

METHOD OF DETERMINING THE GROUNDS FOR RELATING DATA TO OFFICIAL INFORMATION AND THE DEGREE OF RESTRICTION ACCESS "FOR OFFICIAL USE"

Yurii Dreis¹, Oleh Harasymchuk²

¹Mariupol State University, Department of Analytics System and Information Technology, Kyiv, Ukraine, ²Lviv Polytechnic National University, Department of Information Protection, Lviv, Ukraine

Abstract. The article proposes a method for determining the grounds for classifying data as official information and the degree of access restriction under the label "For official use." The principle of expert assessments applied in this method allows for determining, in the same conventional units (points), the extent of substantial damage that may be caused to the vital interests of Ukraine as a result of the disclosure of information that is or should be classified as official. The method employs both existing and newly introduced terms and definitions, as well as criteria for establishing the grounds necessary to restrict access, in accordance with the requirements of the "three-part test" set forth in Ukrainian legislation. Based on the results of an expert assessment of the magnitude of possible substantial damage in the event of disclosure of information subject to examination and the introduced criterion for determining the degree of access restriction "For official use", a decision is made to classify this data as official information. This method is intended for commissions working with official information and officials responsible for decisions on classifying data as official. It may also be useful for state secrets experts and expert commissions established under their auspices when declassifying state secrets as official information.

Keywords: access management, data processing, consequence assessment, risk analysis

METODA OKREŚLANIA PODSTAW KLASYFIKACJI DANYCH JAKO INFORMACJI SŁUŻBOWYCH ORAZ STOPNIA OGRANICZENIA DOSTĘPU "DO UŻYTKU SŁUŻBOWEGO"

Streszczenie. W artykule zaproponowano metodę określania podstaw klasyfikacji danych jako informacji urzędowych oraz stopnia ograniczenia dostępu w ramach oznaczenia „Do użytku służbowego”. Zastosowana w tej metodzie zasada ocen eksperckich pozwala określić, w tych samych jednostkach miary (punktach), zakres istotnej szkody, jaka może zostać wyrządzona żywotnym interesom Ukrainy w wyniku ujawnienia informacji, które są lub powinny być zaklasyfikowane jako urzędowe. Metoda ta wykorzystuje zarówno istniejące, jak i nowo wprowadzone terminy i definicje, a także kryteria ustalania podstaw niezbędnych do ograniczenia dostępu, zgodnie z wymogami „testu trójkąciowego” określonego w ukraińskim ustawodawstwie. Na podstawie wyników ocen ekspertów dotyczących skali możliwych istotnych szkód w przypadku ujawnienia informacji podlegających badaniu oraz wprowadzonego kryterium określania stopnia ograniczenia dostępu „Do użytku służbowego” podejmowana jest decyzja o zaklasyfikowaniu tych danych jako informacji służbowych. Metoda ta jest przeznaczona dla komisji zajmujących się informacjami urzędowymi oraz urzędników odpowiedzialnych za podejmowanie decyzji w sprawie klasyfikacji danych jako informacji urzędowych. Może ona również okazać się przydatna dla ekspertów ds. tajemnic państwowych oraz komisji eksperckich powołanych pod ich auspicjami podczas odtajniania tajemnic państwowych jako informacji urzędowych.

Słowa kluczowe: zarządzanie dostępem, przetwarzanie danych, ocena skutków, analiza ryzyka

Introduction

In recent years, the volume of such restricted information, which is accumulated, stored, and used in the course of official and professional activities as official information (OI), has been rapidly increasing. During the period of military aggression against Ukraine, with the excessive concentration of special-purpose information and the expansion of the circle of users with direct access to it, it is necessary to ensure the constant protection of OI from possible disclosure or loss of its material carriers. The increasing complexity of methods and means of obtaining OI, as well as existing methods of using information technologies, has led to the emergence of real and potential threats in the information sphere. The realization of these threats can result in the leakage of OI and cause damage to state authorities, local governments, and other public authorities. The extent of such damage is usually difficult to formalize and not clearly defined, therefore, when it becomes necessary to determine it, a set of identifying and evaluative parameters should be established within the procedure for classifying information as OI.

According to the legislation of Ukraine, official data refers to information contained in the documents of public authorities, which includes intra-agency official correspondence, memos, and recommendations, provided they relate to the development of the institution's activities or the exercise of control and supervisory functions by public authorities, the decision-making process, and precede public discussion and/or decision-making. It also includes information collected in the course of operational and investigative or counterintelligence activities, as well as in the field of national defense, that is not classified as a state secret [8].

