



Blueprint for Free Speech

Submission to:

The General and Education Committee of Althingi
in respect of the 647. mál, lagafrumvarp þjónusta
144. löggjafarþing 2014–2015 – (Dissemination of
Information and Protection of Whistleblowers).

27 May 2015

Submission to the General and Education Committee of Althingi (the Committee) in respect of the 647. mál, lagafrumvarp þjónusta 144. löggjafarþing 2014–2015 – (Dissemination of Information and Protection of Whistleblowers) (the Bill).

27 May 2015

1. Introduction

Thank you for the opportunity to provide comments to the Committee in respect of the Bill.

Blueprint for Free Speech (**Blueprint**) is an Australian based, internationally focused not-for-profit concentrating on research into 'freedoms' law. Our areas of research include public interest disclosure (whistleblowing), freedom of speech, defamation, censorship, right to publish, shield laws, media law, Internet freedom (net neutrality), intellectual property and freedom of information. We have significant expertise in whistleblowing legislation around the world, with a database of analyses of more than 20 countries' whistleblowing laws, protections and gaps.

Blueprint has long been a supporter of the passage of whistleblower protection law in Iceland. In February 2013, at the last attempt to pass such a law, Blueprint provided a comprehensive submission on this topic to the Judicial Affairs and Education Committee. Although this Bill is different in a certain respects, the essence of the Bill is the same. We repeat and affirm the vigour demonstrated in our support of the previous Bill for this reincarnation and congratulate the parliament of Iceland for coming forward with this impressive and necessary measure. For the Committee's convenience, we have attached this submission as '**Annexure A**'.

Since this time, Blueprint has been involved in numerous projects around the world assisting in the development and passage of legislation designed to protect whistleblowers. Currently, there are over 40 countries considering the passage of whistleblower legislation. We encourage the Committee to go to our website: <https://blueprintforfreespeech.net>, which has a world map indicating the level of progress made by various countries around the world to improve their whistleblower protection law. Additionally, the Committee will also find our report on the G20 Countries concerning the performance and effectiveness of their whistleblower protection laws. This report was presented at the G20 summit in November 2014 and involved a significant consultation process with the justice ministries of the member countries.

2. Progress since 2013

Whilst there have been some minor changes to the Bill between 2013 and today, the essence of the Bill is the same. The important matter to note is that for too long whistleblowers have gone without protection in Iceland and every year that this Bill does not pass is another year where whistleblowers are persecuted and wrongdoing continues to occur.

Whistleblowing is one of the most effective means to guard against corruption and other wrongdoing. In some ways it is the most effective because it relies upon inside information only available to whistleblowers. It needs to be protected because in many cases the particular wrongdoing can be revealed in no other way than by the brave few who come forward and make their disclosures.

We encourage the continued interest of the committees of Althingi, including this one, to examine the finer mechanisms of the Bill. However, we are mostly concerned with the passage of the Bill present with the key characteristics of a modern whistleblower protection regime.

3. The future of whistleblowing protection

In a 2014 submission we made to the Swedish parliament. In that submission we argued that Sweden had the opportunity to be a world leading country for the protection of whistleblowers. This is a mantle held by each of the Nordic countries. Iceland too fits this mantle with a history of progressive and modern politics. Taking the lead in this area provides an improved working environment for employees, better protections for shareholders and a better functioning society for all. Given the worldwide interest in this topic, such leadership also provides a country with significant international stature. It underlines the country's commitment to what is evolving as a new type of human right and a mechanism for a more advanced society. The opportunity is there now not simply to catch the rest of the pack, but to surge forward and create the world's most sophisticated and progressive whistleblower protection regime. In order to achieve this, Blueprint suggests the following additional concepts for consideration in the Proposed Law:

a. Protection from extradition

The Proposed law could provide that a court may order that a whistleblower is not to be extradited to another country if the extradition is sought on a basis connected to the disclosure. In considering such an application, a court must give consideration to:

- (a) the degree of connection between the disclosure and the conduct or circumstances that gives rise to the request for extradition; and
- (b) whether extradition is necessary in all of the circumstances, taking into account the public interest in protecting whistleblowers.

