people, or orders were issued to him/her by his/her superiors to keep them secret. This duty remains in place even after the end of his/her service. Accordingly, this section is divided into two subsections. In the first subsection, administrative secrets are tackled. In the second subsection, the issue of government secrets is tackled.

First: Administrative Secrets

Administrative secrets are major obstacles facing administrations in disclosing the reasons for marketing decisions or accessing some of documents. Administrative secrets are various, including what is related to the secret work of the administration such as plans to reorganize public facilities. Administrative files contain important information that is available to the employees who consider them among their secrets. They also consider that the disclosure of the information harms them. The content of job secrets varies from one administration to another. In general, public administrative secrets differ from public government secrets that concern the whole state, such as state security secrets. Public administrative secrets also differ from the private secrets of individuals (Shaheen, 1974).

Moreover, administrative secrets are represented in the documents, information, and data that the employee is entrusted with. Such secrets may be revealed to the employee by virtue of practice of usual job duties in governmental departments. Therefore, it is obligatory in the public interest to preserve the secrets contained in the information and documents by the employee, and it is not permissible to hand them over to anyone, unless this person has the capacity to receive those secrets (Faisal, 2001).

Administrative secrets are the secrets belonging to the administrative authorities that do not affect the integrity of the state in its external affairs, but the disclosure of such secrets would harm public order, the proper functioning of the public facility, and the regularity of work within it. Administrative secrets include orders ordered by heads of government departments regarding procedures and administrative documents that must be concealed, in addition to instructions that explain the laws issued in this order as required to ensure quality, and the proper implementation of administration's decisions, orders, and directives efficiently and effectively, and that their disclosure may disrupt Implementation of the plans of the administrative authorities in providing services to all citizens, which leads to harming public order (Al-Muhammadi, 2020). If there is no text to give confidentiality to certain information or documents, the employee must be guided by the fact that such information or documents are confidential through the experience that the employee has gained in the public job. There is no objection to inquiring about this under the principle of The public interest in dealing with the affairs of the job and finding out whether these documents and information are considered confidential or non-confidential. Perhaps, the content of administrative secrets may differ from one administration to another, and the duty to conceal administrative secrets and their content comes in many joints of daily job. An example of this is the confidentiality of conducting bid analysis in public tenders and contracts. The confidentiality of administrative information also appears in the conduct of administrative investigations into disciplinary violations, reports of employee promotion and confirmation, the delivery of salaries from banks, and other administrative secrets of an economic, administrative, and financial nature that are of interest

to the public office. The employee may indirectly be aware of these secrets, such as correspondences that pass on to his/her colleague because of their presence in one place of work related to a specific administrative aspect, or correspondences that take place between departments and other administrative bodies.

Second: Government Secrets

Government secrets are the secrets related to one of the functions of the state as a government based on managing the higher policy of the state, such as security secrets, internal secrets, in addition to the secrets related to the state's external relationship. These secrets must be kept confidential and not disclosed in order to preserve the integrity of the state. Moreover, the employee's commitment to concealing government secrets is based on the employee's position in providing services to citizens. Many damages may result from revealing government secrets, as their disclosure may be more harmful than the consequences of disclosing private individual secrets because damages result from the disclosure of government secrets and the interests directly controlled by the state, as well as their high scope. Therefore, secrets related to the government and public bodies must be protected. Accordingly, public interests must not be delved into. Similarly, the secrets of some of the works in which the executive authority works must also be maintained so that the objectives drawn by this authority in managing the affairs of individuals are not lost, and achieving the general interest of society, so it is the duty of the state to prevent the disclosure of these secrets, which could harm the higher social interest of the country (Al-Mult, 1967).

The Iraqi Penal Code No. 111 of 1969 referred to the punishment of anyone who publishes or broadcasts in any way, image, or means, information, news, documents, drawings, reading, or other things that pertain to departments, government departments, and their institutions, whose publication or dissemination is prohibited by the weakness of the will of the competent authority for these secrets. This prohibition also applies to the non-delivery of these secrets to a foreign country or to one of those working for the interest of that country. As long as the absolute is being released, it is possible that the secrets of government interests, according to this article, may be disclosed by the employee at times, especially if related matters that are published or broadcast are mentioned in them. Government departments and their affiliated institutions can be divulged from the ordinary person that obtains these government secrets in any way. This text criminalizes what is called government secrets according to what the state orders in its various government agencies. But, the principle in this matter is the publicity of actions of government interests or its public bodies related to the internal affairs of the state to achieve the public interest.

It is worth noting that the legislator prohibited the public employee from keeping the original version of any official document or extracting it because by virtue of position, the employee may be acquainted with the most accurate secrets contained in these documents. The employee may misuse these documents or tamper with them if they are leaked to parties that stalk the administration and assert them such as press and political parties, especially if these documents are related to administrative secrets of security and economic importance (Muhammad, 2005).

