

Reasons for rejecting a public interest defence

HK Hansard

1. “Given the nature of the information concerned, any unauthorized disclosure would of itself be likely to harm the public interest. To provide statutorily for a “public interest” defence for disclosing information relating to matters under one of these areas set out in the legislation would be contradictory.”
2. “Evidence of prior disclosure will be relevant in deciding whether a particular disclosure does, in fact, cause harm of a kind specified in the legislation. Where there has been a prior disclosure it will be open for a defendant to argue that the disclosure, which is the subject of the prosecution, has done no further harm. This may not always be the case, however, as there may be circumstances in which the timing and placing of a fresh disclosure may cause harm which an earlier disclosure had not.”
3. “We have deliberately defined these areas [of protected information] in narrow terms, so that the unlawful disclosure of information concerning one of these areas would, in itself, cause or be likely to cause substantial harm to the public interest.”
4. “We also do not accept that there is any justification for the proposed public interest and prior disclosure defences. The six areas of protected information prescribed under the Bill are narrowly defined on the basis that any disclosure of such information would, of itself, be damaging to the public interest. To therefore include a defence allowing that such a damaging disclosure is in the public interest is self-contradictory. Similarly, we consider the proposed prior disclosure defence to be unjustified. Any disclosure, in its particular circumstances, of the prescribed types of information could have the potential of damaging the public interest. Consequently, every such disclosure should be judged by the Courts within its own circumstances, and not by whether or not there has been prior disclosure.”