

## **The Issue of Safeguarding State Secrets During the Preliminary Investigation Phase**

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**Abstract.** *This article analyzes the specifics of the issue of securing state secrets at the preliminary investigation stage. The secrecy of the preliminary investigation, on the one hand, protects the rights and freedoms of the individual in the criminal process, and on the other hand, issues of protecting the interests of the state have been analyzed. Most importantly, at the preliminary investigation and inquiry stage, the issue of taking measures to prevent the disclosure of materials related to state secrets by the investigator was emphasized. This article analyzes national and foreign legislation as well as the opinions of scientists.*

**Key words:** *investigative secret, state secret, methods of securing, crime, criminal process, documents, tactics, security measures, foreign experience, law, secrecy, disclosure.*

### **Introduction**

According to Article 33 of the Constitution of the Republic of Uzbekistan, restrictions on the right to seek, receive and disseminate information are allowed only in accordance with the law and only to the extent necessary for the protection of the constitutional order, public health, social morality, the rights and freedoms of other persons, ensuring public safety and public order, as well as for the prevention of disclosure of state secrets or other secrets protected by law.<sup>1</sup>

During the preliminary investigation, the investigator enters into a legal relationship with the participants in the criminal process. The investigator independently carries out the planning of the investigation, the implementation of investigative and other procedural actions, the evaluation of the collected evidence, and the issuance of decisions on the criminal case.<sup>2</sup>

Article 88 of the Criminal Procedure Code of the Republic of Uzbekistan stipulates that the investigator, prosecutor, and judge are obligated to take measures to prevent the disclosure of information about the private lives of suspects, accused persons, defendants, victims, and others, which is revealed during the investigation and trial process. For this purpose, the number of individuals participating in investigative or judicial actions where such information may be revealed is limited, and participants are warned about their responsibility for disclosing such information.<sup>3</sup>

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<sup>1</sup> Ўзбекистон Республикаси Конституцияси. – Т.: Ўзбекистон, 2023.

<sup>2</sup> Қурбанов Д. Дастлабки терговда қонунийликни таъминлашнинг хусусиятлари.

<https://cyberleninka.ru/article/n/dastlabki-tergovda-onuniylikni-taminlashning-hususiyaatlari>

<sup>3</sup> Ўзбекистон Республикасининг Жиноят-процессуал кодекси. – Т.: Ўзбекистон, 2023.

It is of particular importance in the investigation of criminal cases related to state secrets, as in this category of cases, there is often strong resistance from interested parties towards the investigative authorities (especially when it concerns the safety of victims, witnesses, and other persons involved in the criminal process). Thus, maintaining the confidentiality of the preliminary investigation is also necessary for protecting the rights and freedoms of individuals in the criminal process.

In such cases, organized criminal groups primarily attempt to obtain information about victims and witnesses from criminal case materials in order to achieve their objectives. In this context, information can be acquired not only from corrupt or former law enforcement officials but also from participants in the process of a specific criminal case through the prosecution or defense.

Consequently, disclosing information from the preliminary investigation may impede the establishment of truth in the case, facilitate the alteration of witness and victim testimonies, aid in the destruction or falsification of evidence, and thereby negatively impact the course and outcomes of both the investigation and trial.

In our opinion, the secret of the preliminary investigation should be understood as information protected by criminal and criminal procedural law, or determined by the investigator (inquiry officer) in the interests of investigating a criminal case or protecting the interests of participants in the criminal process, and safeguarded to eliminate the risk of actual or potential harm.

In each specific case, the determination of what information constitutes an investigative secret depends on the discretion of the investigator. However, this discretion cannot be arbitrary. Identifying information that cannot be disclosed is very challenging, as excessive confidentiality may lead to violations of the rights and legitimate interests of participants in the criminal process by both the prosecution and defense, while excessive disclosure negatively affects the investigation of the criminal case.<sup>4</sup>

In our opinion, the confidential information of a preliminary investigation may include the following:

- 1) tactics and plans for conducting investigative work. Disclosure of such information may significantly increase resistance to the investigation, rendering it ineffective;
- 2) evidence obtained during investigative actions, as well as the results of evidence evaluation at certain stages of the investigation;
- 3) information about the composition of participants in a specific investigative action and the tactical methods to be employed in its execution;
- 4) security measures taken for participants in the criminal proceedings;
- 5) identity, place of residence, and other details of participants in the judicial process who may be at risk, as well as officials conducting the investigation;
- 6) reports and information on the results of operational-search activities.