Section Two

Legal Basis for the Employee's Obligation to Keep Job Secrets

There are two groups of jurists in defining the legal basis required for concealing job secrets. Some of them took the idea of the contract as a basis for this duty, while the majority

held that the idea of public order could be a basis for it to depend on the public interest, which left its impact on the nature of the obligation to conceal the job secret and the extent to which this argument applies to others. Based upon, this section will be divided into two subsections. In the first subsection, the contract theory is tackled. In the second subsection, the general system theory is tackled.

First: The Contract Theory

The basis of the employee's obligation not to disclose job secrets according to this theory is based on the idea of the contract through an agreement between the two parties because the owner of the secret entrusts his/her secrets to the person with the job, profession, and others by virtue of this capacity. The employee has the option to accept the obligation to keep secrets or Refuse to do so, as he/she is not obliged to accept the obligation to keep the secret. Institutions, government departments, and administrations inform employees of the secrets of work in these institutions when they perform their job duties, so they reveal those secrets. According to this theory, the employee is free to accept this trust or reject it, as there must be a mutual consent between the owner of the secret and the custodian. After the agreement of these two wills, the contract is made between the two parties, whether explicit, when depositing with the employee, and when he/she is asked to conceal it, or implicit when the disclosure is indirectly about Through the employee's discovery and others with his/her experience or when examining these secrets (Mitwalli, 2004).

Perhaps, the proponents of this theory based their rejection on the fact that it is possible to determine the responsibility of the one who discloses the secret and the extent of the damage if it occurs through the contract. It is also possible to estimate the compensation, which makes the legislator or the one responsible in need of developing a legal definition of mutuality. Jurists have different views about the nature of this contract. It is sometimes described as a trust contract. Some of jurists call it an authorization contract. It is also called an unnamed contract, but the majority say that it is a trust contract (Al-Salim, 1986).

Second: Public Order Theory

Through the inability of contract theory to establish the obligation not to disclose job and other types of secrets, another opinion in jurisprudence turned to the idea of public order inspired by legal texts, as the social interest is the basis of the obligation to keep secrets according to this idea because the interest of society outweighs the interest of individuals, and everything that harms them is contrary to public order. This interest is used to determine public order, as well as the need for the regular and steady functioning of the public facility by organizing the work of its employees, and that it is in the interest of state departments to find employees who do serious work and keep state secrets. Likewise, it is in the interests of individuals and citizens to trust the work of the government and its institutions (Al-Sanhouri, 1996). These interests ultimately constitute the public order. Jurists have different views in defining the concept of public order because this idea is flexible. It also varies according to time and place. The public interest is linked to this idea, which considers the public interest as the result that the public order seeks to achieve, so it turns in the modern content of the public order to intervention, and restricting individual freedoms, including the good of society, unlike the traditional content of this system, which is devoted to maintaining public security, public tranquillity, and public health (Najm, 1981).

Most of those concerned in this regard consider that this theory is closer to reality, as it included penal texts for cases that mitigate the severity of the absolute secret and make the secret a relative secret. As for the position of penal legislation and jurisprudence on this theory, it is adopted by the judiciary and jurisprudence in France. The French jurisprudence states that

the crime of disclosing a secret is a breach of a legal obligation imposed by the Penal Code and not a breach of the right of the victim (Salama, 1988). The French Court of Cassation ruled that the secret is a pure idea of public order (Hassan, 2004).

The Egyptian criminal law also adopted this theory, as the jurisprudence agreed that keeping secrets stipulated in Article (310) of the Penal Code is related to public order (Hassan, 2004).

In Iraq, the Iraqi Penal Code adopted this theory, as it is clear from the text of Article (437) of the Penal Code that it tends to adopt the theory of public order, as seen by some jurists. Penalties are considered part of public order. Therefore, it is not permissible to agree to violate them, that is, it is not permissible to add or introduce any new cases of disclosure that are not covered by the legal text of criminalization, except for the cases stipulated in other laws such as Articles (88, 89) of the Evidence Law (Muhyi, 1986).

Section Three

Legal Penalty of Breaching Job Secrets

In the event that the employee fails to abide by administrative secrets, an investigative committee is formed against him/her under Article 10 of the State Employees Discipline Law No. 14 of 1991, which states that the minister or the head of the department must form an investigative committee consisting of a chief with two experienced members, provided that one of them has an undergraduate degree in law. The committee undertakes a written investigation with the violating employee. In order to perform its duties, it may hear and record the statements of the employee and witnesses and review all documents and data that it deems necessary to review, along with its causative recommendations (Faisal, 2001).

