IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2026] SGHC 80

Magistrate's Appeal No 9109 of 2025

Between

Tran Thi Tien

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Statutory offences — Official Secrets Act (Cap 213, 2012 Rev Ed)]
[Criminal Law — Appeal]
[Criminal Procedure and Sentencing — Sentencing — Appeals]

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Tran Thi Tien
v
Public Prosecutor

[2026] SGHC 80

General Division of the High Court — Magistrate's Appeal No 9109 of 2025
Mavis Chionh Sze Chyi J
3 November 2025, 30 January, 2 March 2026

10 April 2026

Mavis Chionh Sze Chyi J:

Introduction and procedural background

1 This appeal concerned the sentencing of an offender convicted of unauthorised receipt of confidential information under s 5(2) of the Official Secrets Act (Cap 213, 2012 Rev Ed) ("OSA"). The key issue which arose for consideration in this appeal concerned the appropriate sentencing approach to be adopted for such offences.

2 By way of background, the appellant, Tran Thi Tien ("Appellant"), pleaded guilty in the District Court to one charge under s 5(2) of the OSA, punishable under s 17(2) of the OSA,[1] of receiving information, having reasonable grounds to believe, at the time when she received it, that the said

[1] Charge (DAC-919027-2024) (Record of Appeal (Amendment No. 2) ("ROA") at pp 5–6).

information was communicated to her in contravention of the OSA. The District Judge ("DJ") convicted the Appellant of the said charge and sentenced her to one week's imprisonment. The DJ's grounds of decision are set out in *Public Prosecutor v Tran Thi Tien* [2025] SGDC 191 ("GD").[2]

3 The Appellant appealed against her sentence and was on bail pending the disposal of her appeal. The crux of her appeal was her contention that a custodial sentence was not warranted in her case, whereas the Prosecution contended that it was. The hearing, which was originally fixed for 3 November 2025, was adjourned to allow both the Appellant and the Prosecution to put in further submissions addressing my queries as to what the appropriate sentencing approach should be for s 5(2) OSA offences, having regard to the dearth of reported sentencing decisions for such offences.

4 Having considered parties' written and oral submissions, including their further written submissions, I allowed the Appellant's appeal against sentence, and substituted a fine of S$1,500 for the sentence of one week's imprisonment. These are my full written grounds of decision which include, in particular, my findings as to what the appropriate sentencing approach should be for offences of unauthorised receipt of confidential information under s 5(2) of the OSA.

5 The version of the OSA considered in this case is the version in force at the time when the Appellant committed the offence (*ie*, 10 December 2020). However, there is no difference between the sections material to the present case which were in force as of 10 December 2020 (*ie*, ss 5(2) and 17(2) of the OSA), and the corresponding provisions which are currently in force. I also highlight that in these written grounds of decision, I use the term "confidential

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2 GD dated 1 August 2025 (ROA at pp 38–54).

information" as a convenient shorthand for referring to "information communicated in contravention of the OSA", and this term does not relate to any particular sensitivity or security classification. The term "confidential information" was used in a broadly similar manner in a speech on 10 January 2011 by the Minister for Home Affairs, Mr K Shanmugam, in response to a Parliamentary Question regarding the WikiLeaks incident (in which classified diplomatic cables had been published online). I return to the content of this speech at [52] below.

6 I first set out the undisputed facts in this case, based on the Statement of Facts ("SOF") to which the Appellant admitted in pleading guilty.[3]

Background

Undisputed facts

7 The co-accused in this matter is one Chan Zhiyao, who was, at the material time, a Senior Investigation Officer attached to the Special Victims Unit of Bedok Division, Singapore Police Force ("SPF"). The co-accused joined the SPF in 2003.[4]

8 The SPF employs a confidential computer database system known as the CRIMES II system, on which police officers may conduct screenings of individuals to obtain information about them. This includes information about previous cases of police investigations involving the individuals being screened. Police officers may log onto the CRIMES II system using their personal

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3 Notes of Evidence ("NEs") dated 10 July 2025 at p 1 line 28 – p 4 line 15 (ROA at pp 23–26).

4 Statement of Facts dated 10 July 2025 ("SOF") at para 2 (ROA at p 7).

username and password. By virtue of his position as a Senior Investigation Officer of the SPF, the co-accused had access to the CRIMES II system.[5]

9 Sometime before 2 December 2020, the co-accused was assigned to investigate a case of child abuse involving the Appellant and her ex-husband, one Wong Peiliang ("Appellant's ex-husband").[6]

10 In the course of these investigations, the Appellant informed the co-accused that she and her ex-husband were undergoing divorce proceedings.[7]

11 On 9 December 2020, the Appellant informed the co-accused that sometime around end-2016, her ex-husband had stolen a person's handphone at Tan Tock Seng Hospital ("Theft Case"). The Appellant asked the co-accused to provide her with information on the investigations against her ex-husband in relation to the Theft Case, so that she could relay the same to her divorce lawyer.[8]

12 Sometime between 5.40pm on 9 December 2020, and 8.24pm on 10 December 2020, the co-accused conducted an unauthorised screening of the Appellant's ex-husband's name using the CRIMES II system, to procure information relating to the Theft Case. The information regarding the Theft Case was not related to the child abuse case that the co-accused was investigating. Through this unauthorised screening, the co-accused obtained the police report number ("Report Number") pertaining to the Theft Case.[9]

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5 SOF at para 3 (ROA at pp 7–8).

6 SOF at para 4 (ROA at p 8).

7 SOF at para 5 (ROA at p 8).

8 SOF at para 6 (ROA at p 8).

9 SOF at para 7 (ROA at pp 8–9).

13 On 10 December 2020, at 8.24pm, the co-accused sent the Appellant the Report Number *via* WhatsApp. The Appellant knew that the co-accused had obtained the Report Number owing to his position as a Senior Investigation Officer who held office under the SPF. The Appellant also knew that the Report Number was unrelated to the child abuse case that the co-accused was investigating. She therefore had reasonable grounds to believe that the co-accused was not authorised to communicate the said Report Number to her, and that it was not the co-accused's duty to communicate the said Report Number to her.[10]

14 As the Appellant received the Report Number, having reasonable grounds to believe, at the time of receipt, that this information was communicated to her in contravention of the OSA, the elements of an offence under s 5(2) of the OSA (punishable under s 17(2)) were made out.[11]

15 The above offence was discovered by investigators when they were conducting unrelated investigations into the co-accused. The investigations also revealed that the Appellant and the co-accused had entered into a sexual relationship on or around 25 May 2022.[12]

16 *Per* the SOF, there was another incident following the above offence. This involved a WhatsApp conversation between 8 September 2022 and 9 September 2022, in which the Appellant asked the co-accused whether a shopfront that she intended to rent had previously been "checked" by the Police.

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10 SOF at para 8 (ROA at p 9).

11 SOF at para 9 (ROA at p 9).

12 SOF at para 10 (ROA at pp 9–10).

On that occasion, the co-accused refused to provide the information, stating that it was confidential.[13]

17 The SOF further recounted that the Appellant gave the co-accused a loan of S$2,000 on 5 January 2023.[14] The Appellant was subsequently arrested on 17 October 2023 and released on bail on the same day.[15]

Decision below

The sentencing considerations and factors considered by the DJ

18 I next summarise the sentencing considerations and factors considered by the learned DJ in sentencing the Appellant.

19 To begin with, as the DJ noted, the OSA prohibits the unauthorised disclosure *and* unauthorised receipt of confidential information, given that such acts "threaten the integrity of State information" and might have "potentially serious ramifications".[16] This means that the principal sentencing consideration for OSA offences is general deterrence of *both* public officers *and* external parties. In his GD, the DJ explained that the offence of illegitimately procuring confidential information from the police force is "essentially an offence against a public institution", and that offences against public institutions generally warrant general deterrence (citing *Public Prosecutor v Law Aik Meng* [2007] 2

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13 SOF at para 11 (ROA at p 10).

14 SOF at para 12 (ROA at p 10).

15 SOF at para 13 (ROA at p 10).

16 GD at [9]–[14] (ROA at pp 43–47).

SLR(R) 814 ("*Law Aik Meng*") at [24(a)]).[17] That said, the DJ acknowledged the trite principle that "deterrence must be tempered by proportionality".[18]

20 Noting the paucity of reported sentencing decisions on OSA offences, the DJ took reference from corruption offences that similarly involved undermining of public institutions. Citing *Goh Ngak Eng v Public Prosecutor* [2023] 4 SLR 1385 ("*Goh Ngak Eng*"), the DJ considered the following non-exhaustive *offence-specific* factors to be relevant in assessing an offender's culpability and the harm posed by their offence:[19]

Culpability	Harm
(a) Motive (b) Role of the offender and the position held by the offender (c) Degree of planning and premeditation (d) Use of threats, pressure or coercion (e) Acts of concealment (f) Involvement of criminal syndicate (g) Transnational element	(a) Nature of the information disclosed and the risk of harm (b) Extent of the actual harm caused (c) Extent of breach and dissemination

21 As for *offender-specific* factors, the DJ considered the following non-exhaustive factors (citing *Public Prosecutor v Wong Chee Meng* [2020] 5 SLR 807 ("*Wong Chee Meng*")):[20]

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17 GD at [14] (ROA at pp 46–47).

18 GD at [15] (ROA at p 47).

19 GD at [16] (ROA at p 47).

20 GD at [18] (ROA at p 48).

Aggravating factors	Mitigating factors
(a) Offences taken into consideration for sentencing purposes (b) Relevant antecedents (c) Evident lack of remorse	(a) A guilty plea (b) Cooperation with the authorities (c) Actions taken to minimise harm

22 Finally, the DJ held that the principle of parity in sentencing applied in the present case. Citing *Chong Han Rui v Public Prosecutor* [2016] SGHC 25 ("*Chong Han Rui*") at [47], the DJ held that the relevant question was whether the public would perceive that an offender who was party to a common criminal enterprise had suffered injustice by reason of a disparity in sentence *vis-à-vis* a co-offender who was also party to the same common criminal enterprise. While the principle of parity had yet to be applied in reported decisions on OSA offences, the DJ found it helpful to consider corruption offences which similarly involved conduct undermining public institutions. He noted that in the context of such corruption offences, the general principle was that the giver and recipient of gratification were equally culpable, although the sentencing court must still assess the culpability of each offender and their unique circumstances.[21]

The DJ's application of the relevant legal principles to the facts

23 Having set out the above sentencing considerations and factors, the DJ applied them to the Appellant's case in the following manner.

24 Beginning with the Appellant's *culpability*, the DJ first considered *Public Prosecutor v Phua Keng Tong* [1985–1986] SLR(R) 545 ("*Phua Keng*

[21] GD at [32] and [33] (ROA at pp 52–53).

Tong"). In that case, the receiving party (Phua) claimed trial to a charge under s 5(2) of the Official Secrets Act (Cap 233, 1970 Rev Ed). He was acquitted by the trial judge, but the prosecution's appeal against the acquittal was allowed by the High Court, which convicted him of the charge and sentenced him to a fine of S$1,500. The DJ distinguished *Phua Keng Tong* from the present case on the basis that the Appellant had "specifically solicited the information from [the co-accused]", whereas in *Phua Keng Tong*, the receiving party had not *asked* for confidential information.[22]

25 The DJ held, moreover, that the Appellant's culpability was "heightened" by her "ill intent" and "malice", in that she had sought confidential information which she intended to "weaponi[s]e in divorce proceedings against her ex-husband". In contrast, according to the DJ, the *disclosing* party in *Phua Keng Tong* had offended due to "a lapse of judgment, absent any malicious intent".[23] The fact that the Appellant eventually did not use the Report Number was held to be a "neutral factor", particularly since the "*potential* for misuse" [emphasis added] of the information remained, as she "could still use that information against her ex-husband in the future".[24]

26 Based on the above reasoning, the DJ concluded that the Appellant's *culpability* was "materially higher" than that of Phua in *Phua Keng Tong*.[25]

27 As for the *harm* caused by the Appellant's offending, this was held to be low but not negligible, and in the DJ's view, "slightly higher" than the harm

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22 GD at [19]–[22] (ROA at pp 48–50).

23 GD at [23] (ROA at p 50).

24 GD at [26] (ROA at p 51).

25 GD at [28] (ROA at p 52).

occasioned in *Phua Keng Tong*. He found that the very fact that confidential information (*ie*, the Report Number) had been leaked from the CRIMES II system to the Appellant meant that *actual* prejudice had been caused to the SPF's interest as well as the ex-husband's interest. Also relevant, in his view, was the *potential* for future misuse of the information against the Appellant's ex-husband.[26]

28 In respect of the parity principle, the DJ held that this applied to the present case because the Appellant and the co-accused were "participants of a common criminal enterprise", in that the former had "solicited the information, and [the latter] provided it".[27] He found that the co-accused, being well-positioned to refuse the request for confidential information, was "significantly more culpable" than the Appellant. Since the co-accused had been sentenced to two months' imprisonment for his OSA offence, the DJ held that a sentence of one week's imprisonment for the Appellant would be commensurate with her reduced culpability.[28]

29 In arriving at this sentence, the DJ took into account the Appellant's early plea of guilt, which entitled her to a discount in sentence.[29] On the other hand, he also took into account her subsequent attempt "some two years later" to find out from the co-accused whether a shopfront that she intended to rent had been previously "checked" by the police. According to the DJ, this

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26 GD at [27] and [29] (ROA at pp 51–52).

27 GD at [31] (ROA at p 52).

28 GD at [34] (ROA at p 53).

29 GD at [34] (ROA at p 53).

subsequent incident "reinforced [his] view that the prior offence was not a momentary lapse of judgment".[30]

Issues to be determined

30 The main issue in contention in this appeal was whether the DJ erred in imposing a sentence of one week's imprisonment instead of a fine. As I noted earlier, this gave rise to an anterior question as to the appropriate sentencing approach for offences of unauthorised receipt of confidential information under s 5(2) of the OSA.