Restriction of access to information is carried out subject to compliance with a set of requirements of the so-called "three-part test", namely [8]:

- exclusively in the interests of national security, territorial integrity or public order to prevent disorder or crime, to protect public health, to protect the reputation or rights of others, to prevent the disclosure of information received in confidence, or to maintain the authority and impartiality of justice,
- disclosure of information may cause substantial damage to these interests,
- the harm from disclosure of such information outweighs the public interest in obtaining it.

1. Literature review, problem statement and purpose of the article

The "three-part test" is a set of grounds (criteria) provided in Part 2 of Article 6 of the Law of Ukraine "On Access to Public Information" [8], the presence of which allows the information manager to classify certain information as restricted information [13]. This "three-part test" must be applied in the following cases [11, 13]:

- in the "primary" attribution of certain information to SS,
- when "initially" classifying certain information as OI,
- when deciding whether to grant or deny access to a particular information (document),
- when registering in the system of accounting of restricted public information, which the administrator possessed at the time of entry into force of the Law [8],
- in all other cases when the issue of restricting access to public information is being resolved.

In order to carry out the procedure of classifying information as OI, the public authorities create a commission on OI, which, in addition to the main tasks defined by the instruction [2], must also fulfill the tasks of this "three-part test" as follows:

- 1) to establish the existence of a relevant state interest, the purpose of this information and its purpose,
- 2) to determine whether the disclosure of such information causes damage to these interests and what is its magnitude (size),
- 3) to compare the damage to determine whether it outweighs the public interest in the disclosure of this information.

Based on the aggregate of the results obtained, the commission on work with OI (or an authorized person) makes a decision to classify this data as OI, with its subsequent inclusion in the "List of Data Constituting Official Information", which must be approved and published in accordance with the procedure established by the Decree [11]. Subsequently, documents containing OI from this List are assigned the stamp "For official use" (hereinafter referred to as the "FOU" stamp), and the material carriers containing OI are marked "FOU", and so on in accordance with [5].

While the first task does not present significant difficulties or raise major questions in its implementation – since the list of possible state interests, as well as the purpose and objectives of OI, are provided in [7, 8, 10, 12] – the other tasks clearly raise many questions and present difficulties in their theoretical and practical implementation due to the evident lack of necessary regulatory and methodological support.

Since this process follows a similar procedure to the classification of information as a state secret, with its subsequent inclusion in the "List of Information Constituting State Secrets" (LICSS), as confirmed by paragraph 2 of Part 1 of Article 9 of the Law [8], this study is therefore based on the mechanism for determining the parameters of possible harm according to the "Methodological Recommendations to State Secrets Experts on Determining the Grounds for Classifying Information as a State Secret and the Degree of Its Secrecy" (hereinafter referred to as the Recommendations) [12]; other works [1, 3–7, 11] containing theoretical foundations in the field of state secret and restricted information protection, and assessment of consequences (harm) in the event of its leakage; the Procedure [13]; and the "List of Information Constituting Official Information of the Ministry of Education and Science of Ukraine" [9].

However, there is a problem arising from the need to restrict access to such public information used in the vital interests of Ukraine, as defined by law, the purpose and objectives of the activities and functions of the public authorities, and the lack of a mechanism (method) for determining the extent (magnitude) of substantial harm that may be caused to these interests in the event of its disclosure – or when the public interest in obtaining this information may outweigh the interest in restricting it – i.e., a mechanism necessary to justify the legal basis for such a restriction.

This problem can be addressed by developing new models, methods, and tools that allow for the assessment of the potential damage in the event of a OI leak, as well as other possible consequences of its disclosure – an urgent scientific and practical task.

Therefore, the purpose of this article is to develop a method for determining the grounds for classifying data as OI and the degree of access restriction under the label "For official use."

2. Description of the developed method

The method is intended for the commission (or official) responsible for working with OI (hereinafter referred to as the commission), which makes decisions on the classification of public information as OI (including state secret experts and expert commissions established under them), and outlines the procedure for determining the grounds for classifying information as OI and assigning it the degree of access restriction "For official use" (hereinafter referred to as the degree of "FOU"), based on expert assessments.