The investigation with the violating employee is the work carried out by the investigative committee that is formed according to the text of Article (10) of the Iraqi State Employees Discipline Law in force. This investigation is required to be in writing because writing is a basic condition that cannot be ignored in the work of these committees according to the text of this article. Writing can preserve the investigative procedures and the findings of these committees. Writing is an important document to prove the legitimacy of the work of the investigative committees if the work of these committees is challenged. In order to perform their duties, the investigative committees may listen to the statements of the violating employee who is referred to them, listen to the statements of witnesses, and record their testimony. They have the right to review all files and the data that they deem necessary to review. After the investigative committees have finished performing their work, they will be written in a written record and prove all the actions they have taken, the statements of the offending employee, and the statements of defence witnesses as well as witnesses for the proof and denial with mentioning their causal recommendations. It can be noted that the conclusion reached by the investigative committees is not a non-binding recommendation to the entity to which the employee is referred, whether it is the minister, or the head of the department not associated with a ministry. In such cases, the Iraqi legislator instructed the investigation order to the investigative committees, while the issue of deciding on the matter of punishment is referred to the administrative head. Thus, this is an important guarantee for the violating employee who was investigated, but this does not mean that the administrative head is better than the investigative committees in estimating the appropriate penalty for the offending person, and for the offense committed, especially since the investigative committees include in their formation a legal member that is familiar with the text of the law that may exceed the

knowledge of the administrative head.

The two researchers believe that the Iraqi legislator must reformulate the text of Article Ten of the State Employees Discipline Law in force by making these recommendations in the form of binding decisions in order to get rid of their subordination to the administrative head who only has the right to appeal these decisions before the Employees Judiciary Court, in addition to the fact that the investigative committee, which consists of three members, one of whom has an initial degree in law, is more capable than the administrative head in estimating the appropriate punishment for the experience of the investigative committees when compared with the opinion of the administrative head. The impartiality of one of the members of the investigative committees is corrected by the neutrality of the other members. The error of one of them is corrected by the opinions of the other members of the committee. This is the opposite of what is the case with regard to the administrative head (Shawish, 1990).

Hence, the principle is that the public employee is not questioned disciplinarily except during the period of service, i.e. in the period between the date of appointment and the date of leaving the service. The employee is not punished for mistakes committed before entering the service. The employee is not disciplinarily punished after leaving the service. The principle is that the termination of the job association for any reason, such as resignation, retirement, or dismissal leads to the suspension of the application of the disciplinary system to the employee. Discipline is linked to the job, so if the employment association is cut off, there is no longer room for discipline as the employee's job description which is the areas of discipline recedes. The employee can be held disciplinarily accountable for the actions committed by him/her after the termination of the job association, but there is an exception to this principle with regard to some errors committed after the termination of the job association that affects it. Therefore, the legislator may intervene with special texts to determine the penalties that can be imposed on employees who left Service for errors committed after the termination of the job association.

Moreover, the issue of disciplinary punishment for a person for acts he/she committed before joining the public office is a matter that is permitted by some of the jurisprudence. If these acts are by nature incompatible with the practice of the public office or are inconsistent with the duties of the job, the issue of accurate adaptation of the act and the selection of the appropriate punishment aims at an important goal, which is the imposition of a fair and equitable penalty, which can only be done by conducting an investigation with the employee, through which the administration can find out the reality of the violation committed to impose a disciplinary penalty on the employee, as well as to address the faults and pitfalls for the purpose of avoiding them in the future (Al-Tamawi, 1971).

Conclusion

The topic of the present study proposes treatments for a specific aspect of the administration's authority to maintain job secrets, as it presents the legal basis for the employee's obligation to maintain the secrets of the public job, deals with the types of job secrets, and shows the legal basis for the employee's obligation to keep job secrets and the legal penalty resulting from breach job secrets.

The Results

1. One of the most important duties of the public employee related to dealings with the administration is the concealment of job secrets, as the laws related to the public job

- stipulate that the employee is obligated to maintain job secrets that he/she learns by virtue of his/her work.
2. Job secrets are not specified in the provisions of the penal law criminalizing the act of disclosing job secrets. Therefore, the judiciary is resorted to in order to determine job secrets when a dispute over this issue arises.
 3. It turns out that the Iraqi legislator has favoured the theory of public order to determine the legal basis for the employee's duty to conceal job secrets, and the French and Egyptian legislators also followed this approach.
 4. The principle of transparency in job is in contrast to the principle of confidentiality and concealment of job secrets, which is the process of providing information about the administrative work of the state to the press, media, and public opinion so that they can be informed and monitor government work.

The Recommendations

1. The Iraqi legislator should address the unintentional responsibility of the employee for disclosing job secrets in the event of an error or negligence on his/her part in disclosing job secrets through a special text.
2. The administration should educate the employees about their duties in concealing job secrets by holding workshops, seminars, and conferences for this.
3. The Iraqi legislator should amend the text of Article (4/Seventh) of the State and Public Sector Employees Discipline Law No. 14 of 1991 by deleting the following phrase from it ((and this duty remains in place even after the end of his/her service)) because there is no provision in the law that authorizes the accountability of the employee whose service has been terminated because the origin of disciplinary accountability is the existence of the job association.
4. The Iraqi legislator should reformulate the text of Article Ten of the Law of Discipline of State Employees in force by making the recommendations of the investigative committees in the form of binding decisions in order to get rid of their subordination to the administrative head who has nothing but to appeal before the Employees Judiciary Court in the decisions issued by investigative committees.
5. The Iraqi legislator should not extend the restriction on the freedom of the public employee to express his/her opinion because the employee's freedom to express his/her opinion should not be wasted on the grounds of maintaining the secrets of the public office.

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