31 Before I address the above issues, I should note for completeness that while the punishment provision in this case (s 17(2) of the OSA) states that a person who is guilty of an offence under s 5 of the OSA "shall be liable on conviction before a District Court to a fine not exceeding $2,000 *and* to imprisonment for a term not exceeding 2 years" [emphasis added], both parties (as well as the DJ) appear to have understood s 17(2) of the OSA to confer a discretion on the sentencing court to impose sentences of fines and imprisonment terms *as alternatives*. On appeal, both parties confirmed that this was their common understanding of how s 17(2) should be construed. I accepted their common position. As See Kee Oon JC (as he then was) observed in *Sim Wen Yi Ernest v Public Prosecutor* [2016] 5 SLR 207 (at [52]), the words "shall be liable" do not have any *prima facie* obligatory or mandatory connotation, and have been generally viewed as conferring a discretion, while the word "and" may, in some cases, be used in a disjunctive sense. The parties' common position – that s 17(2) gives the sentencing court the discretion to impose sentences of fines and imprisonment *as alternatives* – is consistent with the

[30] GD at [35] (ROA at pp 53–54).

position taken by the High Court in *Phua Keng Tong,* which imposed a fine of S$1,500 on the receiving party Phua after convicting him of the s 5(2) charge.

The principles governing appeals against sentence

32 Parties were also agreed as to the principles governing appeals against sentence. Statutorily, s 390(1)(*c*) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC") provides that in an appeal against sentence, an appellate court may "reduce or enhance the sentence, or alter the nature of the sentence". Further, an appellate court may reverse or set aside a trial court's sentence that is found to be "wrong in law or against the weight of the evidence", or "manifestly excessive or manifestly inadequate in all the circumstances of the case": s 394 of the CPC. An appellate court "will not ordinarily disturb the sentence imposed by the trial court except where it is satisfied that: (a) the trial judge erred with respect to the proper factual basis for sentencing; (b) the trial judge failed to appreciate the materials placed before him; (c) the sentence was wrong in principle; or (d) the sentence was manifestly excessive or manifestly inadequate, as the case may be": *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [12]. A "manifestly inadequate" or "manifestly excessive" sentence is one which is "unjustly lenient or severe, as the case may be, and requires substantial alterations rather than minute corrections to remedy the injustice": *Public Prosecutor v Siew Boon Loong* [2005] 1 SLR(R) 611 at [22].

Issue 1: Appropriate sentencing framework for s 5(2) OSA offences

33 I now address the issue of the appropriate sentencing approach for offences under s 5(2) of the OSA.

34 Parties' original submissions focused primarily on dissecting the DJ's GD, and on arguing about whether he was justified in drawing certain inferences

from the evidence before him and in concluding that the inferences so drawn warranted a custodial sentence. However, as I pointed out to parties when asking for further submissions, this exercise can only be carried out in a meaningful manner if all parties first share a clear understanding of the key sentencing considerations applicable to offences under s 5(2) of the OSA, as well as the specific factors to be considered by the sentencing court in calibrating the seriousness of a s 5(2) OSA offence. In particular, being able to coherently articulate the relevant sentencing considerations and factors would provide us with a principled basis for determining when the custodial threshold is crossed for s 5(2) OSA offences and whether the threshold has been crossed in a particular case. This, in turn, should (hopefully) bring about greater consistency and transparency in the sentencing of s 5(2) OSA offenders in future cases.

35 In endeavouring to articulate the sentencing considerations and factors relevant to s 5(2) OSA offences, parties were agreed that given the dearth of reported sentencing decisions for such offences, it was necessary to approach the matter from first principles. At the outset, the Appellant did not seriously disagree with the Prosecution's submission that the predominant sentencing consideration for offences under s 5(2) of the OSA should be general deterrence. With this guiding principle in mind, parties were also broadly agreed that given the wide range of different circumstances in which s 5(2) OSA offences could be committed, it would not be feasible to classify the seriousness of an offence by reference to a set of "principal factual elements" – as has been done, for example, in relation to vice-related offences (see, for example, *Poh Boon Kiat v Public Prosecutor* [2014] 4 SLR 892 ("*Poh Boon Kiat*"), as discussed by the Court of Appeal in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [33]–[34]). Instead, both parties proposed adopting – with some adjustments – the sentencing framework established in *Logachev*

Vladislav v Public Prosecutor [2018] 4 SLR 609 ("*Logachev*") for offenders who claim trial to offences punishable under s 172A(2) of the Casino Control Act (Cap 33A, 2007 Rev Ed) ("CCA").[31]

36 The *Logachev* framework (*Logachev* at [75]–[84]) may be summarised as follows:

(a) The first step of the framework requires the sentencing court to have regard to relevant offence-specific factors, in order to identify the level of *harm* caused by the offence and the level of the offender's *culpability*. The level of harm caused may be categorised into three levels (*ie*, slight, moderate or severe), and so too may the offender's level of culpability (*ie*, low, medium or high);

(b) Second, the court should identify the applicable indicative sentencing range with reference to these two factors, *ie*, the level of harm caused by the offence and the level of the offender's culpability;

(c) Third, the court should identify the appropriate starting point *within* the indicative sentencing range. This is to be done with regard, once again, to the level of harm caused by the offence and the level of the offender's culpability. While this step will engage the same offence-specific factors as those considered at the first step, it is not an instance of double-counting: rather, this step involves the court granulating the case so as to derive a sense of the appropriate starting point in that particular case;

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[31] NEs dated 30 January 2026 at p 2 lines 3–5.

(d) Fourth, after identifying the appropriate starting point within the indicative sentencing range, the court may adjust this starting point to take into account offender-specific aggravating and mitigating factors. These are factors which do not directly relate to the commission of the particular offence and are generally applicable across all criminal offences; and

(e) Fifth, the court may adjust the individual sentences imposed on the offender to take into account the totality principle.

37 As explained in *Goh Ngak Eng* at [45]–[46], these five steps can be classified into two separate stages. Steps one to three allow the court to arrive at an indicative starting point sentence which reflects the "intrinsic seriousness of the offending act". Pursuant to steps four and five, the court may then adjust the starting point sentence to arrive at a sentence that reflects the "personal circumstances of the offender".

38 In proposing the use of the *Logachev* framework for sentencing in s 5(2) OSA offences, both parties in the present case noted that the *Logachev* framework has previously been adapted for application in the sentencing of offences other than those punishable under s 172A(2) of the CCA. In *Goh Ngak Eng* (at [45]–[47]), a three-Judge panel of the General Division of the High Court adapted the *Logachev* framework for the purposes of sentencing offenders convicted under ss 6(*a*) and 6(*b*) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA"). The court held that the *Logachev* framework was an appropriate sentencing framework for ss 6(a) and 6(b) PCA offences for two reasons (at [47]). First, the court noted that at the first stage of the *Logachev* framework, the court would determine the severity of the offending conduct not by reference to the particular facts of each case, but based on the salient features

of offending conduct (*ie*, the offence-specific factors). This made the *Logachev* framework "apt for encapsulating the diverse circumstances in which private sector corruption can occur". Second, given the established body of jurisprudence on ss 6(*a*) and 6(*b*) PCA offences, the court would be "assisted in identifying the salient features of offending conduct from which the relevant offence-specific factors [could] be derived, and which [would] provide the court with a sense of how the sentencing spectrum under ss 6(*a*) and 6(*b*) of the PCA … should be spread across the harm/culpability categories in the sentencing matrix at step two of the framework".

39 Implicit in both parties' submissions in this case was the acknowledgement that the first of the above two reasons applied equally to the sentencing of s 5(2) OSA offences, which – as I have noted – may be committed in a broad variety of circumstances. Further, while the second of the above two reasons might not be applicable in the present case because of the absence of a substantial body of case law on s 5(2) OSA offences, both parties accepted that this was not *per se* an obstacle to the identification of salient features of offending conduct from which the relevant offence-specific factors for s 5(2) OSA offences could be derived.

40 I next summarise each side's submissions as to how the *Logachev* sentencing framework should be adapted for application to s 5(2) OSA offences.

The Appellant's submissions on the adaptation of the* Logachev *sentencing framework for s 5(2) OSA offences

41 The Appellant proposed that in applying the *Logachev* sentencing framework to s 5(2) OSA offences, the following offence-specific factors should be considered at the first step of the framework:[32]

Culpability	Harm
(a) Involvement of inducements and value	(a) Nature of information disclosed
(b) Degree of planning and premeditation	(b) Extent of actual breach and dissemination
(c) Level of sophistication	(c) Abuse of information
(d) Duration of offending	(d) Prejudice to the administration of the State
(e) Extent of offender's abuse of position and breach of trust	(e) Type and extent of harm to third parties
(f) Motive	(f) Public disquiet
(g) Presence of threats, pressure or coercion	(g) Offences committed as part of a group or syndicate
(h) Role played by offender in transaction (whether initiated or not)	(h) Involvement of a transnational element
(i) Extent of offender's knowledge	
(j) Acts of concealment	

42 As for the second step of identifying the relevant indicative sentencing range, the Appellant suggested that a custodial term should not be imposed for all s 5(2) OSA offences which feature slight harm and low culpability. *Per* the

[32] Appellant's Further Written Submissions dated 31 December 2025 ("AFS") at pp 5–24.

Appellant's formulation, the applicable indicative sentencing ranges would be the following:[33]

Harm / Culpability	**Slight**	**Moderate**	**Severe**
Low	Fine	Fine and/or up to 6 weeks' imprisonment	6 to 22 weeks' imprisonment
Medium	Fine and/or up to 6 weeks' imprisonment	6 to 22 weeks' imprisonment	22 to 54 weeks' imprisonment
High	6 to 22 weeks' imprisonment	22 to 54 weeks' imprisonment	1 to 2 years' imprisonment

43 Further, *per* the Appellant's formulation, the number of harm-specific and culpability-specific factors present in each case should determine where in the above matrix that particular case should be located. The Appellant proposed the following categorisation of cases according to the configuration of offence-specific factors present:[34]

(a) **0-1 harm-specific factor and 0-1 culpability-specific factor:** slight harm/low culpability category;

(b) **2-3 harm-specific factors and 2-3 culpability-specific factors:** categories involving more than slight harm/low culpability to moderate harm/medium culpability (inclusive); and

[33] AFS at pp 24 and 31.

[34] AFS at pp 31–32.

(c) **More than 3 harm-specific factors and more than 3 culpability-specific factors:** categories involving more than moderate harm/medium culpability.

44 Based on the matrix proposed above, the Appellant submitted that the third step of the framework would involve the court identifying an appropriate starting sentence *within* the selected range, based on – *inter alia* – the potential prejudice caused to the agency involved.[35]

45 Next, at the fourth step, the court would consider how (if at all) the sentence derived at the preceding step should be calibrated upon a consideration of *offender*-specific aggravating and mitigating factors. Any final adjustments needed to account for the operation of the totality principle would then be done at the fifth step.[36] The Appellant also submitted that the offender-specific factors to be considered at the fourth step should include the following:[37]

Aggravating Factors	Mitigating Factors
(a) Prior antecedents and recency (b) Number of charges taken into consideration and their nature (c) Evident lack of remorse	(a) Genuine remorse (b) Young age

35 AFS at p 37.

36 AFS at pp 36–37.

37 AFS at p 38.

The Prosecution's submissions on the adaptation of the* Logachev *sentencing framework for s 5(2) OSA offences

46 The Prosecution's position in respect of the first step of the (adapted) *Logachev* framework was essentially the same as the DJ's, in that they adopted the list of offence-specific factors suggested by the DJ at [16] of his GD, with the addition of two other culpability-related factors: firstly, conduct on the part of the receiving party to instigate the communication of the confidential information; and secondly, the receiving party's persistence in offending.[38]

47 At the second step of the (adapted) *Logachev* framework, the Prosecution proposed the following matrix of indicative sentencing ranges:[39]

Harm / Culpability	**Slight**	**Moderate**	**Severe**
Low	Fine or short custodial term	Up to 6 months' imprisonment	6 months to 1 year's imprisonment
Medium	Up to 6 months' imprisonment	6 months to 1 year's imprisonment	1 year to 1 year and 6 months' imprisonment
High	6 months to 1 year's imprisonment	1 year to 1 year and 6 months' imprisonment	1 year and 6 months to 2 years' imprisonment

48 For the purposes of identifying – at the third step – the appropriate starting point within the relevant indicative sentencing range, the Prosecution

[38] Respondent's Further Written Submissions dated 31 December 2025 ("RFS") at paras 22–26.

[39] RFS at para 27.

submitted that a sentence of a fine would be appropriate only for cases where there were "no aggravating factors" [emphasis in original], having regard to the nature of the information disclosed and the risk of harm.[40] In this context, the Prosecution submitted that offences under s 5 of the OSA had the potential to erode the public's confidence in the "essential institutions of government", with the "scale, ease of access and dissemination of information" today only increasing the need for sufficiently robust deterrence.[41]

49 At the fourth step of the (adapted) *Logachev* sentencing framework, the Prosecution agreed with the list of offender-specific aggravating and mitigating factors set out at [18] of the DJ's GD.[42]

50 In gist, therefore, the Appellant's and the Prosecution's positions broadly overlapped. Both parties proposed adapting the *Logachev* framework so as to establish a five-step sentencing framework for s 5(2) OSA offences. Both parties also agreed that a harm-culpability matrix was an appropriate method by which the severity of the offence could be determined at the first step of the adapted sentencing framework.[43] Parties, however, disagreed on what the indicative sentencing ranges should be at the second step of the adapted sentencing framework; and following from this, they disagreed too on when the custodial threshold would be crossed for s 5(2) OSA offences. There were also minor areas of disagreement regarding the relevant offence-specific factors at the first step of the sentencing framework, and the relevant offender-specific factors at the fourth step.

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40 RFS at para 29.

41 RFS at paras 30–34.

42 RFS at paras 36–37.

43 NEs dated 30 January 2026 at p 2 lines 3–6.

My decision

51 Having summarised the parties' respective submissions, I next explain my decision as to the primary sentencing consideration for s 5(2) OSA offences, the appropriate sentencing framework to be adopted for such offences, and the application of the appropriate sentencing framework to the present case.