The principle of expert assessments applied in this method makes it possible to determine, in the same conventional units, the amount of economic damage and the severity of other negative consequences that may be caused to the vital interests of Ukraine as a result of the disclosure of information that is or should be classified as OI, and to assign the "FOU" degree to such information.

2.1. Terms and definitions introduced

The following basic concepts, terms and definitions are introduced and used in this method:

Official information (OI) – is a type of restricted information that pertains to the performance of functions and activities of public authorities in the vital interests of Ukraine, the disclosure of which may cause significant damage to these interests, and where the harm resulting from such disclosure outweighs the public interest in obtaining the information.

The degree of "FOU" – is a category that characterizes the importance of OI, the degree of restriction of access to it "For official use" and the level of its protection by the state.

Classification of information as OI – is a procedure involving a decision (by the commission on work with OI or authorized officials) to designate a category of information or specific information as OI, with the assignment of the access restriction level "For official use", based on the justification and assessment of potential harm to the vital interests of Ukraine in the event of its disclosure – where such harm outweighs the public interest in accessing the information. This process also includes the inclusion of the information in the "List of Information Constituting OI" and the publication of this classification.

Access restriction stamp – is a requisite of a material information carrier that indicates the degree of access restriction to the information ("For official use", "Secret", "Top Secret") [13].

Stamp "FOU" – is a requisite of a material carrier of OI, certifying the degree of access restriction "For official use" of this information.

Economic damage – material losses to the state, in terms of the vital interests of Ukraine, expressed in quantitative terms, that are caused or may be caused as a result of the disclosure of specific information constituting OI, where the damage from such disclosure outweighs the public interest in obtaining the information.

Other grave consequences (OGC) – are negative changes to the above-mentioned interests that have occurred or may occur as a result of the disclosure of specific information constituting OI, and which, in some cases, cannot be economically quantified in cost terms.

Substantial damage – economic damage and OGC, which are caused or may be caused to the state as a result of disclosure of specific information that constitutes OI.

Object – a state authority, local self-government body, other public authorities, whose activities and functions are related to ensuring the vital interests of Ukraine, which contains information that is or may be classified as OI.

Component part of the object (CPO) – an element of the object, the functioning of which is directly influenced by the predictive actions of the party that has acquired the information that is or can be attributed to the OI.

Auxiliary words ("by individual component indicators", "by the aggregate of all component indicators", "by individual indicators", "by the aggregate of all indicators", "object as a whole") – are words used in the texts of data and used when referring to OI to highlight, clarify and perceive the parameters of the indicator of identification of information of the CPO, if any.

The list of information constituting OI – is an act of a public authority, local self-government body or other subject of power, which summarizes brief descriptions of the content of data that, according to the decision of the commission (or official) on OI, constitutes OI in accordance with the requirements of the Law of Ukraine "On Access to Public Information".

2.2. Parameter values in method

The basis for classifying information as OI is the existence of potential substantial damage (ω_{sd}) to the vital interests of Ukraine, as specified in Part 2 of Article 6 of the Law of Ukraine "On Access to Public Information", from the disclosure of this information:

$$\omega_{sd} = \omega_{ed} + \omega_{sc} \quad (1)$$

where: ω_{ed} – is an indicator characterizing economic damage to the state as a level of decrease in the efficiency of using the allocated funds to perform the functions and activities of the object in ensuring the vital interests of Ukraine as a result of disclosure of information about this object, ω_{sc} – an indicator characterizing the damage to the state from the OGC established on the basis of a preliminary expert assessment.

The list of OGCs for vital interests of Ukraine from disclosure of information constituting OI that causes harm that constitutes substantial damage or has serious consequences ($0 \leq \omega_{sc} < 1$):

- in the areas of state secret protection (defense, foreign relations, economy, science and technology, state security and law enforcement),
- to protect public health, protect the reputation or rights of others, prevent the disclosure of information received in confidence, or maintain the authority and impartiality of justice,
- in the areas of the object's activity or in the exercise of its control, supervisory functions, decision-making process, which precede public discussion and/or decision-making.

In some cases, it is possible that substantial damage some cases, it is possible that substantial damage from disclosure of information will be determined only by the economic damage or OGC indicator.

In order to avoid the influence of factors related to changes in economic (price) indicators, the calculation of funds is performed in conventional units – points, and their number characterizes the "specific weight".