It should be noted that the above requirements and recommendations can be specific or individualized for each criminal case. Therefore, in our opinion, it is advisable to clearly define and enshrine in criminal procedural legislation a list of information that cannot constitute the confidential information of a preliminary investigation.

This information includes:

- 1) the fact of the commission of the crime and its consequences;
- 2) the initiation of a criminal case;
- 3) Detention of suspects, application of preventive measures, indictment;

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<sup>4</sup> Камалова Г.Г. Анализ понятия и содержания тайны следствия // Вестник Удмуртского университета. Экономика и право. 2013. Вып. 1. С. 156-159.

- 4) completion of the investigation and transfer of the case to the court or termination of the criminal case;
- 5) facts of violation of the rights and freedoms of a person and citizen during the investigation;
- 6) facts of violation of the law by the investigator.

Criminal and criminal procedural legislation are the legal means of securing the secrecy of the preliminary investigation.

According to Part 4 of Article 88 of the Criminal Procedure Code, the investigator, investigator, prosecutor, judge are obliged to take measures not to disclose the information about the private life of the suspect, accused, defendant, victim, etc., revealed during the investigation and trial.<sup>5</sup>

To this end, the circle of persons participating in the conduct of investigative or judicial actions in which such information can be revealed will be limited, and the participants will be warned of liability for their disclosure. In this case, the source or method of obtaining this information by the process participant and the level of their awareness are irrelevant.

Article 88 of the Criminal Code establishes liability by a person who has been warned about the inadmissibility of disclosing the information of the preliminary investigation, if it was committed without the consent of the investigator or inquiry officer.<sup>6</sup>

For example, Article 162 of the Criminal Code provides for independent criminal liability for disclosing information constituting the secret of the preliminary investigation. The subjects of this crime are officials of law enforcement agencies and other persons to whom this information is entrusted.<sup>7</sup>

The issue of the duration of the warning against disclosing preliminary investigation information is crucial. This appears to depend on the period necessary to maintain the confidentiality of the investigation.

For instance, should information about investigation planning, investigative actions, strategy, and tactics be kept confidential until the investigation is completed and the accused and their defense counsel have familiarized themselves with the criminal case materials? Regarding information about security measures applied to participants in the judicial process, in some cases, it may not be disclosed even after the completion of the investigation and trial.

With the investigator's permission, information constituting confidential investigation secrets may be publicly disclosed. Such a decision may be made for various reasons.

Certain investigation-related information may be published in the media to engage the public in helping identify or search for the person who committed the crime, locate witnesses, as well as gather evidence.

Disclosure of case materials may also serve a preventive purpose. It warns citizens about the possibility of certain types of crimes being committed against them (for example, information about fraud).

Public disclosure of preliminary investigation data may be necessary to prevent and suppress rumors or to counter deliberate misinformation of the public about the circumstances of the case. Sometimes, "information leaks" can be orchestrated based on tactical considerations of the investigation and other factors.

Based on the above, the disclosure of preliminary investigation data is permissible if: 1) disclosure does not contradict the interests of the preliminary investigation; 2) it does not lead to a violation of the rights and legitimate interests of process participants; 3) consent has been

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<sup>5</sup> Ўзбекистон Республикасининг Жиноят-процессуал кодекси. – Т.: Ўзбекистон, 2023.

<sup>6</sup> Ўзбекистон Республикасининг Жиноят кодекси. – Т.: Ўзбекистон, 2023.

<sup>7</sup> Ўзбекистон Республикасининг Жиноят кодекси. – Т.: Ўзбекистон, 2023.

obtained for the dissemination of information about the private lives of participants in the criminal process.

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