General deterrence is the primary sentencing consideration for offences under s 5(2) of the OSA

52 At the outset, I agreed with the DJ that the primary sentencing consideration for s 5(2) OSA offences is general deterrence. The long title of the OSA states that the OSA is an Act "to prevent the disclosure of official documents and information". This general legislative purpose is confirmed by the record of the Parliamentary debates regarding the OSA (s 9A(2)(*a*) read with s 9A(3)(*d*) of the Interpretation Act 1965 (2020 Rev Ed); see also *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [42]–[45]). At [10] of the GD, the DJ referred to the speech by the Minister for Home Affairs, Mr K Shanmugam, which I referenced at [5] above. It is helpful to set out the Minister's explanation regarding the importance of Singapore's laws on the handling of official secrets or classified information (*Singapore Parliamentary Debates, Official Report* (10 January 2011) vol 87):

> *Our Government is an e-Government. It cannot function without empowering our public servants and disseminating confidential information to them. The efficient functioning of our Government has to be based on mutual trust and honour, backed up by a clear legal framework.* Trust and honour can of course be breached. As the WikiLeaks incident shows, even one officer, in that instance a junior officer in the US Army, can cause significant leak of official data with far-reaching consequences.
>
> Should there be any leak, the Government will act firmly. All cases will be investigated. Officers responsible for leakage of data will be charged. Furthermore, the OSA allows prosecution not only of public officers responsible for the leaks, but also

> anyone else (whether or not a public servant) who receives the information or had any role in the leak. The Government has consistently taken this approach, and has on occasions charged private citizens for their roles in leakage of Government data.
>
> […]
>
> If recipients of official information who are not themselves public servants cannot be prosecuted or prevented from publishing it, it would create an unacceptable situation where people outside the Government would have every incentive to obtain confidential information from public servants in every way possible. And public servants would constantly be weighing the benefits to themselves of releasing the confidential information against the likelihood of getting caught and punished. Meanwhile, the broader public interest will suffer.
>
> *We believe that everyone involved in a leak of information, whether in Government or outside, should be dealt with firmly. We do not intend to encourage cat and mouse games. Public interest in free flow of information cannot justify the abuse of confidential information.*
>
> Some countries have allowed their secrecy rules to be weakened in the belief that it is supposedly in the interest of freedom of information. We do not subscribe to such a belief. *We fully intend to uphold confidentiality of official information, so that the Government can function properly. It is impossible to conduct diplomacy, develop policy or negotiate issues if everything said or written in the process will become public because officials will no longer commit their true thoughts and reasons in writing for fear of leaks. The end result, ironically, would be less transparency and less accountability.*
>
> [emphasis added]

53 The above remarks by the Minister make it clear that in Singapore, a *laissez-faire* response to unauthorised leakages of confidential information will not be tolerated, and that such criminal conduct must be dealt with firmly in order to deter such leakages and to protect the public interest.

Why the **Logachev** *sentencing framework is appropriate for adaptation to s 5(2) OSA offences*

54 Bearing in mind the above sentencing consideration, I address next the formulation of a sentencing framework for s 5(2) OSA offences. I accepted the parties' submissions that the *Logachev* framework should be adapted for application to such offences and set out below my reasons. In so doing, I should emphasise that my remarks below are intended to apply only in respect of s 5(2) OSA offences. While it may be said that the offences of unauthorised communication under s 5(1) of the OSA are really the "mirror" of the offences of unauthorised receipt under s 5(2) of the OSA, I did not consider that I should make any pronouncements on the appropriate sentencing approach to s 5(1) OSA offences, given that parties did not make any submissions on the applicability of the same sentencing framework to s 5(1) OSA offences. In any event, it was not necessary for me to make any such pronouncements in dealing with the present appeal.

55 As I alluded to earlier, offences under s 5(2) of the OSA may be committed in a broad range of circumstances. Section 5(2) of the OSA criminalises the unauthorised receipt of a broad swath of "document[s]" and "information". The *means* by which such confidential information may be disclosed and received without authorisation are also manifold; and as the Prosecution pointed out, the corollary of the "modern realities of information systems" is the possibility of vast reams of information being disclosed and disseminated at scale.[44]

56 From these observations, it follows that in seeking to formulate an appropriate approach to sentencing for s 5(2) OSA offences, it will not be

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[44] RFS at paras 32–33.

practicable to adopt what is commonly known as the "sentencing benchmark" approach, which proceeds by identifying "an archetypal case (or a series of archetypal cases) and the sentence which should be imposed in respect of such a case" (*Terence Ng* at [31]). As the Court of Appeal pointed out in *Terence Ng* (at [32]), the benchmark approach is particularly suited for offences "which overwhelmingly manifest in a particular way or where a particular variant or manner of offending is extremely common and is therefore singled out for special attention". Section 5(2) OSA offences plainly do not fall within this description.

57 From the above observations, it also follows that it would not be practicable to adopt what is commonly known as the "sentencing matrix" approach. This is because the "sentencing matrix" approach requires the sentencing court to first determine the seriousness of an offence by reference to a set of principal factual elements of the case in order to give the case a preliminary classification. Based on this preliminary classification, the court then identifies the starting point and the range of sentences before determining the eventual sentence at the second stage of the approach by reference to any other aggravating and/or mitigating factors which do not relate to the principal factual elements (*Terence Ng* at [33]). The availability of the "sentencing matrix" approach is thus "crucially dependent on the availability of a set of principal facts which can significantly affect the seriousness of an offence in all cases" (*Terence Ng* at [34]). This has made it appropriate for use in the context of (for example) vice-related offences, where the courts have been able to identify a set of principal factual elements relating to the offender's role in the vice syndicate (which determines his culpability) and the treatment of the prostitute (which determines the harm caused by the offence): *Poh Boon Kiat* at [75]–[76]. It is, on the other hand, not suitable for use in relation to s 5(2) OSA

offences which can take place in a broad variety of circumstances, making it difficult, if not impossible, to pin-point a set of "principal factual elements" capable of affecting the seriousness of a particular offence.

58 It is also for this reason that the "single starting point" approach to sentencing would not be appropriate for s 5(2) OSA offences. The "single starting point" approach involves identifying a notional starting point that may then be adjusted based on the aggravating and mitigating factors in each case. This approach is suitable where "the offence in question almost invariably manifests itself in a particular way and the range of sentencing considerations is circumscribed", as would often be the case for regulatory offences: *Terence Ng* at [27]–[28]. This does not apply to s 5(2) OSA offences, for the reasons set out in the preceding paragraph.

59 In similar vein, the "multiple starting points" approach, which involves setting various indicative starting points, each corresponding to a "different class of the offence", would not be appropriate in this case. One of the usual features of cases to which the "multiple starting points" approach is suited is that a particular mischief is inherent in the offence, which mischief is measurable by reference to a single quantitative metric: *Terence Ng* at [29]–[30]. This feature is not present in s 5(2) OSA offences.

60 There is, of course, also the "sentencing bands" approach exemplified in the case of *Terence Ng* itself. This approach involves a two-stage process of analysis (*Terence Ng* at [39]; see also *Sue Chang v Public Prosecutor* [2023] 3 SLR 440 ("*Sue Chang*") at [60]). The sentencing court first considers the relevant offence-specific factors to identify the appropriate "band" in which the particular offence should be placed. These offence-specific factors include the manner and mode of commission of the offence as well as the harm caused by

it. Having identified the appropriate "band", the court then considers where within the selected band it would place the offence in question. This first stage of the "sentencing bands" approach results in an indicative starting sentence, which the court proceeds to calibrate at the second stage in consideration of the relevant offender-specific aggravating and/or mitigating factors.

61 As the High Court noted in *Sue Chang* at [61], in comparison to the sentencing matrix approach, the sentencing bands approach "is more suitable where the offence can take place in a wide variety of different circumstances, and it is difficult to identify any set of 'principal factual elements' which can affect the seriousness of such an offence across the board". Having considered the elements of the sentencing bands approach, however, I did not find it appropriate for use in the context of offences under s 5(2) of the OSA. The sentencing bands essentially correspond to the *number* of offence-specific aggravating factors present; and bearing in mind the wide variety of circumstances in which s 5(2) OSA offences may be committed, it is not clear how the sentencing bands approach would accommodate the correspondingly wide range of harm caused by such offences and the potentially significant divergences in the culpability of different offenders.

62 In contrast, the *Logachev* framework allows for a more nuanced approach to sentencing in s 5(2) OSA offences. This framework allows the court to classify – at the first step – varying levels of severity of offences "not by reference to the particular facts of each case, but based on the salient features of offending conduct (manifesting themselves as offence-specific factors)", which allows the "diverse circumstances in which private sector corruption can occur" to be captured: *Goh Ngak Eng* at [47]. While the court's comments in *Goh Ngak Eng* were made in the context of ss 6(*a*) and 6(*b*) PCA offences, they are equally apt when applied to offences under s 5(2) of the OSA. For s 5(2) OSA offences,

the *categories* of confidential information and the *means* of disclosure and receipt of such information are sufficiently wide-ranging to be represented on a harm axis (*cf Sue Chang* at [70]).

63 Further, the second and third steps of the *Logachev* framework allow for a process of "increasing granulation which enhances analytical clarity and promotes the transparent articulation of reasons for the eventual sentence imposed" (*Sue Chang* at [79]). As the court in *Sue Chang* observed (at [79]):

> It ensures that all relevant sentencing factors are considered and adequate flexibility is built into the approach to allow for sentencing judges to conduct their own assessment and weighing of the relevant harm and culpability factors to arrive at a principled sentence.

64 I next address the five individual steps of the adapted *Logachev* sentencing framework for offences under s 5(2) of the OSA.

Relevant offence-specific factors at the first step

65 The first step of the sentencing framework involves assessing the severity of the offence with reference to the harm caused by the offence and the offender's culpability. In the table below, I summarise the *non-exhaustive* offence-specific harm and culpability considerations which are, in my view, relevant to offences under s 5(2) of the OSA:

Culpability	**Harm**
(a) Offender's role (b) Duration and persistence of offending behaviour (c) Extent of offender's knowledge	(a) Nature of information disclosed (including amount of information disclosed) (b) Extent of actual harm caused

(d) Degree of planning and premeditation (e) Level of sophistication (f) Use of threats, pressure or coercion (g) Acts of concealment (h) Involvement of criminal syndicate (i) Transnational element	(c) Extent of breach and dissemination

66 I first address the harm-specific factors (at [67]–[81] below), followed by the culpability-specific factors (at [82]–[118] below).

(1) Harm-specific factors

(A) NATURE OF INFORMATION DISCLOSED (INCLUDING AMOUNT OF INFORMATION DISCLOSED)

67 Parties agreed that the nature of the information disclosed would constitute a relevant harm-specific consideration, although they disagreed on the precise characterisation of this factor and on some of its constituent elements.[45] At [68]–[74] below, I address five key issues arising from the parties' submissions.

68 First, I accepted the Prosecution's submission that in considering the nature of information disclosed in a particular case, the *amount* of information disclosed should be taken into account in the sentencing court's assessment of the seriousness of the offence committed in that case.[46] The Appellant did not dispute this point.

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45 AFS at pp 6–11; RFS at para 25(a).

46 RFS at para 25(a)(ii).

69 Second, both the Appellant and the Prosecution took the position that the risk of harm caused by the disclosure of the confidential information – while relevant to the court's assessment of the seriousness of an offence – should not be categorised as an independent harm-specific factor in itself, as it is really a facet of other, existing factors.[47] In my view, this is the correct position. The risk of harm caused by the impugned disclosure can and should be taken into account by the sentencing court in assessing the nature of the information disclosed and the extent of the breach and dissemination – both of which are already distinct harm-specific factors. In considering the nature of the information disclosed, therefore, the court may have to consider (*inter alia*) the risk of harm arising from the initial disclosure to the immediate recipient of the confidential information (*ie*, the s 5(2) OSA offender). Then, in considering the extent of the breach and dissemination, the court may also have to consider (*inter alia*) the risk of harm arising from any further circulation of the information by this s 5(2) OSA offender.

70 Third, the Appellant suggested that the court should assess the *threat* posed to the State and third parties by the disclosure of confidential information without authorisation, by taking reference from the classification of information adopted by the Government.[48] In particular, the Appellant referred to Annex A of the Government Data Security Policies ("GDSP") which provides the following definitions (at p A6):[49]

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47 AFS at pp 13–14; NEs dated 30 January 2026 at p 2 lines 16–22, and p 21 line 18 – p 22 line 29.

48 AFS at pp 8–11.

49 Appellant's Supplementary Bundle of Authorities dated 31 December 2025 ("ASBOA") at p 547.

(a) "Security Classification" is defined as "classifying information according to the security levels that measure the damage done to national security, or national or Agency interest, in the event of an unauthorised disclosure"; and

(b) "Sensitivity Classification" is defined as "classifying information according to sensitivity levels that measure the damage done to an individual or an organisation, in the event of an unauthorised disclosure".

71 The Prosecution accepted in principle that any assessment of the nature of the information disclosed should include consideration of the *sensitivity* of the information, but submitted that reliance on the Government's classifications should not be taken too far. The Prosecution pointed out that not all information caught by the OSA may be classified; and that importantly, it is in any event the sentencing court which retains the discretion to assess the level of sensitivity of the information disclosed for the purpose of calibrating the seriousness of the offence.[50] In addition, the Prosecution submitted that "sensitivity" – for the purposes of sentencing in s 5 OSA offences – should more accurately be understood as being an inquiry into "whether the information pertains to matters of national importance, including national defence, internal security, public safety, or Singapore's economic interests".[51]

72 Insofar as *general* principle is concerned, I accepted the Appellant's submission that the higher the sensitivity classification or security classification of the information leaked, the more likely it is that the risk of harm caused will

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50 NEs dated 30 January 2026 at p 22 lines 10–29.

51 RFS at para 25(a)(i).

be higher.[52] However, for the reasons given by the Prosecution (see [71]), the Government's sensitivity and security classifications should constitute only one sub-factor in the court's consideration of the nature of information disclosed. This conclusion is reinforced by the qualification found on the first page of the GDSP, which provides that the GDSP "contains general information for the public only", is "not intended to be relied upon as a comprehensive or definitive guide on each agency's policies and practices", and may be updated by the Government "without publishing such updates to the public".[53] Further, unless the justification for the Government's classification is admitted in evidence before the sentencing court, the fact *per se* that the information in question bears a particular classification may not be helpful in practice to the court when it considers the nature of the information disclosed and how it affects the seriousness of the offence.

73 Fourth, the Prosecution suggested that the "profile of the recipient(s) that the information was disclosed to" is a relevant sub-factor when considering the nature of information disclosed, and accordingly, that the fact that information was disclosed to a "potentially malicious actor" would suggest that the offence committed was more serious.[54] I accepted that the fact that confidential information was disclosed to a potentially malicious actor may be relevant to assessing the *risk of harm* caused by the said disclosure. It should be highlighted, however, that the profile of the recipient may also be relevant to the court's consideration of another harm-specific factor – *ie*, the extent of breach and dissemination. In other words, there may be some overlap in the

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52 NEs dated 30 January 2026 at p 2 lines 23–30.