The indicator characterizing the state's economic damage (ω_{ed}) is calculated as:

$$\omega_{ed} = \omega_{dd} - \omega_{pi} \quad (2)$$

where: ω_{dd} – an indicator that characterizes the damage (losses) from the disclosure of this information, which is subject to examination for classification as OI, ω_{pi} – an indicator characterizing the existence of public interest in obtaining this information.

Also, the value (ω_{dd}) determines the level of economic damage, which is caused by a complete or partial loss of efficiency of further use (creation) of the object as a result of disclosure of information about this object, as:

$$\omega_{dd} = Q \cdot \bar{k} \cdot \bar{\rho} \quad (3)$$

where Q – "specific weight" of the object (points), information about which can be attributed to the OI, $\bar{k}$ – the relative value of the CPO (of the value of the entire object), which will be directly affected by the predictable actions of the party that has obtained the above information, $\bar{\rho}$ – "the level of reduction in the efficiency of the use of this CPO" due to the disclosure of this data.

The number of points characterizing the "specific weight" of certain categories of important objects (Q) is shown in Table 1.

Table 1. "Specific weight" of object categories

field of activity, category of objects	specific weight (Q)
State authorities	3
Local self-government bodies	2
Other governmental entities	1

The value of the relative value of the CPO ($\bar{k}$) is established by the equivalent of the use of auxiliary words used to fully, partially or indirectly identify the CPO that will be directly affected by the predictable actions of the party that has acquired this information, which is subject to examination for classification as OI ($0 < \bar{k} \leq 1$).

The number of points characterizing the "specific weight" of individual auxiliary words ($\bar{k}$) is shown in Table 2.

Table 2. The "specific weight" of auxiliary words as a relative cost of CPO

relative cost of CPO		
auxiliary words	scale	specific weight ($\bar{k}$)
"in general" (in case of absence of indicators)	[0.8-1]	0.9
"by the aggregate of all indicators"	[0.6-0.8]	0.7
"by individual indicators" (or "by indicators")	[0.4-0.6]	0.5
"by the aggregate of all component indicators"	[0.2-0.4]	0.3
"by individual component indicators"	[0-0.2]	0.1

For example, in paragraphs 4.1, 4.2, 4.4 of the "List of Information Constituting Official Information of the Ministry of Education and Science of Ukraine", the auxiliary words "by individual indicators" are used, and in paragraph 4.3 of the same list – "by the aggregate of all indicators" [9].

The value of the "level of reduction in the efficiency of the use of this CPO" ($\bar{\rho}$) due to the disclosure of this information subject to examination is determined within ($0 \leq \bar{\rho} \leq 1$). This parameter $\bar{\rho}$ is determined by the relative characteristic of identifying the completeness of the CPO in the data subject to examination, the disclosure of which will lead to a possible decrease in the efficiency of the use of the object as a whole to the level of compromise of this CPO.

The number of points that characterizes the "specific weight" of such "levels of reduction in the efficiency of the use of CPO" ($\bar{\rho}$) is given in Table 3.

Table 3. "Specific weight" of the relative cost of CPO

decrease in the efficiency of the use of the CPO		
level	scale, %	specific weight ($\bar{\rho}$)
maximum	[80-100]	0.9
significant	[60-80]	0.7
average	[30-60]	0.5
partial	[10-30]	0.3
minimum	[0-10]	0.1

2.3. Grounds and decision criteria for classification as official information

The grounds and decision criteria for classifying information as OI is the existence of potential substantial damage (ω_{sd}) to the vital interests of Ukraine from the disclosure of this information as:

$$\omega_{sd} = \omega_{dd} - \omega_{pi} + \omega_{sc} \quad (4)$$

In the absence of public interest in obtaining information ($\omega_{pi} = 0$) subject to examination for classification as OI, the indicator characterizing economic damage will be equal to the indicator characterizing the harm (losses) from their disclosure ($\omega_{ed} = \omega_{dd}$) and then formula (4) will take the form:

$$\omega_{sd} = Q \cdot \bar{k} \cdot \bar{\rho} + \omega_{sc} \quad (5)$$

The grounds for making a decision to classify data as OI are the following:

- damage from OGC to the vital interests of Ukraine from the disclosure of this data, which constitutes substantial damage or has serious consequences ($\omega_{sc} = \omega_{sd}$),
- substantial damage in case of disclosure of this data ($\omega_{sd} > 0$),

- damage, which from the disclosure of such information outweighs the public interest in obtaining it ($\omega_{di} > \omega_{pi}$).

