

Employing institution (stamp)

Universitätsverwaltung  
-Personaldezernat-  
Subject: ..... or  
Mr./Ms. ....  
Hauspost

### Memorandum of the formal obligation of persons not appointed as civil servant with tenure

Today appeared in front of the undersigned for the purpose of obligation acc. to § 1 of the law on formal obligation of persons not appointed as civil servants with tenure (Gesetz über die förmliche Verpflichtung nicht beamteter Personen) of March 2<sup>nd</sup> 1974 (BGBl. I page. 547)

Mr./Mrs. ....

The person appearing obligates her/himself to conscientiously and duly carry out the service owed according to the contract of employment in accordance with the purposes of our institution, particularly the specific tasks in research, teaching and further education (§ 3 para. 1 TV-L in connection with § 40 TV-L).

She/He was informed about the contents of the following penal provisions of the Penal Code (Strafgesetzbuch):

- |   |  |
|---|--|
| § 133 para. 3                           | - Destruction of documents in official custody;                        |
| § 201 para. 3                           | - Breach of confidentiality of spoken word,                            |
| § 203 para. 2, 4, 5                     | - Breach of private secrets,   |
| § 204                                   | - Exploitation of third party's secrets,                               |
| § 331                                   | - Accepting an advantage,  |
| § 332                                   | - Corruptibility,  |
| § 353 b                                 | - Breach of official secrets and a particular duty to observe secrecy, |
| § 358                                   | - Incidental legal consequences,                                       |
| § 97 b para. 2 in con. with §§ 94 to 97 | - Mistaken assumption of betrayal of a state secret,                   |
| § 120 para. 2                           | - Freeing of prisoners,  |
| § 355                                   | - Breach of tax secrecy.   |

The person appearing was informed that these penal provisions apply for her/him due to her/his obligation.

In addition, the person appearing was committed to keeping the confidentiality of data (§ 6 Landesdatenschutzgesetz – LSDG (Data Protection Act of the Land)). According to this law, it is forbidden for persons employed by public authorities to process or otherwise use personal data without being authorized. The confidentiality of data persists even after termination of the function. The obliged party was instructed that certain knowing violations of the Landesdatenschutzgesetz can be punished with fines of up to 25.000 Euro (§ 40 LSDG) or penalties and prison sentences respectively of up to two years (§ 41 LSDG)

In most cases, a breach of the above-mentioned duties will also simultaneously constitute a violation of the contractual obligations for which reason the corresponding legal consequences up to dismissal with immediate effect and claims for damages have to be expected.

She/He declares that she/he has been informed about the contents of the specified provisions.

These minutes have been read to the obliged party and approved and signed. At the same time, the obliged party confirms reception of a copy of this memorandum as well as the above-mentioned penal provisions and explanations of the data protection laws.

Read and approved

.....  
Date/signature of the obliged party

.....  
Date/signature and title of the obligating person

.....  
Name of the obligating person  
(in block capitals please)

**Penal provisions (Penal Code), to be emphasized within the frame of the obligation acc. to § 1 of the Law on the obligation of persons not appointed as civil servants of March 2<sup>nd</sup> 1974 (BGBl. I P. 547)**

**§ 133 Destruction of documents in official custody**

- (1) Whoever destroys, damages, renders useless, or withdraws from official disposition documents or other movable property, which are in official custody or have been officially placed in her/his custody shall be punished with imprisonment not exceeding two years or a fine.
- (2) The same applies to documents or other movable property, which are in official custody of a church or another religious society under public law or have been officially placed in the custody of the perpetrator or another person.
- (3) Whoever commits the offence in relation to a property that has been entrusted or made available to her/him as an office bearer or a person with special public service obligations shall be punished with imprisonment not exceeding five years or a fine.

**§ 201 Breach of confidentiality of spoken word**

- (1) Whoever, without authorization
  1. makes an audio recording of the privately spoken word of another, or
  2. uses, or makes such a recording available to a third party,shall be punished with imprisonment not exceeding three years or a fine.
- (2) Whoever, without authorization:
  1. listens with a listening device to the privately spoken word of another person shall be punished with imprisonment not exceeding three years or a fine.
- (3) Whoever, as an office bearer or person with special public service obligations breaches the confidentiality of the spoken word shall be punished with imprisonment not exceeding five years or a fine (clauses 1, 2).
- (4) The attempt shall be punishable.
- (5) The sound carriers and listening devices used by the perpetrator or the accomplice may be confiscated.

**§ 203 Breach of private secrets**

- (1) Whoever ..., shall be punished with imprisonment not exceeding one year or a fine.
- (2) Whoever, without authorization discloses a secret of another person, in particular a secret belonging to the personal sphere of life or a business or trade secret that was disclosed to her/him or was otherwise made known to him as
  1. office bearer,
  2. a person with special obligation in public service,
  3. a person performing tasks or capacities according to the Staff Representation Act (Personalvertretungsrecht),
  4. a member of an investigation committee working for a legislative body of the Federation or a Land, another committee or council which itself is not a member of the legislative body, or as an assistant of such a committee or council, or
  5. an officially appointed expert who has been formally obligated by law to conscientiously fulfill her/his duties,will be punished in the same way.