53 ASBOA at p 526.

54 RFS at para 25(a)(iii).

constituent elements of two distinct harm-specific factors; and the sentencing court will have to exercise care to avoid any double-counting effect.

74 Fifth, the Appellant suggested that prejudice caused to the "interest of the state" by disclosure and prejudice caused to the "deliberative process" should be subsumed within the analysis of the nature of information disclosed.[55] In my view, however, these matters are more aptly considered within the context of a different harm-specific factor – *ie*, the extent of actual harm caused. It is this factor which I address next.

(B) EXTENT OF ACTUAL HARM CAUSED

75 The Prosecution submitted that this factor should encompass consideration of the harm caused to: (a) Singapore's national interests; (b) public institutions (including any ongoing operations or investigations); (c) individuals; and (d) third-party nations or organisations. In addition, according to the Prosecution, any assessment of the extent of actual harm caused should take into account the difficulty and cost of remediation.[56]

76 The Appellant, for her part, did not expressly include the extent of actual harm caused in her proposed list of harm-specific factors. What she did, however, was to include in her list, *inter alia*, three other suggested harm-specific factors – abuse of information, prejudice to the administration of the State, and the type and extent of harm to third parties. In my view, these three matters really relate to the different types of harm which may be caused by the unauthorised disclosure, and are thus some of the *sub-factors* to which the sentencing court may have regard when considering the extent of harm caused

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55 AFS at pp 9–10.

56 RFS at para 25(c).

by the offence in question. In seeking to treat each of these three matters as an independent harm-specific factor, the Appellant's suggested approach risks introducing over-granularity and excessive prescriptiveness into the sentencing framework (*Public Prosecutor v Randy Rosigit* [2024] 4 SLR 1586 at [46]). For this reason, I rejected the Appellant's suggested approach. I preferred the Prosecution's suggested approach, whereby consideration of the various types of harm is subsumed *within* the overarching factor of the "extent of actual harm caused".

77 I make two other points. I note that in her submissions, the Appellant argued that "[p]rejudice to the agency" – which she equated with the "public service rationale" – should not be considered as a separate harm-specific factor at the first step of the sentencing framework because (according to her), the "public service rationale is inevitably implicated in all offences involving the public sector – OSA offences being such [an] example".[57] This argument is erroneous. In the first place, "prejudice to the agency" is not at all the same thing as the "public service rationale". The "public service rationale" is "a sentencing principle which refers to the public interest in preventing a loss of confidence in Singapore's public administration through corruption within"; and in cases where it is invoked, a custodial sentence is typically justified: *Goh Ngak Eng* at [66]. Further, depending on the nature of the information and the agency in question, there may be varying types and degrees of prejudice caused to an agency that a sentencing court should consider in assessing the seriousness of the offence. That said, as the Prosecution suggested,[58] such prejudice will form one of the matters weighed in the balance in the sentencing court's consideration

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57 AFS at p 16.

58 RFS at para 25(c)(ii).

of the extent of actual harm caused, and will not generally be treated as an independent harm-specific factor.

78 The Appellant also suggested that any *public disquiet* generated by the offence in question should be relevant to the assessment of harm caused.[59] In the context of an assessment of the harm caused by corruption offences, "public disquiet" has been defined as "the effect of causing loss to third parties" or "generating a sense of unease in the general public": *Wong Chee Meng* at [67], cited in *Goh Ngak Eng* at [60(c)]. Applying a similar definition in the present case, I was satisfied that the various types of harm identified by the Prosecution (see [75] above) would be sufficiently broad to include consideration of any public disquiet caused by the unauthorised receipt of confidential information.

(C) EXTENT OF BREACH AND DISSEMINATION

79 The third harm-specific factor I have set out is the extent of breach and dissemination. Parties agreed that the number of persons to whom the information was leaked without authorisation (including the number of third-party recipients) would be a relevant harm-specific factor.[60] As alluded to earlier (at [69]), the risk of harm caused by any subsequent dissemination beyond the initial recipient of the confidential information (*ie*, the s 5(2) OSA offender) may be considered within the context of the extent of breach and dissemination.

80 In this connection, I accepted the Prosecution's submission that the relevant sub-factors in relation to the extent of breach and dissemination are the *medium* and *scale* of dissemination.[61] All other things being equal, greater harm

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59 AFS at p 15.

60 AFS at pp 12–13; RFS at para 25(d).

61 RFS at para 25(d).

is likely to be *actually* caused if the disclosure of official information without authorisation takes place *via* publicly accessible media (as opposed to private channels), and/or if such disclosure results in dissemination to a large group of persons.

81 I also accepted the Appellant's submission that "[e]ven though the secondary spread of protected information by third parties may be beyond an offender's control, it is not precluded from being relevant to the determination of punishment for that offender" (citing *Lai Jenn Wuu v Public Prosecutor* [2013] 4 SLR 1134 at [4]).[62] In other words, the degree of further dissemination by third parties is a relevant sub-factor in the court's assessment of the extent of breach and dissemination.

(2) Culpability-specific factors

82 I next address the offence-specific factors that are relevant to an offender's culpability.

(A) OFFENDER'S ROLE

83 An offender's role in the commission of the offence for which he is being sentenced has generally been held to be an important indicator of his culpability: *Logachev* at [61]. For example, in cases involving a criminal syndicate, the higher the offender's position in the syndicate, the more culpable he is likely to be (*Logachev* at [60]). As another example, an offender who actively takes steps to solicit the unauthorised disclosure of confidential information will generally be found to be more culpable than a passive recipient

62 AFS at pp 12–13.

who took no steps to pursue the acquisition of the information (*Goh Ngak Eng* at [84]).

84 In this connection, I note that in the Prosecution's written submissions, it was suggested that the court should consider, as an independent culpability-specific factor, whether an offender had *initiated* the unauthorised communication of information.[63] In my view, this is not the correct approach. In the context of corruption offences, it has been observed that "it is preferable to examine holistically whether the offender's role in the corrupt transaction had been active or passive, rather than to focus restrictively on whether he had initiated or solicited the corrupt scheme or the bribe" (*Goh Ngak Eng* at [84]). This reasoning applies with equal force to offences under s 5 of the OSA. The fact that a recipient of information *initiated* its unauthorised communication is relevant to assessing his culpability only insofar as it demonstrates the degree to which he played an *active role* in the entire illicit transaction.

85 I also note that in its submissions, the Prosecution employed the terms "instigate" and "initiate" interchangeably, apparently on the basis that they meant the same thing.[64] Again, this is not correct. The term "instigate" is given a specific meaning in criminal law: see Explanation 1 to s 107 of the Penal Code 1871 (2020 Rev Ed) ("Penal Code"). The Prosecution plainly did not intend to invoke the specific meaning given to this term in the Penal Code; I address this further at [150] below. As such, using this term interchangeably with the term "initiate" in a loose or colloquial manner may simply create unnecessary confusion.

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63 RFS at para 24(a).

64 NEs dated 30 January 2026 at p 23 line 18 – p 24 line 11.

86 I make one final point in relation to this culpability-specific factor. In its submissions, the Prosecution accepted the DJ's finding that the "position held by the offender" formed a relevant consideration alongside the offender's *role*.[65] More precisely, the Prosecution submitted that a sentencing court should consider – as distinct culpability-related factors – the "[p]osition held by the offender, such as whether he is a senior public officer, or in a sensitive vocation such as military intelligence", as well any "[a]buse of trust, including the degree to which the offender exploited their position of trust, access privileges or security clearance".[66] In my view, however, considerations of "abuse of position" and "breach of trust" are more appropriately raised in the context of sentencing in s 5(1) OSA offences, where the offender is usually someone in an official position that allows him access to the confidential information in question. In the context of s 5(2) OSA offences, there may, of course, be offenders who seek to take advantage of their relationship with a person in an official position in order to obtain such information without authorisation. Such conduct can and should be taken into account by the court when it considers the existing factor of the s 5(2) OSA offender's role. I add that such conduct may also be relevant for consideration in the context of the separate culpability-specific factors of planning and premeditation as well as the level of sophistication: the sentencing court will need to exercise care to avoid double-counting.

(B) DURATION AND PERSISTENCE OF OFFENDING BEHAVIOUR

87 In respect of the duration and persistence of the offending behaviour, I accepted the Appellant's and the Prosecution's submission that this constitutes

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65 RFS at paras 22–23; NEs dated 30 January 2026 at p 24 lines 2–11.

66 RFS at para 25(b).

a relevant culpability-specific factor.[67] An offence that is perpetrated over a sustained period, or on multiple occasions, will generally be more aggravated than a one-off offence: *Logachev* at [59], affirmed in *Public Prosecutor v GED* [2023] 3 SLR 1221 at [78].

88 In this connection, I note that the parties were divided on the issue of whether events occurring *after* the offence in question could be taken into account by the sentencing court in its assessment of the offender's culpability. In the proceedings below, the DJ justified the imposition of a custodial sentence on the basis (*inter alia*) of the incident in September 2022 in which the Appellant had asked the co-accused whether a "shopfront" she intended to rent "had previously been 'checked' by the Police".[68] The DJ held that this incident amounted to a "subsequent attempt to commit the same offence some two years later", and that although no separate charge had been preferred in relation to this incident, it "probably constituted an offence under s 511 of the [Penal Code]".[69] In his view, this incident demonstrated that the s 5(2) OSA offence for which he was sentencing the Appellant "was not a momentary lapse of judgment".

89 On appeal, the Appellant argued that the DJ erred in principle in finding the September 2022 incident to be a relevant consideration in his assessment of her culpability.[70] The Prosecution, on the other hand, submitted that *Public Prosecutor v Bong Sim Swan Suzanna* [2020] 2 SLR 1001 ("*Suzanna Bong*") provided authority for the DJ's decision to consider subsequent uncharged

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67 AFS at p 24; RFS at para 24(b).

68 SOF at para 11 (ROA at p 10).

69 GD at [35] (ROA at pp 53–54).

70 Appellant's Written Submissions dated 23 October 2025 ("AWS") at paras 31–41.

offending conduct when assessing the Appellant's culpability.[71] In response to the Appellant's argument that the decision in *Suzanna Bong* dealt solely with "prior uncharged offending conduct", the Prosecution contended that the principles espoused in that case were just as applicable to conduct *subsequent to* the offence for which an offender had been charged.[72]

90 I found the Prosecution's position to be only partially correct. At the outset, it must be recognised that as a matter of *general* principle, an offender cannot be punished for an offence for which he was not charged or convicted. Indeed, in the context of prior uncharged offending conduct, the Court of Appeal in *Suzanna Bong* took pains to highlight (at [64]) that "[i]f the Prosecution wants the sentencing court to consider the offender's prior acts and these acts might also be the subject of criminal charges, the onus is on them to draw up the necessary charges and proceed with them at trial or apply for them to be taken into consideration for the purpose of sentencing pursuant to s 148 of the CPC".

91 There are at least two main reasons for this general principle. As the High Court in *Public Prosecutor v Tan Thian Earn* [2016] 3 SLR 269 ("*Tan Thian Earn*") observed (at [62]), not punishing an offender for an offence for which he was not charged "is an elementary component of fairness". In addition, there is "a constitutional dimension to this issue": the decision whether to frame a charge and if so, what charge to frame, is the constitutional prerogative of the Public Prosecutor; and in a scenario where (for example) the Public Prosecutor chooses not to frame a charge for each of the prior acts of offending, the court should not be asked to "indirectly sanction" an offender for those prior acts by

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71 Respondent's Written Submissions dated 24 October 2025 ("RWS") at para 61.

72 NEs dated 30 January 2026 at p 11 line 26 – p 12 line 4 and p 35 lines 18–27.

way of an enhancement to the sentence for the offence in respect of which a charge *was* framed. Instead, if the Prosecution desires a prior offending act to be taken into consideration by the court in sentencing the offender, it should draw up an appropriate charge in respect of that prior act. If the Prosecution elects not to do so or is unable to draw up an appropriate charge (*eg*, due to lack of evidence), there is no reason why it should expect to be entitled to ask for the prior act to be taken into account in sentencing.

92 In *Chua Siew Peng v Public Prosecutor* [2017] 4 SLR 1247 ("*Chua Siew Peng*"), the High Court elaborated on the above concerns. In considering whether an offender's past offending conduct could be considered for the purposes of sentencing, the court noted that if the Prosecution drew up charges in respect of an accused's past offending conduct but then elected not to proceed with these charges, it must apply for these outstanding charges to be taken into consideration ("TIC") if it wishes the court to consider them in sentencing the accused for the charges proceeded with. Pointing out that the CPC had provided "legal safeguards" for how TIC offences could be considered at the sentencing stage, the court expressed the concern that if there were outstanding charges which were not TIC but which were nevertheless considered by the court at the sentencing stage, this would in effect amount to the court "recognising a new category of offences, to be taken into consideration for the purpose of sentencing at the sentencing stage, in addition to the legislatively provided category of TIC offences under s 148 of the CPC". In the court's view, this would be "an undesirable outcome": *Chua Siew Peng* at [78].

93 While the above concerns were articulated by the High Court in *Chua Siew Peng* (at [78]) in the context of past offending conduct for which the Prosecution *had* drawn up the necessary charge which it then elected not to proceed with or to apply to TIC, similar concerns are *a fortiori* relevant in the

context of offending conduct occurring at a different time from the charged offence (whether before or after it) for which the Prosecution *has not drawn up any charges*.

94 At the same time, while bearing in mind the importance of the above principle, our courts have acknowledged that a sentencing court should consider all the circumstances of a case when it assesses the seriousness of the offence in question. In this connection, as the Court of Appeal explained in *Suzanna Bong* at [73], "[w]here the Prosecution has proved relevant facts", there is no reason "why the court should pay no heed to them when considering the appropriate sentence on the sole ground that they might also amount to offences". As the Court of Appeal put it (at [73]):

> … [I]t is important to consider the totality of the circumstances of a charged offence in order to have a true flavour of the offence as the overall perspective may have an impact on the level of the offender's culpability and the extent of the victim's suffering. Naturally, in applying this principle, the court must take a common-sense and contextual approach when considering the importance of the proved relevant facts.