The criterion for determining the degree of "FOU" to OI and further assignment of the "FOU" stamp to its material carriers is to find the value of the substantial damage from its disclosure within the range of 0 to 1 point ($0 < \omega_{di} < 1$).

If the value of the substantial damage is more than one point, one should use the methodological recommendations [12] on the possibility of classifying this data as state secret.

An example of an examination of determining by formula (5) whether information belongs to OI and the degree of "FOU" according to the paragraph 4.2 of "List of Information Constituting Official Information of the Ministry of Education and Science of Ukraine" [9] is shown in Figure 1.

EXAMPLE OF DETERMINING THE SUBSTANTIAL DAMAGE FROM DISCLOSURE OF INFORMATION OF THE DEGREE OF ACCESS RESTRICTION

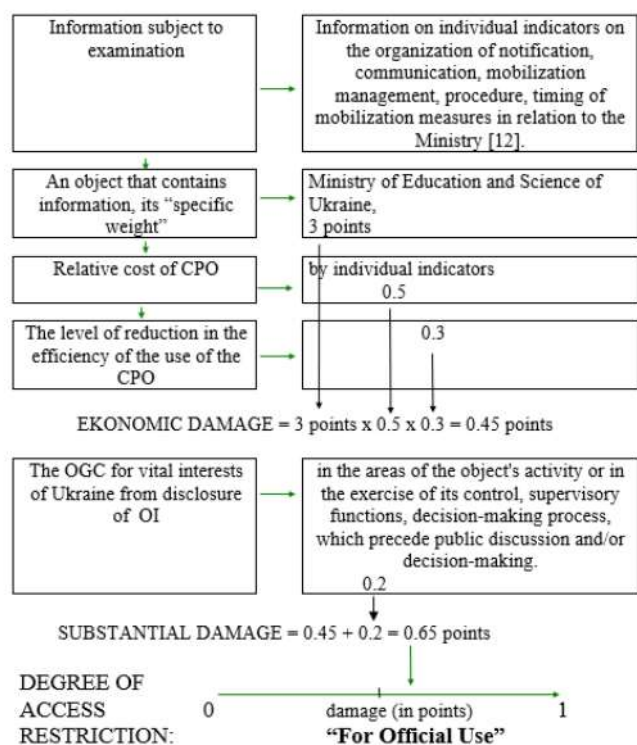


Fig. 1. An example of determining whether information belongs to the OI and the degree of "FOU"

3. Conclusion

The article proposes a method for determining the grounds for classifying data as OI and the degree of access restriction "For official use." The principle of expert assessments applied in this method allows for determining, in the same conventional units (points), the amount of information that may be harmful to the vital interests of Ukraine as a result of the disclosure of information that is or should be classified as OI. The method incorporates existing and newly introduced terms and definitions, and also applies the criteria for determining the grounds necessary to restrict access in accordance with the requirements of the "three-part test" defined by Ukrainian legislation. The main parameters used in this method to identify such information include the following indicators of substantial damage as: economic damage, other grave consequences (OGC), public interest in disclosure, the "specific weight" of the information objects, the relative cost of the component part of the object (CPO), the level of decrease in the efficiency of the object's use, among others. Based on the results of an expert assessment of the magnitude of possible substantial damage in the event of disclosure of information subject to examination and the intro-

duced criterion for determining the degree of access restriction "For official use", a decision is made to classify this data as official information. This method is intended for the commission on work with OI and officials responsible for making decisions on the classification of information as OI. It may also be useful for state secrets experts and expert commissions established under their auspices when declassifying state secret as OI.

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Ph.D. Yuriy Dreis

e-mail: y.dreis@mu.edu.ua

Candidate of technical sciences (Ph.D.) in information security of state, associate professor at the Department of Analytics System and Information Technology, Mariupol State University, Kyiv, Ukraine. Scientific interests: information security, protection information, consequence assessment, risk analysis.

<https://orcid.org/0000-0003-2699-1597>

Ph.D. Oleh Harasymchuk

e-mail: oleh.i.harasymchuk@lpnu.ua

Candidate of technical sciences (Ph.D.), associate professor at the Department of Information Protection, Lviv Polytechnic National University, Lviv, Ukraine. Scientific interests: protection information, generating pseudo random sequences

<https://orcid.org/0000-0002-8742-8872>