Particulars about personal or material relationships of another person, which have been recorded for public administration purposes correspond to a secret in terms of clause 1; however, clause 1 shall not be applicable to the extent that such particulars have been disclosed to other authorities or agencies for public administration and the law does not prohibit this.
- (3) ...
- (4) Subsections 1 to 3 shall also apply if the perpetrator, without authorization, discloses the secret of another after the affected person died.
- (5) If the perpetrator acts for money or with intent to enrich her/himself or to harm another person, this will be punished with imprisonment not exceeding two years or a fine.

**§ 204 Exploitation of third party's secrets**

- (1) Whoever, without authorization, exploits a third party's secret, in particular a business or trade secret which she/he is obligated to keep secret acc. to § 203, shall be punished with imprisonment not exceeding two years or a fine.
- (2) § 203 para. 4 applies accordingly.

**§ 331 Accepting an advantage**

- (1) An office bearer or a person with special public service obligations who demands, obtains the promise of or accepts an advantage as reward for having carried out or intending to carry out an official function shall be punished with imprisonment not exceeding two years or a fine.
- (2) A judge or arbitrator who demands, obtains the promise of or accepts an advantage as reward for having carried out or intending to carry out a judicial function, shall be punished with imprisonment not exceeding three years or a fine. The attempt shall be punishable.
- (3) Acc. to para. 1, the act shall not be punishable if the perpetrator obtains the promise or accepts an advantage which she/he did not demand and the competent authority within the scope of its powers either previously authorizes the acceptance, or the perpetrator promptly reported to the competent authority which then authorized the acceptance.

**§ 332 Corruptibility**

- (1) A public official or person with special public obligations who demands, obtains the promise of or accepts an advantage for her/himself or a third person as reward for having carried out or intending to carry out an official function and thereby violated or would violate her/his official duties, shall be punished with imprisonment from six months to five years. In less serious cases, the punishment shall be imprisonment not exceeding three years or a fine. The attempt shall be punishable.
- (2) A judge or an arbitrator who demands, obtains the promise of or accepts an advantage for her/himself or for a third person as reward for having carried out or intending to carry out a judicial function and has thereby violated or will violate her/his judicial duties shall be punished with imprisonment from one to ten years. In less serious cases, the punishment shall be imprisonment from six months to five years.
- (3) If the perpetrator demands, obtains the promise of or accepts an advantage as reward for a future function, subsections 1 and 2 shall already be applicable if she/he has shown her/his willingness to the other party,
  1. to violate her/his duties by the act, or
  2. as far as the act is within her/his discretion, to allow her/himself to be influenced by the advantage in exercising her/his discretionary power.

**§ 353 b Breach of official secrets and of a particular duty to observe secrecy**

- (1) Whoever, without authorization, discloses a secret which has been confided or become known to her/him as
  1. office bearer,
  2. person with special public obligations, or
  3. person performing tasks and capacities acc. to the Staff Representation Act,and thereby endangers important public interests, shall be punished with imprisonment not exceeding five years or a fine. If the perpetrator negligently endangered important public interests with her/his act, she/he shall be punished with imprisonment not exceeding one year or a fine.
- (2) Whoever, except for the cases under para. 1, without authorization, allows to come to the attention of another person or publicly discloses a matter or message,
  1. which she/he is obligated to keep secret due to a resolution of a legislative body of the Federation or a Land or one of its committees, or
  2. which she/he has been formally obligated to keep secret by another official body upon notice of the punishability of the breach of the duty to observe secrecy,and thereby endangers important public interests, shall be punished with imprisonment not exceeding three years or a fine.
- (3) The attempt shall be punishable.
- (4) The act shall be prosecuted with authorization only. Authorization shall be granted
  1. ...2. ...
  3. the highest legislative body of the Land in all other cases of para. 1 and 2 no. 2.

### § 358 Incidental legal consequences

In addition to imprisonment of at least six months for a crime acc. to §§ 332, 335, 339, 340, 343, 344, 345 para. 1, 3, §§ 348, 352 to 353 b para. 1, §§ 355 and 357, the court of judgment can disqualify the perpetrator from holding public offices (§ 45 para. 2).

### § 94 Treason

- (1) Whoever
  1. communicates a state secret to a foreign power or one of its intermediaries, or
  2. otherwise allows a state secret to come to the attention of an unauthorized person or to become known to the public in order to disadvantage the Federal Republic of Germany or to benefit a foreign power, and thereby creates a danger of serious disadvantage for the external security of the Federal Republic of Germany, shall be punished with imprisonment exceeding one year.
- (2) In particularly serious cases, the punishment shall be imprisonment for life or not under five years. In general, a case is particularly serious if the perpetrator
  1. abuses a position with responsibility which especially obligates him to safeguard state secrets, or
  2. creates by the act the danger of an especially serious disadvantage for the external security of the Federal Republic of Germany.