95 As to how the sentencing court is to consider "the totality of the circumstances of a charged offence" without making unacceptable inroads into the general principle that an offender cannot be punished for an uncharged offence, the preceding passages at [65]–[66] of the judgment of the Court of Appeal in *Suzanna Bong* are instructive. In these passages, the Court of Appeal cited with approval the decision of the High Court in *Chua Siew Peng*:

> 65 In *Chua Siew Peng* … the High Court observed that while a sentencing court generally could not take into account uncharged offences, it was entitled to and in fact should consider the aggravating circumstances in which the offence was committed, even where those circumstances could technically constitute separate offences (*Chua Siew Peng* at [81]). There was conduct that could constitute a separate offence but which was

> so closely intertwined with the specific charge before the court that it should be considered at sentencing (*Chua Siew Peng* at [83]). One example was the offence of drink-driving where the sentencing court might recognise aggravating factors such as speeding or driving recklessly, notwithstanding that each of those facts could amount to a separate charge (*Chua Siew Peng* at [83]). A fact with a sufficient nexus to the commission of the offence could be considered at the sentencing stage, irrespective of whether this fact could also constitute a separate offence for which the accused was not charged. What constituted a sufficient nexus was a fact-sensitive inquiry that depended on the circumstances of each case and the degree of proximity of time and space to the charged offence. A sufficient nexus would generally be present if it concerned a fact in the immediate circumstances of the charged offence or was a fact relevant to the accused's state of mind at the time of committing the offence (*Chua Siew Peng* at [85]).
>
> 66 We agree with the above principles stated in *Chua Siew Peng.* If the facts are relevant and proved, they may be, and indeed ought to be, considered by the sentencing court …

96 Having endorsed the principles stated by the High Court in *Chua Siew Peng*, the Court of Appeal in *Suzanna Bong* went on to consider how these principles had been applied in that case. The offender in that case (Chua) was convicted of voluntarily causing hurt to and wrongful confinement of a domestic worker in her employment. She was charged with slapping the victim repeatedly on 29 October 2012. During the incident, she had also pulled the victim's hair. The next day, she locked the victim in the house; and there was evidence that prior to this occasion, she had locked the victim in the house on many other occasions. On this occasion, the victim climbed out of the window to escape, sustaining multiple fractures in the process. The High Court found that Chua's act of pulling the victim's hair – although not part of the charge of voluntarily causing hurt – was an aggravating factor "because it occurred contemporaneously with the slap and formed part of the immediate circumstances of the offence" (*Suzanna Bong* at [69], citing *Chua Siew Peng* at [67] and [87]). As for the previous instances of wrongful confinement, these

were relevant to the court's consideration of Chua's culpability because "[i]n knowingly prolonging the victim's wrongful confinement, [Chua] increased the risk that the victim would suffer injuries owing to the conditions of the confinement", and her actions ultimately "drove the victim to take the drastic step of escaping through a window": *Suzanna Bong* at [69], citing *Chua Siew Peng* at [65]. As the High Court in *Chua Siew Peng* pointed out at [91], the past instances of confinement had "a close nexus" to the offence of wrongful confinement for which Chua was charged, insofar as "they had made the [v]ictim's mental state more vulnerable": the offence in question was thus committed knowingly by Chua on a victim with a significantly weakened mental state.

97 Following from the reasoning of the Court of Appeal in *Suzanna Bong* and its endorsement of the principles set out in *Chua Siew Peng*, conduct amounting to an uncharged offence may be taken into account by a sentencing court if such conduct is shown to have a sufficient nexus to the charged offence. Further, while the question as to what may amount to a sufficient nexus is a fact-sensitive inquiry, as the High Court noted in *Chua Siew Peng* (at [84]), the degree of proximity of time and space between the uncharged offending conduct and the charged offence will be a pertinent factor in this inquiry. The greater the temporal and/or spatial distance between the uncharged conduct and the charged offence, the less likely it is that the uncharged conduct will have "sufficient nexus" to the commission of the offence.

98 *GDC v Public Prosecutor* [2020] 5 SLR 1130 ("*GDC*") provides an example of this fact-sensitive inquiry. In that case, the accused was originally charged with and convicted by the District Judge of aggravated outrage of modesty of a person under 14 years of age (which was an offence punishable under s 354A(2)(*b*) of the Penal Code (Cap 224, 2008 Rev Ed)). On appeal,

Sundaresh Menon CJ amended this charge to one of outrage of modesty of a person under 14 years of age, under s 354(1) read with s 354(2) of the Penal Code (Cap 224, 2008 Rev Ed) and convicted the accused of the amended charge. A crucial aspect of this case was that shortly *after* outraging the modesty of the victim, the accused had slapped the victim's face twice: *GDC* at [5]. Although this act of slapping the victim did not form part of the amended charge in *GDC*, it was taken into account as an offence-specific aggravating factor despite it having occurred *after* the commission of the offence of outrage of modesty. In reaching this conclusion, Menon CJ noted that the slapping of the victim "took place just ten minutes later in the context of the same struggle [during the course of which the accused outraged the victim's modesty] in the same place" (*GDC* at [43], citing *Chua Siew Peng* and *Suzanna Bong*). The decision in *GDC* thus reinforces the proposition that uncharged post-offence wrongful conduct will generally be found to have sufficient nexus to the charged offence where such uncharged conduct is relatively proximate in time and space to the charged offence.

99 For completeness, I note that in *Public Prosecutor v Muhammad Salihin bin Ismail* [2023] SGHC 155 ("*Salihin (HC)*") at [109], the High Court held that conduct (in this case, the accused's delay in seeking medical attention for the victim) which occurred *after* the commission of the offence (voluntarily causing grievous hurt, "VCGH") should not be taken into account as an aggravating factor. The Court of Appeal subsequently allowed the Prosecution's appeal against the High Court's decision to acquit the accused of the original murder charge and to convict him of a lesser charge of VCGH. In convicting the accused of the original murder charge and sentencing him to life imprisonment and caning, the Court of Appeal did not comment on the High Court's treatment of the accused's post-offence conduct in sentencing (see *Public Prosecutor v*

Muhammad Salihin bin Ismail [2024] 1 SLR 792). Having perused the High Court's judgment in *Salihin (HC)*, I was of the view that its treatment of the accused's post-offence conduct was not necessarily in conflict with my observations at [90]–[98] above. While the High Court did express the view that the accused's delay in seeking medical treatment for the victim should not be treated as an aggravating factor for sentencing purposes (at [109]), it went on to consider (at [110]) what the outcome should be *if* such delay were to be considered an aggravating factor: the court's decision was that this factor was – in any event – "not engaged on the facts of the case" because there was "insufficient evidence" to support the finding that the delay had been deliberate. Additionally, from the judgment (at [109]), it is apparent that in deciding not to treat the accused's delay in seeking medical treatment for the victim as an aggravating factor for sentencing purposes, the court was influenced – at least in part – by its finding that:

> …to the extent that a delay in seeking medical attention contributed to the victim's demise or the more severe injury that he or she eventually suffered from, this already constituted a consequence of the offence, which would have been factored in identifying the indicative starting sentence under the first step of the sentencing framework [for VCGH offences] in [*Public Prosecutor v BDB* [2018] 1 SLR 127 ("*BDB*")] (see *BDB* at [56]).

100 To sum up, therefore, in considering the duration and persistence of offending behaviour as a culpability-specific factor in s 5(2) OSA offences, sentencing courts may consider facts with sufficient nexus to the commission of the charged offence even if such facts occurred after the commission of the charged offence and even if they are not the subject of a separate charge.

(C) EXTENT OF OFFENDER'S KNOWLEDGE

101 Next, I accepted the Appellant's submission that an offender's knowledge in the lead-up to, and upon unauthorised receipt of confidential information, should constitute a culpability-related offence-specific factor.[73] In oral submissions, the Prosecution too agreed that there could be different degrees of knowledge on the part of offenders under s 5(2) of the OSA.[74]

102 Thus, for example, if an offender actually *knows* that the information he receives is being communicated in contravention of the OSA (as opposed to having reasonable grounds to believe this), then all other things being equal, such knowledge will go towards elevating the level of his culpability. As another example, if an offender actually *knows* of the official position occupied by the person who is making the unauthorised communication, such knowledge too will likely be a culpability-enhancing consideration.

103 By way of illustration, it would appear that the receiving party Phua in *Phua Keng Tong* possessed both these types of knowledge. As the High Court in that case pointed out (at [31]), Phua had, *inter alia*, been in the Government service for about three years, holding a senior position at the time he left the service; he knew of classification of documents in Government departments; he knew of official secret undertakings, having signed one himself while in service; and he knew that documents classified as "Confidential" (as the document referred to as "P9" in the charge against Phua was) were meant only for certain groups of persons authorised to receive them and he was not one such person. In Phua's case, in other words, it would have been *obvious* to him that the

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73 AFS at pp 18–19; NEs dated 30 January 2026 at p 5 line 24 – p 6 line 8.

74 NEs dated 30 January 2026 at p 26 lines 7–12.

document P9 was being communicated to him by his co-accused Tan in contravention of the OSA; and Phua's culpability, for sentencing purposes, would thus be higher than that of an offender who did not possess the same knowledge.

104 For completeness, I did not accept the Appellant's argument that members of the public who interact with government officials should be entitled to assume *prima facie* that the officials will not – in their responses – breach their obligations to the Government.[75] The Appellant did not explain the legal basis for this assumption, and in any event, for the purpose of assessing the extent of an offender's knowledge, the fact that government officials should know what information they are entitled to disclose only goes to the state of mind of these officials, and not to the receiving party's state of mind.

(D) DEGREE OF PLANNING AND PREMEDITATION

105 I also agreed with both parties that the degree of planning and premeditation involved in the commission of the s 5(2) OSA offence would be a relevant culpability-specific factor.[76] It is well-established that an offence committed with planning and premeditation is typically "more aggravated than one which is committed opportunistically or on impulse", as the former reflects a "considered commitment towards law-breaking": *Logachev* at [56]; *Goh Ngak Eng* at [61(b)].

106 I add that the Appellant submitted that abuse of position and/or breach of trust should be included as a distinct culpability-specific factor,[77] but I did not

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75 AFS at p 19; see also NEs dated 30 January 2026 at p 6 line 9 – p 8 line 26.

76 AFS at p 23; RFS at para 26.

77 AFS at pp 5 and 21–22.

think this was correct, given the manner in which this sentencing factor is generally defined (*Terence Ng* at [44(b)]). As I noted earlier (at [86]), this factor would be more relevant in the context of offences committed under s 5(1) of the OSA, where it is often the case that the offender has possession of or access to confidential information by virtue of some public office or government position. If an offender under s 5(2) of the OSA does take steps to cultivate a close relationship with a public officer or government official in order to obtain confidential information without authorisation, such actions will of course go towards the degree of the offender's premeditation and planning (and probably also the extent of his knowledge).

(E) LEVEL OF SOPHISTICATION

107 I also accepted the Appellant's submission that the level of sophistication involved in the commission of the s 5(2) OSA offence would constitute a distinct culpability-specific factor,[78] since an offence committed by sophisticated means is generally more aggravated than one which is committed "simplistically": *Logachev* at [57]; *Goh Ngak Eng* at [61(b)]). This factor will generally require more granular consideration of the *complexity* and *scale* of the offence committed: *Logachev* at [58].

108 It should be highlighted that there may, in some cases, be an overlap between this factor and other culpability-specific factors such as the degree of premeditation and planning on an offender's part and the involvement of a criminal syndicate in the offence. Sentencing courts will have to be vigilant *vis-à-vis* the possibility of such overlap, so as to avoid double-counting culpability-specific factors.

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[78] AFS at p 24.

(F) USE OF THREATS, PRESSURE OR COERCION

109 Next, I agreed with both parties that the use of threats, pressure or coercion by the s 5(2) OSA offender would be a distinct culpability-specific factor.[79] A receiving party who applies pressure or coercion, or who issues threats, to obtain information without authorisation, obviously does so to make his request or demand more effective, and is more blameworthy than a receiving party who does not take such additional steps (*Goh Ngak Eng* at [81]).

110 In this connection, the Appellant suggested that sentencing courts should also consider – as a separate culpability-specific factor – whether *inducements* were provided by the s 5(2) OSA offender to incentivise the unauthorised disclosure of information.[80] I did not think this was necessary, as the notion of applying "pressure" to encourage the commission of an offence is sufficiently broad to encompass the provision of such inducements.

(G) ACTS OF CONCEALMENT

111 Acts of concealment by a s 5(2) OSA offender will also constitute a culpability-specific factor.[81] It has been observed that in the context of commercial crimes, the difficulties and costs connected with the detection of such crimes form one of the reasons for the importance of deterrence in commercial cases (*Law Aik Meng* at [25(d)]). The same reasoning applies to offences under s 5(2) of the OSA.

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79 AFS at p 21; RFS at para 26.

80 AFS at pp 20–21.

81 AFS at p 24; RFS at para 26.

112 Again, however, this factor may overlap in some cases with other culpability-specific factors; namely, the degree of planning and premeditation by the offender and the level of sophistication involved in his offence. In such cases, sentencing courts should take guidance from the approach adopted by Menon CJ in *Ye Lin Myint v Public Prosecutor* [2019] 5 SLR 1005 ("*Ye Lin Myint*") (at [73]). In *Ye Lin Myint* (which involved offences of criminal intimidation by anonymous communication and harassment by threatening communication), Menon CJ observed that the offender's use of sophisticated technological means to conceal his identity was evidence of his planning and premeditation. As such, these two factors were combined and considered as one: *Ye Lin Myint* at [73]. As Menon CJ reiterated, the categories of offence-specific factors "are not watertight and a sentencing court must not be distracted merely by the number of labels put forward, which might obscure the true gravity of the offender's actions".

