



TO: Chairman of the Parliament of Georgia,
Mr. Davit Bakradze

Chairman of the Legal Affairs Committee
of the Parliament of Georgia,
Mr. Pavle Kublashvili

Chairman of the Defense and Security Committee
of the Parliament of Georgia,
Mr. Giorgi Targamadze

CC: Chairman of LEPL Data Exchange Agency,
Mr. Irakli Gvenetadze

Dear Sirs,

The Parliament of Georgia is debating the draft Law of Georgia on Information Security. This document is of a particular concern, as number of its provisions have an impact on and make corrections to the legislation regulating freedom of information in the country. We would like to present the opinions of the "Institute for Development of Freedom of Information", "Transparency International - Georgia", and the "Georgian Young Lawyers' Association" with respect to separate issues regulated under the above-mentioned draft Law.

Notably, we find the debating of this legislative initiative as justified and timely. We believe the risks existing in terms of rapid development and application of information technologies must be reflected accordingly in the legislation of Georgia. Notwithstanding our positive stance on the legislative initiative, we find this draft Law raises numerous questions and requires improvement.

Firstly, we would like to emphasize that the proposed draft Law establishes new types of closed public information, such as: confidential, restricted, and non-classified information. Information is **confidential**, if the breach of its confidentiality shall presumably result in significant damages to the functions of entity of

critical infrastructure.¹ Information is **restricted**, if the breach of its confidentiality shall presumably result in significant hindrance of discharge of functions by an entity of critical infrastructure, or cause damage to the state interest or business reputation of a private person.² Information is **non-classified**, if it is intended only for the employees of entity of critical infrastructure and/or person in contractual relations with such entity, and if the breach of its confidentiality may result in insignificant damage to the infrastructure entity and/or the security of state authorities, state interests, or business reputation of private entities.³ **The above-described new types of closed public information go beyond the list of secrets established under the Constitution of Georgia (state, commercial, and private) and represent its illegitimate extension.**

Remarkably, when restricting the access to information, in all three instances the test of presumable damages is applied rather than the test of confirmed damages or one with the high probability. The standard of secrecy offered by the draft Law for restricting the access to information is extremely low and vague.

Further, the purpose of introducing new types of closed information by the legislator is unclear, when it is possible to apply already established categories of secret information (state, commercial, private). Besides, the legislation of Georgia not only institutes the standards for classifying the information, but defines the procedures for getting familiar with, making public, and having access to the classified information as well.

Sub-Paragraph "l" of Article 2 of the draft Law defines an 'information asset' - any information having a value for the entity of critical infrastructure, such as the technological means for storing, processing and transferring the information, employees, and their know-how in processing of information.

Paragraph 3 of Article 5 of the draft Law states that in the process of creating an information asset, the author of asset and/or a person responsible for an asset, i.e. the entity of critical infrastructure determines the respective class of criticality. Pursuant to this provision, the entities of critical infrastructure will themselves grant one out of four classifications to the public information, i.e. decide the category - confidential, restricted, non-classified, or open - for each piece of public information.

We believe that granting such authority to the entities of critical infrastructure may lead to inaccessibility of information despite of its publicity.

At the same time, the access to public information is secured by the General Administrative Code of Georgia, while Paragraph 4, Article 5 of Chapter II of the draft Law stipulates new rules for accessing, issuing (publishing), amending or deleting the classified information (including **open information**), namely: *"The Legal Entity of Public Law Data Exchange Agency shall determine by a normative act the procedure for describing, classifying, accessing, issuing (publishing), amending or deleting the information assets"*,⁴

¹ Sub-Paragraph "h" of Article 2 of the draft Law.

² Sub-Paragraph "i" of Article 2 of the draft Law.

³ Sub-Paragraph "j" of Article 2 of the draft Law.

⁴ Paragraph 4 of Article 5 of the draft Law.

which may further widen the conflict at legislative level between the norms on freedom of information and legislation regulating information security.

Although pursuant to the draft Law its "provisions do not affect the validity of norms of Georgian legislation regulating the freedom of information, processing of personal data, and protection of the state, commercial or private secret", this wording does not neutralize the threat emerging from the new classification of closed public information. Moreover, in terms of the Law's common spirit it is inconsistent with the reality, as in general the explanatory note of the draft Law states that the main objective of adopting a new law is to protect the security of **information systems**⁵ (info-communication technologies) of entities of critical infrastructure, primarily in the cyber-space.⁶

Hence, we trust the provisions of the draft Law must ensure the operation of information systems and secure functioning of these systems. Accordingly, we find it necessary to clarify number of terms, e.g.:

"Information asset - any information and know-how protected in the entity of critical infrastructure, which is linked to the **functioning of information systems** of the entity of critical infrastructure, such as the technological means for storing, processing and transferring the information, employees, and their know-how in processing of information."

We consider that the new categories of classified information introduced by the draft Law fundamentally contradict the standards set by the Constitution of Georgia and provide for the possibility of unconstitutional restriction of access to public information. In case of its adoption by the Parliament as presented, this draft Law may serve as a new tool in the hands of public institutions or courts for disproportionately classifying the public information. We also believe that there is no need to introduce the interpretation of **public information** as provided in the draft Law, and if it becomes necessary to restrict access to a particular piece of public information, respective public institutions must act pursuant to the Law of Georgia on State Secret and the General Administrative Code of Georgia. We trust at this stage the draft Law requires substantial revision, so that number of its provisions do not contradict the Constitution of Georgia.

⁵ "The Agency is obligated to "ensure information security, including, to carry out education activities as in the public, as well as in the civil sectors", for which it may "develop draft legal acts regulating the **field of information technologies (systems)**" (Sub-Paragraph "1" of the same article). **This draft Law serves the exercise of these very powers.**"

⁶ Definition of 'critical infrastructure' provides grounds for drawing the same conclusion: "Critical infrastructure - the unity of legal entities, state bodies, and areas of activity determined by this Law and other normative acts issued based on law, the **continuing functioning of information systems of which** is crucial for the country's defense and/or economic security, and normal functioning of the state authorities and public at large."

The document is drafted by "Transparency International - Georgia", "Georgian Young Lawyers' Association", and "Institute for Development of Freedom of Information" and represents joint opinions/comments of these organizations on the draft Law.

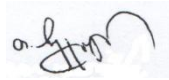
Sincerely,



Eka Gigauri

Transparency International - Georgia
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