### § 95 Disclosure of state secrets

- (1) Whoever allows a state secret, which is kept secret by an official body or at its instance, to come to the attention of an unauthorized person or become known to the public, and thereby creates the danger of serious disadvantage for the external security of the Federal Republic of Germany, will be punished with imprisonment from six months to five years, if the act is not punishable under § 94.
- (2) The attempt shall be punishable.
- (3) In particularly serious case, the punishment shall be imprisonment from one to ten years, § 94 para. 2 clause 2 shall be applicable.

### § 96 Treasonable espionage; spying out of state secrets

- (1) Whoever obtains a state secret in order to betray it (§ 94), shall be punished with imprisonment from one to ten years.
- (2) Whoever obtains of a state secret, which has been kept secret by an official body or at its instance in order to disclose it (§ 95), shall be punished with imprisonment from six months to five years. The attempt shall be punishable.

### § 97 Revelation of state secrets

- (1) Whoever allows a state secret, which has been kept secret by an official body or at its instance, to come to the attention of an unauthorized person or become known to the public and thereby negligently causes the risk of serious disadvantage to the external security of the Federal Republic of Germany, shall be punished with imprisonment not exceeding five years or a fine.
  - (2) Whoever recklessly allows a state secret, which has been kept secret by an official body or at its instance and which was accessible to her/him due to her/his public office, official position or assignment by an official body, to come to the attention of an unauthorized person, and thereby negligently causes the risk of serious disadvantage for the external security of the Federal Republic of Germany, shall be punished with imprisonment not exceeding three years or a fine.
- (2) Whoever recklessly allows a state secret, which has been kept secret by an official body or at its instance and which was accessible to her/him due to her/his public office, official position or assignment by an official body, to come to the attention of an unauthorized person, and thereby negligently causes the risk of serious disadvantage for the external security of the Federal Republic of Germany, shall be punished with imprisonment not exceeding three years or a fine.

- (3) The act shall be prosecuted with the authorization of the Federal Government only.

### § 97 b Betrayal under the misapprehension of an illegal secret

- (1) ...
- (2) If the state secret was officially confided or disclosed to the perpetrator in his capacity as office bearer or soldier in the Federal Armed Forces, then she/he shall also be punished if the office bearer did not previously appeal to a supervisor or the soldier to a disciplinary superior for remedy. This shall apply correspondingly to persons with particular public service obligations and to persons who have been obligated in terms of § 353 b para. 2.

### § 120 Freeing of prisoners

- (1) Whoever frees a prisoner or induces or assists him to escape, shall be punished with imprisonment not exceeding three years or a fine.
- (2) If the perpetrator is particularly obligated as office bearer or person with special public obligations to prevent the escape of the prisoner, then the punishment shall be imprisonment not exceeding five years or a fine.
- (3) The attempt shall be punishable.
- (4) Whoever is otherwise in custody in an institution upon order of a public authority is equivalent to a prisoner in terms of para. 1 and 2.

### § 355 Breach of tax secrecy

- (1) Whoever, without authorization, discloses or uses
  1. circumstances of another person which became known to him as office bearer,
    - a) in an administrative proceeding or legal procedure in tax matters,
    - b) in a criminal procedure due to tax crime or in monetary fine proceedings due to a tax administrative offence,
    - c) on another occasion through a communication of a tax authority or through the submission of a tax assessment notice or a certificate concerning the findings made at the end of taxation required by law, or
  2. a business or trade secret of another person that became known to him as an office bearer in one of the procedures mentioned under number 1,shall be punished with imprisonment not exceeding two years or a fine.
- (2) The following shall be considered equivalent to office bearers in terms of para. 1
  1. persons with special public obligations,
  2. officially consulted experts and
  3. those bearing offices in churches or other religious societies under public law.
- (3) The act shall be prosecuted only upon demand of the supervisor or the aggrieved party. In case of acts by officially consulted experts, the head of the public body whose proceedings are concerned shall be also be entitled to apply in addition to the aggrieved party.

---

As to compliance with the confidentiality of data (§ 6 LDSG) the following has to be observed in particular:

- All personal data must be stored, processed or published only in the manner instructed by the authorities responsible for data processing.
- Only those personal data required to fulfill a specific task must be retrieved.
- Documents containing personal data must be stored so that they are protected from being accessed by third parties.
- Data media or printouts have to be deleted or destroyed completely according to the relevant provisions.
- Incidents and cases that become known during official business must be referred to in private only anonymized and in such a manner that conclusions on persons are not possible – regardless of further obligations to confidentiality for internal processes.

Existing regulations on the treatment and storage of personal data (e.g. with regards to password protection) have to be observed. The necessary diligence is to be used to protect personal data within the frame of the assigned task; detected shortcomings are to be reported.

Supplementary instructions on data protection:

- Any processing of personal data by employees of a public authority is an intrusion into the basic right on informational self-determination and must be carried out only based on a legal provision or with the consent of the interested party.
- Employees must always check under which legal norm they act before they process (collect, store, modify, transmit, use, block or delete) data. The general regulations of the Landesdatenschutzgesetz as well as department-specific provisions are a possibility.

Processing of personal data is to be limited to the degree required for the legal fulfilling of tasks. Incorrect, unduly collected or stored data as well as data that are not longer required have to be corrected or deleted.