(H) INVOLVEMENT OF CRIMINAL SYNDICATE

113 In respect of the involvement of a criminal syndicate, the Prosecution submitted that the DJ was correct to include this in the list of *culpability*-related offence-specific factors, whereas the Appellant argued that it should instead be relevant to considerations of the *harm* caused by the offence.[82]

114 It is well-established that the involvement of a criminal syndicate "is in itself aggravating as raising the spectre of organised crime": *Wong Chee Meng* at [68]; see also *Logachev* at [52]–[53]; *Goh Ngak Eng* at [60(d)]. I accepted the Prosecution's submission that the involvement of a criminal syndicate in the commission of an offence is a fact more relevant to "culpability", since an

[82] AFS at pp 5–6; RFS at para 26.

offender's relative blameworthiness is – broadly speaking – measured by the extent *and manner* of his involvement in the criminal act (*Public Prosecutor v Koh Thiam Huat* [2017] 4 SLR 1099 at [41]). In any event, as the High Court in *Public Prosecutor v Sindok Trading Pte Ltd (now known as BSS Global Pte Ltd)* [2022] 5 SLR 336 observed (at [32]), "[t]he distinction between culpability and harm is not watertight": "reasonable persons might categorise [factors] differently"; and "[t]he important thing is to ensure proper consideration of these factors and to avoid double counting their effects".

(I) TRANSNATIONAL ELEMENT

115 As for the presence of a transnational element in an offence under s 5(2) of the OSA, case law provides clear support for including this as a culpability-specific factor, given the difficulties in detecting and prosecuting transnational offences: *Logachev* at [54]–[55]; *Wong Chee Meng* at [68]; *Goh Ngak Eng* at [60(e)].

(J) ON WHETHER AN OFFENDER'S MOTIVE SHOULD BE LISTED AS A DISTINCT CULPABILITY-SPECIFIC FACTOR

116 In setting out the culpability-specific factors relevant to offences under s 5(2) of the OSA, I did not include "motive" as a separate culpability-specific factor. In *Newton, David Christopher v Public Prosecutor* [2024] 3 SLR 1370, Menon CJ held (at [71]) that while motive *may* affect the degree of an offender's culpability for sentencing purposes, this is not a blanket rule and must be considered alongside the nature of the offence committed. Menon CJ held that it is inherent in some offences – for instance, cheating – that the offender seeks "some form of personal benefit or monetary recompense"; and in such cases, "absent exceptional circumstances, it is not meaningful for the sentencing court

to ascribe separate weight to the offender's motivations for committing the offence".

117 In my view, the same reasoning applies to the sentencing of s 5(2) OSA offenders. Realistically, in most offences of unauthorised receipt under s 5(2) of the OSA, the party receiving the confidential information is motivated at least in part by some element of perceived personal benefit. In most cases, it will not be feasible or productive to engage in protracted debate over whether one motive is "worse" than another. Despite the apparent assumption made by the DJ and the Prosecution, it was not obvious to me that an offender motivated by the wish to "put one over" her opponent in ongoing litigation (for example, the current Appellant) should naturally be considered more culpable than an offender seeking to recoup personal investment losses (for example, the offender Phua in *Phua Keng Tong*) – or for that matter, that an offender who sought out confidential information to satisfy his own prurient curiosity would necessarily be less culpable than either of these two offenders.

118 As I indicated to parties when delivering my decision on 2 March 2026, there may well be *some exceptional circumstances* where an offender's motive *should* be taken into account in assessing his or her culpability: for example, an offender who receives confidential information without authorisation in order to pass that information on to a foreign power, and who is motivated in so doing to damage or undermine Singapore's security and safety (whether for ideological or other reasons). In such exceptional situations, it is possible to take the offender's motive into account as a culpability-related factor, since the list of offence-specific factors I have outlined above is non-exhaustive.

(3) Relevant offence-specific factors: Conclusion

119 The offence-specific factors outlined above for s 5(2) OSA offences are not exhaustive. Sentencing courts retain the discretion to take into account other relevant factors in future cases, and to accord different weight to the offence-specific factors identified at the first step of the adapted *Logachev* sentencing framework, depending on the facts of each case: *Logachev* at [38] and [74]; *Goh Ngak Eng* at [92] and [95].

Indicative sentencing ranges at the second step

120 The second step of the adapted *Logachev* sentencing framework involves identifying the applicable indicative sentencing range. To reiterate, under s 17(2) of the OSA, a person found guilty of an offence under s 5 of the OSA may be sentenced to a fine not exceeding S$2,000 and/or to imprisonment for a term not exceeding 2 years.

121 While both parties proposed a three-by-three sentencing matrix (see [42] and [47] above), there were a number of significant differences between the parties' proposed sentencing ranges. First, the sentencing ranges in the Prosecution's proposed matrix were more evenly distributed, based on six-month-long ranges of imprisonment terms. For instance, in the Prosecution's proposed matrix, a sentencing range of up to six months' imprisonment was followed by a range of six months to one year's imprisonment, which was in turn followed by a range of one year to one year and six months' imprisonment. In contrast, the sentencing ranges in the Appellant's proposed matrix were relatively broader, with a range of six to 22 weeks' imprisonment (*ie*, one and a half months' imprisonment to five and a half months' imprisonment) for cases of severe harm/low culpability, moderate harm/medium culpability, and slight harm/high culpability. This was then followed by a range of 22 to 54 weeks'

imprisonment (*ie*, five and a half months' imprisonment to one year and one and a half months' imprisonment) for cases of severe harm/medium culpability, and moderate harm/ high culpability. Under the Appellant's proposed sentencing matrix, cases of severe harm/high culpability would attract a sentencing range of one to two years' imprisonment.

122 Second, a case of slight harm/low culpability would only attract a fine under the Appellant's proposed matrix, whereas under the Prosecution's sentencing matrix, such a case could attract either a fine or a "short custodial term", with the appropriate starting sentence to be identified at the third step.

123 Third, under the Appellant's proposed matrix, cases of moderate harm/low culpability, or slight harm/medium culpability could lead to a fine and/or up to 6 weeks' imprisonment. In contrast, the Prosecution's sentencing matrix did not provide for a fine in such cases: instead, the Prosecution suggested a sentencing range of up to six months' imprisonment.

124 Having considered parties' submissions, I accepted *in principle* the Prosecution's proposed sentencing matrix. At the same time, I should highlight that both parties agreed that the present case was one involving slight harm/low culpability. In other words, this case only engaged *one* indicative sentencing range. The other sentencing ranges set out in the table below may therefore need to be further considered and developed in future cases. Subject to this observation, I set out the Prosecution's sentencing matrix:

Harm / Culpability	**Slight**	**Moderate**	**Severe**
Low	Fine or short custodial term	Up to 6 months' imprisonment	6 months to 1 year's imprisonment
Medium	Up to 6 months' imprisonment	6 months to 1 year's imprisonment	1 year to 1 year and 6 months' imprisonment
High	6 months to 1 year's imprisonment	1 year to 1 year and 6 months' imprisonment	1 year and 6 months to 2 years' imprisonment

125 I have the following reasons for accepting in principle the above sentencing matrix. First, I agreed with the Prosecution that there is a risk of a clustering effect taking hold under the Appellant's proposed sentencing matrix. Out of nine possible harm-culpability combinations suggested by the Appellant, six of those combinations would *not* lead to a sentence exceeding 22 weeks' imprisonment (see [42] above).[83] Only in respect of three combinations (severe harm/medium culpability, moderate harm/ high culpability, or severe harm/ high culpability) would the sentencing ranges exceed 22 weeks' imprisonment. As the Prosecution observed, this would likely lead to a clustering of sentencing outcomes at or below 22 weeks' imprisonment (*ie*, five and a half months' imprisonment).

126 In general, where Parliament has enacted a range of possible sentences, it is "the duty of the court to ensure that the full spectrum is carefully explored

[83] NEs dated 30 January 2026 at p 15 line 27 – p 16 line 17.

in determining the appropriate sentence" (*Ong Chee Eng v Public Prosecutor* [2012] 3 SLR 776 at [24]). Any clustering effect is therefore eschewed by the sentencing courts because it may not take into account the full spectrum of sentences prescribed by Parliament for the offence in question (*Suventher Shanmugam v Public Prosecutor* [2017] 2 SLR 115 at [26]; *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 ("*Tan Song Cheng*") at [26]). As the Court in *Tan Song Cheng* pointed out (at [26]), failure by the sentencing courts to utilise the full spectrum of possible sentences "would run the risk of promulgating a sentencing trend inconsistent with Parliament's stance with respect to each particular offence". This may in turn lead to sentences that are not proportionate to the overall harm caused and/or the level of culpability of the individual accused.

127 In addition, I agreed with the Prosecution that the appropriate sentencing range for cases of slight harm/low culpability should be a fine or a short custodial term (see [122] above). Given the potentially broad range of circumstances in which offences under s 5(2) of the OSA might be committed, this would give sentencing courts the flexibility to begin with an indicative starting sentence of a short custodial term in cases where the offence-specific factors point to the harm caused being on the higher end of "slight harm", and/or the offender's culpability being on the higher end of "low culpability".

128 In respect of the second step of the adapted *Logachev* sentencing framework, the Appellant also suggested that for the purposes of determining the relevant indicative sentencing range, cases should be classified based on the *number* of harm- and culpability-specific factors that are present in each case.[84] According to the Appellant's suggested scale, for example, a case featuring only

[84] AFS at pp 31–32.

one harm-specific factor and one culpability-specific factor would invariably be classified as one involving "slight harm/low culpability". I rejected this suggested approach for the following reasons. First, it can be seen from [65]–[119] that numerous harm- and culpability-specific factors have been identified at the first step of the adapted sentencing framework. It is unnecessary – indeed, unhelpful – to be "too prescriptive about when a case should be categorised as being of slight, moderate or severe harm and low, medium or high culpability": *Logachev* at [77]. Instead, such categorisation should be left to the discretion of the sentencing court, taking into account all relevant circumstances in each case.

129 Second (and this is a related point), as the Prosecution pointed out in oral submissions,[85] attempts to classify offences based on the *number* of harm- and culpability-specific factors present in each case would produce inappropriate, possibly perverse, outcomes in some cases. For example, in cases where only one harm-specific factor and/or one culpability-specific factor are established, the Appellant's suggested approach would result in such a case being classified as one of slight harm and low culpability – even if the single harm-specific factor or the single culpability-specific factor is extremely egregious (*eg*, a case involving unauthorised dissemination of highly sensitive national security data). In other words, the Appellant's proposal to classify offences based on the *number* of harm- and culpability-specific factors present in each case would not afford the sentencing court sufficient flexibility when assessing the weightage of different offence-specific factors.

[85] NEs dated 30 January 2026 at p 16 line 22 – p 17 line 8.

Identifying appropriate starting point at the third step

130 At the third step of the adapted *Logachev* sentencing framework, given the consensus that the present case involved slight harm and low culpability, parties focused on cases falling within the "slight harm/low culpability" category. Applying the sentencing matrix proposed by the Prosecution, the indicative sentencing range would be a fine *or* a short custodial term. In this connection, a key question would be whether the custodial threshold has been crossed in a particular case.

131 In *Public Prosecutor v Ang Seng Thor* [2011] 4 SLR 217 ("*Ang Seng Thor*"), the High Court held – in the context of offences under s 6(*b*) of the PCA – that the custodial threshold could be breached in various ways. For instance, the custodial threshold would "normally" be found to have been crossed if the "public service rationale" (defined as "the public interest in preventing a loss of confidence in Singapore's public administration") applies; and this sentencing principle "is presumed to apply where the offender is a government servant or an officer of a public body", though it "may also apply to private sector offenders where the subject matter of the offence involves a public contract or a public service" (*Ang Seng Thor* at [33(a)]–[33(c)]). At the same time, the court in *Ang Seng Thor* stressed that triggering the public service rationale was not the only way by which the custodial threshold could be breached for a s 6(*b*) PCA offence: the custodial threshold could also be crossed "in other circumstances, depending on the applicable policy considerations and the gravity of the offence as measured by the mischief or likely consequence of the corruption" (*Ang Seng Thor* at [33(d)]).

132 The Prosecution submitted that for offences under s 5(2) of the OSA, the approach to be adopted at the third step of the adapted *Logachev* sentencing

framework should be broadly similar to the Court's approach in *Ang Seng Thor*.[86] In my view, this would be a sensible and principled manner in which to proceed.

Relevant offender-specific factors at the fourth step

133 I next address the fourth step of the adapted sentencing framework, which requires the sentencing court to consider whether the starting sentence should be adjusted to account for offender-specific aggravating and mitigating factors. In my view, the relevant aggravating and mitigating factors in the present context are those identified by the DJ in the GD (at [18]):

Aggravating factors	Mitigating factors
• Offences taken into consideration for sentencing purposes • Relevant antecedents • Evident lack of remorse	• A guilty plea • Cooperation with the authorities • Actions taken to minimise harm

134 As the above offender-specific factors are generally applicable across most offences and well-established in our criminal jurisprudence, it is not necessary for me to deal with them in any detail. The relevance of the aggravating factors listed above has been affirmed and explained in multiple cases: see *eg*, *Terence Ng* at [64]; *Logachev* at [64]–[66]; *Ye Lin Myint* at [59]; *Wong Chee Meng* at [79]; *Sue Chang* at [105]; *Goh Ngak Eng* at [117]. The relevance of the mitigating factors listed above has also been the subject of much discussion in case law: *Logachev* at [67]–[70]; *Ye Lin Myint* at [59]; *Wong Chee Meng* at [79]; *Sue Chang* at [105]; *Goh Ngak Eng* at [117].

[86] NEs dated 30 January 2026 at p 14 line 22 – p 15 line 4.

135 Apart from the mitigating factors listed in the above table, the Appellant suggested the express inclusion of two other mitigating factors, namely an offender's "genuine remorse" and "young age".[87] I rejected this suggestion. Little if any mitigating weight will generally be accorded to an offender's *bare assertion* that he feels remorseful: instead, a sentencing court will usually consider *whether* and *how* the offender has *demonstrated* or *manifested* remorse before deciding to accord mitigating weight to the stated remorse. The three mitigating factors listed above actually amount to different manifestations of an offender's remorse. The list is non-exhaustive and certainly does not preclude the sentencing court from considering other forms of manifestation of an offender's remorse. As such, I did not find it necessary to provide for "genuine remorse" as an additional, independent mitigating factor.

136 As for an offender's youth, the Court of Appeal in *Terence Ng* held (at [65(b)]) that an offender's youth, and in turn, his *rehabilitation*, is a factor to be taken into consideration in *some* cases. In *Public Prosecutor v Koh Wen Jie Boaz* [2016] 1 SLR 334, Menon CJ explained (at [30]) that rehabilitation was "neither singular nor unyielding", and that the focus on rehabilitation could be "diminished or even eclipsed by such considerations as deterrence or retribution where the circumstances warrant". Broadly speaking, this would happen in cases "where (a) the offence is serious, (b) the harm caused is severe, (c) the offender is hardened and recalcitrant, or (d) the conditions do not exist to make rehabilitative sentencing options such as probation or reformative training viable".

137 In the present case, offences under s 5 of the OSA are serious and *may* involve severe harm being caused – including harm to national interests. As I

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87 AFS at p 38.

have explained, the principal sentencing consideration for these offences is general deterrence. In the circumstances, I did not accept the Appellant's suggestion that an offender's youth should be included from the outset in the list of mitigating factors. This does not mean that sentencing courts are precluded from determining in an appropriate case that mitigating weight should be given to an offender's youth. In this connection, I noted that in *Logachev*, which concerned an offence punishable under s 172A(2) of the CCA, an offender's youth was not expressly included as one of the offender-specific factors to be considered by the sentencing court at the fourth step of the sentencing framework (see [37] and [64]–[70]). However, since "[i]t is not possible to give an exhaustive catalogue of all relevant [offender-specific] factors" (*Terence Ng* at [63]), I would surmise that the court in *Logachev* did not intend sentencing courts dealing with offences under s 172A(2) CCA to be precluded from finding mitigating value in an offender's youth in an appropriate case.

Summary of the applicable sentencing framework for offences under s 5 of the OSA

138 To sum up, the *Logachev* sentencing framework should be adapted for use in the sentencing of offenders convicted after trial of offences under s 5(2) of the OSA. The applicable sentencing framework for such offences ("Sentencing Framework") thus features the following steps:

(a) First, the court should identify relevant harm- and culpability-related offence-specific factors, having regard to the factors set out at [65] above;

(b) Second, the court should identify the indicative sentencing range that is applicable to the offence in question, having regard to the sentencing matrix set out at [124] above;

(c) Third, the court should identify the appropriate indicative starting point within the selected range, and at this stage, the court should examine the relevant offence-specific factors once again in greater granularity;

(d) Fourth, the court may adjust the indicative starting point to account for relevant offender-specific factors, having regard to the factors set out at [133] above; and

(e) Fifth, the court may adjust the sentence to take into account the totality principle.

Issue 2: Application of Sentencing Framework to the facts

139 In the next section of these written grounds, I explain the application of the Sentencing Framework to the facts of the present case. I start by summarising the parties' respective cases.

The Appellant's case

140 *Per* the Appellant's submission, her offence fell within the slight harm/low culpability category.[88] Further, a more granular scrutiny of the facts of her offence showed that the case fell within the "lower end of slight harm and at most, the middle of low culpability".[89] In respect of the harm caused by her

88 AFS at pp 43–44.

89 AFS at p 46.

offence, the Appellant argued that the information received from the co-accused – *ie*, the Report Number – was neither sensitive nor of a high security classification, and therefore of "little or no consequence".[90] In respect of her culpability, the Appellant argued that although she had asked the co-accused for information *generally* relating to her ex-husband's Theft Case, she had not specifically requested the Report Number; and she had simply made an innocuous request, without malice.[91] Moreover, unlike the receiving party in *Phua Keng Tong* who had *actual knowledge* that the document P9 was communicated to him in contravention of the OSA, the charge against the Appellant alleged "reasonable grounds to believe" – *ie*, a less serious state of *mens rea*.[92]

141 Having regard to the above reasons, the Appellant argued that the custodial threshold was not breached in her case, that a fine was appropriate, and that her plea of guilt warranted a downward calibration of the amount of the fine to $1,500.[93]

The Prosecution's case

142 The Prosecution, on the other hand, argued for the DJ's sentence of one week's imprisonment to be upheld.[94] In so arguing, the Prosecution accepted that the present case was one of slight harm/low culpability. Noting that its proposed sentencing matrix indicated a sentencing range of a fine or a short

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90 AFS at pp 39–41; NEs dated 30 January 2026 at p 3 lines 2–20.

91 AFS at pp 41–43.

92 AFS at p 42.

93 AFS at p 46.

94 RFS at para 50.

custodial sentence for this category of offences,[95] the Prosecution contended that the custodial threshold was crossed in this case because although the harm caused was at the "low end" of "slight harm", the Appellant's culpability was at the "higher end" of "low culpability".[96] In particular, the Prosecution argued that the Appellant's culpability was higher by virtue of her having "instigated the communication of the information" for her personal benefit in the divorce proceedings, and also because of the "persistence" she showed in "subsequently attempting to obtain further confidential information".[97] According to the Prosecution, an indicative claim-trial sentence of two weeks' imprisonment was justified on the facts of this case,[98] with this then being reduced to one week's imprisonment on account of the Appellant's early plea of guilt.[99]

My decision

143 Applying the Sentencing Framework to the evidence available in this case, I agreed with the parties that the Appellant's offence fell within the "slight harm/low culpability" category. I also agreed that the harm caused by the offence was on the low end of "slight harm". As for the level of culpability involved, I accepted the Appellant's submission that her culpability fell at the lower end of "low culpability", and that as such, the custodial threshold was not breached.

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95 RFS at para 44.

96 RFS at para 45.

97 RFS at para 45.

98 RFS at para 46.

99 RFS at paras 47–48.

First step: The level of harm caused and the level of offender's culpability

(1) The harm-specific factors

144 In respect of the harm-specific factors present in this case, I agreed with parties that the *amount* of information disclosed was limited. Only the Report Number was disclosed to the Appellant; and this Report Number contained no details of the contents of the police report. At the same time, of course, it should be remembered that the Report Number *is* police information that is generally not available to the public; and there is, moreover, some sensitivity attached to the information: as the DJ pointed out, it provides objective confirmation of the making of a police report (GD at [27(b)]).[100] Given the nature of the information, as the DJ also pointed out, the very fact that an unauthorised person had received such police information would risk some erosion of public confidence in the police. As such, the Appellant was incorrect in characterising the information as being neither confidential nor sensitive and in asserting that its disclosure could not prejudice the police.

145 That said, I accepted the parties' submission that the extent of actual harm caused in this case was limited. It was not disputed that the Appellant did not use the Report Number to cause any harm either to her ex-husband or to the SPF. The extent of breach and dissemination was also limited: it was not disputed that the Report Number was disclosed only to the Appellant, and that she did not disclose it to anyone else.

146 I noted that in assessing the extent of harm caused in this case, the DJ gave not inconsiderable weight to what he perceived as "potential prejudice" to the Appellant's ex-husband: in his GD at [26] and [27(b)], the DJ opined that

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100 RFS at para 43(e).

even as at the date of the Appellant's sentencing and despite her not having used the Report Number, the former husband continued to be "vulnerable to potential misuse of this information". With respect, I disagreed with this finding, as it did not appear to me to be supported by the available evidence. The unauthorised receipt by the Appellant of the Report Number occurred on 10 December 2020. It was not disputed that she did not use this information in the divorce proceedings – or indeed, in any other way. It was also not disputed that in the period of more than four and a half years prior to her sentencing in July 2025, there was no attempt by her to use the Report Number in any way, whether in the divorce proceedings or in some other context. There was thus no basis for the DJ to infer that the former husband "remained vulnerable to potential misuse of this information" even as at the date of the Appellant's sentencing.

147 In light of the above reasons, I accepted the parties' submission that the harm caused by the Appellant's offence was on the low end of "slight harm".

(2) The culpability-specific factors

148 Turning next to the culpability-specific factors, the Prosecution accepted that the Appellant's culpability in this case was low. The bone of contention between the parties related to whether the Appellant's culpability fell within the low to middle end of low culpability as *per* her submission,[101] or whether it lay at the "higher end" of low culpability as the Prosecution claimed.[102] This issue is also relevant at the third step of the Sentencing Framework, where the court has to granulate the case in order to arrive at a sense of what the starting point should be for sentencing purposes. For the purposes of the first step of the

101 AFS at p 46.

102 RFS at para 45(b).

Sentencing Framework, I focus – at [150]–[167] below – on identifying the relevant culpability-specific factors in this case.

149 The Prosecution argued for the following culpability-specific factors to be taken into account in calibrating the Appellant's culpability: the Appellant's role, her motive, and her alleged "persistence" in engaging in offending behaviour.[103] The Appellant, on the other hand, submitted – *inter alia* – that the limited extent of her knowledge about the OSA breach was a relevant factor in calibrating her culpability at a lower level.[104]

(A) THE APPELLANT'S ROLE

150 First, in respect of the Appellant's role, her counsel acknowledged at the appeal hearing that it was her request for information about her ex-husband's Theft Case which had set in motion the events leading to her unauthorised receipt of the Report Number.[105] Counsel disagreed, however, that the Appellant could be described as having "instigated" the offence; and at the appeal hearing, the Prosecution clarified that they had used the term "instigated" somewhat loosely in their written submissions, not in the strict sense in which the term is used in s 107 of the Penal Code (see [85] above), but simply to mean that it was the Appellant who had *initiated* the relevant events by asking her co-accused for information. The Prosecution sought to contrast the Appellant's conduct with the conduct of the receiving party Phua in *Phua Keng Tong*, by pointing out that in *Phua Keng Tong*, Phua – who was sentenced to a fine for his offence under s 5(2) of the OSA – had not *asked* for the confidential document "P9". As

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103 RFS at paras 43(a)–43(c).

104 AFS at p 42.

105 NEs dated 30 January 2026 at p 10 lines 7–12.

such, *per* the Prosecution's argument, the Appellant clearly played a more active role in the present case than Phua had in his case; and her culpability must be higher than Phua's.

151 I rejected the Prosecution's analysis. With respect, their analysis was overly narrow in its focus on the absence in *Phua Keng Tong* of a specific request for the confidential document: it ignored other facts which militated against their conclusion as to Phua's *relatively lower* culpability.

152 The facts of *Phua Keng Tong* – as recounted in the High Court's judgment – were as follows. Phua's co-accused, Tan, was at the material time the director of the Protocol and Consular Division of the Ministry of Foreign Affairs ("MFA"). Tan was charged with communicating or attempting to communicate documents received in his capacity as director to his close friend Phua, who was not authorised to receive those documents. Phua was charged with unauthorised receipt of a copy of an MFA Information Note (referred to at trial as "P9"). Tan and Phua were jointly tried for the OSA offences.

153 At the time of the OSA offences, Phua was a financial manager who was "well-informed on financial matters" and who had been engaged in foreign currency speculations since mid-1981 (*Phua Keng Tong* at [3]–[4]). On 27 July 1983, after purchasing HK$2m on the previous day, Phua had a telephone conversation with Tan in which he inquired about the situation then prevailing in Hong Kong and received from Tan certain information which appeared to him to be favourable to his transaction on Hong Kong dollars. He asked Tan to verify the information, and a follow-up telephone conversation took place, during which Phua persuaded Tan to participate in a purchase of Hong Kong dollars. Phua then purchased in his name two further lots of Hong Kong dollars each for HK$2m, one for himself and one for Tan. Soon thereafter, the Hong

Kong dollar took a deep plunge in the foreign exchange market. Both Phua and Tan became extremely concerned about the fate of the Hong Kong dollar and eventually sold off their Hong Kong dollars at a huge loss of S$228,768.22 (of which Tan's share was S$80,000). Tan was very upset but was advised by Phua not to feel depressed as one "could make up the loss through other transactions"; and in that connection, Phua mentioned two events in the ensuing 12 months on which they should focus their attention: first, the result of the trial of former Japanese Prime Minister Mr Tanaka in Tokyo, and second, President Reagan's re-election – both of which would have an effect on the movement of currencies in the foreign exchange market (*Phua Keng Tong* at [4]). The MFA Information Note referred to in the charge against Phua pertained to the first matter, *ie*, the result of Tanaka's trial (*Phua Keng Tong* at [6]). It should be highlighted that in the statement he gave to officers of the Internal Security Department ("ISD"), Tan asserted that in mentioning to him the two events which they should focus on in the ensuing 12 months, Phua had stated that Tan "was in a better position to judge these trends", and Tan had then "agreed to keep track of development [*sic*] in the two stated areas" (*Phua Keng Tong* at [33]).

154 Phua left Singapore in early October 1983 and only returned sometime around the end of that month. Between 27 October and 8 November 1983, Tan obtained three documents in his official position, one of which was the MFA Information Note on Tanaka's conviction. On 31 October 1983, Tan requested his personal assistant to make a photocopy of this Information Note ("P9"), which he sent along with a newspaper article regarding Tanaka's trial to Phua. This was accompanied with a note written by Tan which stated "From your Partner in sorrow. Frederick", or words to that effect: *Phua Keng Tong* at [6]. Two other documents were sent by Tan to Phua, but I need not deal with them here as they did not pertain to the charge on which Phua was tried. When Tan

and Phua were arrested on 11 November 1983, officers of the ISD found P9 (*ie*, the copy of the Information Note about Tanaka's conviction) on a table in Phua's dining hall: *Phua Keng Tong* at [8].

155 Phua was acquitted after trial on the charge of having received the document P9 from Tan, knowing at the time of receipt that the document was communicated to him in contravention of the OSA. On appeal by the Prosecution, the High Court set aside Phua's acquittal, convicted him of the said charge, and sentenced him to a fine of S$1,500 (*Phua Keng Tong* at [36]). Noting that Phua claimed (*inter alia)* that the communication of P9 to him was contrary to his desire, the High Court held that while it "may well be that he did not specifically ask for P9" and might have found the information in P9 "stale and … of no use to him", the facts summarised above at [152]–[154] made it improbable that P9 was communicated to him contrary to his desire (*Phua Keng Tong* at [34]).

156 For our present purposes, the same facts make it plain that Phua's role was not that of a purely passive recipient. In particular, Phua was the one who had assured Tan that they could make up for their huge losses "through other transactions", and who had specifically picked out Tanaka's trial as one of the two events which he and Tan should focus on. *Per* Tan's evidence, Phua had also made it clear to him that of the two of them, Tan "was in a better position to judge these trends". In other words, prior to Tan sending him P9, Phua had already made clear to Tan the nature of the information they should be focused on in their effort to recoup their investment losses, and he had also reminded Tan of how the latter was better positioned to secure that information.

157 I have set out the facts of *Phua Keng Tong* in some detail because the alleged difference in the roles played by the Appellant and by the receiving party

in *Phua Keng Tong* was one of the key reasons for the Prosecution's contention that the custodial threshold was crossed in the Appellant's case but not in *Phua Keng Tong*. In this respect, the whole thrust of the Prosecution's argument was that Phua should be regarded as having played a limited and/or passive role in the commission of the OSA offence since he had never asked for P9, and that the Appellant, in contrast, played a much more active role by dint of having *asked* for information on the Theft Case. With respect, this argument was not borne out by the facts of *Phua Keng Tong*.

158 Further, while it was indeed the Appellant's request to her co-accused for information on the Theft Case which led to the latter disclosing the Report Number in contravention of the OSA, I noted that there was only a single, simple request made by her. There was no elaborate ruse or stratagem involved; and she did not attempt to apply pressure or to offer inducement to the co-accused.

159 For the purposes of the first step of the Sentencing Framework, therefore, I accepted that the role played by the Appellant was a relevant culpability-specific factor, but I disagreed with the Prosecution's characterisation of the extent of the Appellant's role. I will explain at [172]–[175] below what implications this had at the third step of the Sentencing Framework.

(B) THE APPELLANT'S MOTIVE

160 Second, in respect of the Appellant's motive, I reiterate my earlier observation (at [116]–[118] above) that in many s 5(2) OSA offences, the party who receives confidential information without authorisation will have been motivated by some perceived personal gain or benefit. As I noted earlier, it will not be feasible or productive in most cases to seek to rank different motives on

some putative sliding scale of distastefulness. In the absence of exceptional circumstances, an offender's motive is unlikely to shed light on an offender's culpability. I note that in his GD, the DJ characterised the Appellant's conduct as having been "laced with malice", because she had made a "calculated effort at extracting confidential information for her to weaponi[s]e in divorce proceedings against her ex-husband": he compared the Appellant's actions unfavourably with those of the *disclosing party* (Tan) in *Phua Keng Tong*, whom he described as having acted out of a "lapse of judgment".[106]

161 With respect, I did not agree with the DJ's characterisation of the Appellant's conduct. In the first place, given that the Appellant was the receiving party in this case, it seemed to me somewhat incongruous to compare her conduct with that of the disclosing party (Tan) in *Phua Keng Tong*. In any event, it did not appear to me accurate to describe Tan's conduct in *Phua Keng Tong* as having been caused by a momentary lapse of judgment. I have outlined in some detail earlier the facts of *Phua Keng Tong*, as recounted in the judgment of the High Court (see [152]–[154] above). On the facts available, it was clear that Tan shared Phua's concern about their substantial investment losses; that Phua had assured Tan they could make up their losses through other transactions; and that in that connection, Phua had explained to Tan the two specific matters they should focus on in the ensuing months and also highlighted to Tan that he was "in a better position to judge these trends". In other words, Tan's conduct in subsequently forwarding the document P9 to Phua was far from being the result of a mere, momentary lapse of judgment. Indeed, Tan's motive for his actions was similar to the Appellant's, in that each had a particular, personal interest, and each acted with the intention of advancing that

106 GD at [23] (ROA at p 50).

interest. In describing the Appellant's actions as being "laced with malice" and in contrasting this unfavourably with Tan's intent in *Phua Keng Tong,* the DJ appeared to take the view that the Appellant's motive (or "intent") was more objectionable than Tan's in *Phua Keng Tong*, because her interest in gaining an advantage in divorce proceedings involved her former husband suffering a corresponding disadvantage, whereas Tan's interest in recouping his investment losses did not involve anyone else suffering a corresponding loss. If this was indeed the DJ's reasoning, I did not think it could be justified in principle. Tan – and for that matter, Phua – were after all acting in the context of foreign currency investments, and not in the context of contentious litigation: they did not need to, and it would have made no sense for them to, think in terms of scoring points against some opponent or other.

162 To reiterate, therefore, there were no exceptional circumstances in the Appellant's case that made it helpful to reference her motive when weighing her culpability. Certainly, there did not appear to be any principled basis for finding her motive (*ie*, seeking a tactical advantage over her former husband in the divorce proceedings) "worse" than the motive of either the receiving party or the disclosing party in *Phua Keng Tong* (*ie*, wanting to recoup personal investment losses).

(C) THE APPELLANT'S PERSISTENT OFFENDING

163 The third culpability-specific factor which the Prosecution cited concerned the Appellant's alleged "persistence" in engaging in "offending behaviour". In so submitting, the Prosecution relied on the September 2022 incident mentioned in the SOF (see [16] above), in which the Appellant had asked the co-accused whether a shopfront that she intended to rent "had previously been 'checked' by the Police". According to the Prosecution, this

incident was relevant to the court's evaluation of the Appellant's culpability because it demonstrated that the 2020 offence to which she had pleaded guilty was not simply a "one-off" instance of bad judgment.[107]

164 In considering the Prosecution's (and the DJ's) reliance on the 2022 incident as a factor tending to heighten the Appellant's culpability, I bore in mind the principles established in *Suzanna Bong*, *Tan Thian Earn* and *Chua Siew Peng* (summarised above at [90]–[100]). In gist, while as a matter of *general* principle, an offender cannot be punished for an offence for which he was not charged or convicted, conduct amounting to an uncharged offence may be taken into account by a sentencing court if such conduct is shown to have a sufficient nexus to the charged offence. Accordingly, the question was whether the 2022 incident had a sufficient nexus to the Appellant's 2020 offence, notwithstanding the absence of any charges against her for this 2022 incident.

165 On the evidence available, this question must be answered in the negative. First, as explained at [97] above, in order for the court to find "sufficient nexus" between the uncharged offending conduct and the charged offence, the degree of proximity of time and space between the former and the latter will be a relevant factor. In the present case, there was no temporal or spatial proximity at all between the Appellant's 2020 offence and the 2022 incident, the latter having occurred on an entirely different occasion about two years after the 2020 offence. Second, the 2022 incident related to an entirely different matter from the police report about the Theft Case. To put it another way, the Prosecution failed to show either that the 2022 incident concerned a fact in the "immediate circumstances" of the 2020 offence or that it was relevant

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107 NEs dated 30 January 2026 at p 35 line 20 – p 36 line 3.

to the Appellant's state of mind at the time she committed the 2020 offence (*Chua Siew Peng* at [84]).

166 For the reasons explained above, I rejected the argument that the 2022 incident was relevant in showing "persistence in offending" on the Appellant's part.

(D) THE EXTENT OF THE APPELLANT'S KNOWLEDGE

167 In respect of the Appellant's submissions on culpability-specific factors, the Appellant submitted that both the Charge and the SOF made it clear that she only had reasonable grounds to believe that the Report Number was communicated to her in breach of the OSA – as opposed to having actual knowledge of the breach; and that her level of awareness of the OSA breach was relevant to the calibration of her culpability. This was not seriously disputed by the Prosecution.

Summary of findings at first step of Sentencing Framework

168 For the reasons set out at [150]–[167], at the first step of the Sentencing Framework, I found that the relevant harm-specific factors in this case were the amount of information disclosed and the extent of harm caused; whereas the relevant culpability-specific factors were the Appellant's role in the commission of the offence and the extent of her knowledge of the OSA breach.

Second step: The applicable indicative sentencing range

169 As I noted earlier, both the Prosecution and the Appellant were agreed that this was a case of slight harm and low culpability. This was, in my view, the appropriate classification, having regard to the harm-specific and

culpability-specific factors identified above. Based on the sentencing matrix set out at [124] above, the indicative sentencing range for a "slight harm / low culpability" offence under s 5(2) of the OSA would be a fine or a short custodial term.

Third step: The appropriate starting point within the indicative sentencing range

170 At the third step of the sentencing framework, both parties were agreed that the harm caused in this case was at the "low end of slight harm": the bone of contention between them related to whether the Appellant's culpability fell at the "higher end of low culpability" such that the custodial threshold could be said to have been crossed.

171 In light of my findings at [144]–[147] above, I accepted the parties' submission that the harm caused in this case was at the "low end of slight harm".

172 As for the Appellant's culpability, I was unable to agree with the Prosecution that it should be placed at the high end of "low culpability". Instead, I agreed with the Appellant's submission that her culpability lay at the lower end of "low culpability". I have explained at [160]–[162] and at [163]–[166] why I did not find it relevant to reference the Appellant's motive in the calibration of her culpability and why the 2022 incident should not be taken into account either for sentencing purposes. That left two relevant culpability-specific factors: the Appellant's role and the extent of her knowledge of the OSA breach.

173 As to the Appellant's role, while it was undeniably her request for information that started the chain of events leading to the co-accused's disclosure of the Report Number, I have pointed out that hers was a single,

simple request. I have also explained why I disagreed with the Prosecution's submission that her role was a more active one than that played by the receiving party (Phua) in *Phua Keng Tong*, who was sentenced to a fine.

174 As to the extent of the Appellant's knowledge of the OSA breach, the Prosecution did not seriously dispute the Appellant's submission that "having reasonable grounds to believe" constituted a lower – and accordingly, less blameworthy – state of awareness. The Appellant's position in this case may be contrasted with Phua's position in *Phua Keng Tong.* Unlike the Appellant, Phua was charged with having received the Information Note *knowing* that it was communicated to him in contravention of the OSA. It was not disputed that the Information Note was stamped "Confidential". To recap, Phua had *inter alia* been in the Government service for about three years, holding a senior position by the time he left the service; he knew of classification of documents in Government departments and of official secret undertakings; and it must have been *obvious* to him that documents classified as "Confidential" were meant for certain groups of people authorised to received them and he was not such a person (at [31] of *Phua Keng Tong*).

175 Given that the harm caused by the Appellant's offence was at the low end of "slight harm", and that her culpability was also at the lower end of "low culpability", the custodial threshold could not be said to have been crossed in her case. As such, a fine would be the appropriate punishment. Having regard to the need for general deterrence in cases of unauthorised receipt of confidential information under s 5(2) of the OSA, and bearing in mind the facts of this case, I was of the view that the appropriate starting point would be the maximum fine of S$2,000 under s 17(2) of the OSA.

Fourth step: Adjustment of the starting point to take into account offender-specific factors

176 At the fourth step of the Sentencing Framework, both parties were agreed that the only relevant offender-specific factor was the Appellant's timeous plea of guilt. I found it appropriate at this stage to calibrate the starting fine amount of S$2,000 downwards to S$1,500 to account for the mitigating value of her plea of guilt.

Fifth step: Application of the totality principle

177 It was not necessary for me to proceed to the fifth step of the Sentencing Framework in this case, as the Appellant was convicted of only one charge; and the totality principle is only relevant where an offender has been convicted of multiple charges: *Sue Chang* at [120].

Application of the principle of parity

178 For completeness, I make the following two other points.

179 First, I noted that the DJ found it important to ensure parity between the Appellant's sentence and the co-accused's sentence: in his GD (at [34]), the DJ justified the one-week sentence of imprisonment imposed on the Appellant with reference (in part) to the two-month imprisonment term which the co-accused received for his offence under s 5(1) OSA of unauthorised disclosure of the Report Number.

180 I accepted that it was appropriate in principle for the DJ to apply his mind to the question of parity between the co-accused's sentence and the Appellant's. The Appellant's submission that she and the co-accused were not

"part of a common criminal enterprise" was incorrect,[108] given their respective roles as the giver and the recipient of the confidential information in this case (*Chong Han Rui* at [1]). However, with respect, in concluding that the principle of parity warranted a one-week imprisonment term in the Appellant's case, the DJ did not sufficiently appreciate the materials before him in relation to the co-accused's case. The co-accused's sentence of two months' imprisonment for the s 5(1) OSA offence took into consideration another charge under s 3(1) of the Computer Misuse Act (Cap 50A, 2007 Rev Ed) which the Prosecution had preferred against him in respect of the December 2020 incident.[109] Conversely, there was no TIC charge in the Appellant's case. Moreover, at the time of the December 2020 incident, the co-accused had been a police officer for some 17 years. He held the rank of Inspector and was a Senior Investigation Officer; and by virtue of his official position, he enjoyed access to confidential information stored in the CRIMES II police database. In taking the initiative to access the CRIMES II database for information on the Theft Case, the co-accused clearly played an active role in the commission of the OSA offence. He also abused his position – an aggravating factor not present in the Appellant's case. Indeed, the DJ described the co-accused as being "*significantly more culpable*" than the Appellant (at [34] of the GD). On the facts, there was no doubt that the custodial threshold had been crossed in the co-accused's case – whereas that threshold had not been crossed in the Appellant's case, given her lower level of culpability. In the circumstances, I disagreed that this was a case where the public would perceive that the co-accused had suffered injustice by reason of having been sentenced to two months' imprisonment when the Appellant was sentenced to a fine.

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108 AWS at para 85.

109 ROA at pp 61 and 94.

181 Second, I did not find the sentence of a S$1,500 fine imposed on the receiving party in *Phua Keng Tong* to be a bar in principle to my imposing a fine of S$1,500 in this case. The decision in *Phua Keng Tong* was rendered some 40 years ago. Moreover, that was a case where the Prosecution had appealed against Phua's acquittal at first instance; and in allowing the Prosecution's appeal and convicting Phua of the s 5(2) OSA charge, the High Court did not give reasons for the quantum of the fine it imposed.

Conclusion

182 Pursuant to ss 390(1)(*c*) and 394 of the CPC, and in light of the reasons set out at [143]–[177], I allowed the Appellant's appeal by setting aside the sentence of one week's imprisonment imposed by the DJ, which I found to be manifestly excessive, and substituting a fine of S$1,500 (in default, one week's imprisonment).

183 In closing, I reiterate that this was a case where the Prosecution accepted that the harm caused was at the low end of slight harm, where it also accepted that the Appellant's culpability was low (albeit, according to them, at the "higher end"), and where I assessed that culpability to be at the lower end of low culpability. In other words, a fine was found to be appropriate on the *specific* facts of this case. The fact remains that the offences under the OSA of unauthorised disclosure and receipt of confidential information are serious offences. General deterrence is the chief sentencing consideration for these OSA

offences; and the commission of any such offence will be met with punishment that duly reflects the gravity of the offence and the offender's culpability.

Mavis Chionh Sze Chyi
Judge of the High Court

Chooi Jing Yen and Chen Yongxin (Chooi Jing Yen LLC) for the Appellant;
Hon Yi and Cheah Wenjie (Attorney-General's Chambers) for the Respondent.