The purpose of such a law would be to protect those who have revealed wrongdoing by exceptionally powerful interests or governments and allowing extradition would put the whistleblower in significant personal danger, or there might be danger to their legal rights or freedoms.

b. Technological anonymity

A law should create infrastructure such that a whistleblower can make a disclosure, and monitor a disclosure through a secure online facility that does not reveal their identity. This builds on the important protections offered above for whistleblowers to whistleblow anonymously, but harnesses technological developments to virtually ensure that this can take place. To embed such protections into the law would further strengthen anonymity protections.

4. Conclusion

Blueprint would like to take the opportunity again to thank the Committee for its time in considering our submission and reiterate its enthusiasm in assisting the Committee further in whatever way it might deem us to be helpful.

We congratulate Althingi for once again considering to pass this vital piece of legislation. Once passed, the Bill will ensure that wrongdoing hidden in the darkest places has a light shone upon it, as well as ensuring the protection of those who have been brave enough to make their disclosure.

Please contact us about this submission or any other matter.

Blueprint for Free Speech
27 May 2015

Annexure 'A'

Blueprint submission to the Judicial Affairs and Education Committee – February 2013

Nefndasvið Alþingis
Judicial Affairs and Education Committee
Austurstræti 8-10
150 Reykjavík
Iceland
By email: nefnadasvid@althingi.is

25 February 2013

Confidential

Dear Members,

**Re: Submission Disclosure of Information and Protection of Whistleblower Bill, (453)
(Lög um miðlun upplýsinga og vernd uppljóstrara) (PID Bill)**

Thank you for the opportunity to provide comments on the PID Bill.

Blueprint for Free Speech (**Blueprint**) is an Australian based, internationally focused not-for-profit concentrating on research into 'freedoms' law. Our areas of research include public interest disclosure (whistleblowing), defamation, censorship, right to publish, shield laws, media law, Internet freedom (net neutrality), intellectual property and freedom of information. We have significant expertise in whistleblowing legislation around the world, with a database of analyses of more than 20 countries' whistleblowing laws, protections and gaps.

The PID Bill, if enacted, would become international best practice for public interest disclosure legislation. It would serve as a shining light and firmly establish Iceland as a nation that prefers open government to secrets and in no circumstance tolerates corruption.

Blueprint unequivocally supports the PID Bill for the reasons set out below.

1 Application of the Bill to cover all types of wrongdoing

The PID Bill covers wrongdoing, disclosure of which would be in the public interest. A Disclosure, as provided in Article 2 of the PID Bill includes information about both public and private organisations. This is important because it promotes transparency in public and private institutions as well as ensuring whistleblowers will be afforded the protections under the PID Bill irrespective of the wrongdoing they are revealing. Iceland especially knows and appreciates the importance of both

public and private institutions focusing on transparency as a first defence to corruption and malfeasance.

2 Application of the Bill to cover all types of whistleblowers (Disclosers)

The PID Bill must and does offer protection to those who make a disclosure of wrongdoing in the public interest. It is a very fair Bill; it does not favour a particular class of Icelanders by only providing protections for them while leaving the rest of the population without proper protections. The focus of Bill on the substantive information about serious malfeasance, rather than the source from where it came. The PID Bill also covers third parties who assist a Discloser with making a disclosure (see Article 6). This underlines that the high level purpose of this Bill is to provide a check on wrongdoing in society, such as unlawful activity, misuse of public funds or putting someone's life in danger. The focus on the information rather than the person in no way means that a discloser is secondary to the information, but rather placing importance in the information that the discloser possesses only reinforces the importance of protecting them, and protecting them if they come forward with that information in the public interest.

3 Creation of appropriate options for a whistleblower to disclose

Public interest disclosure can take many forms and the appropriate form will always depend on the particular circumstances and the nature of the information to be disclosed. It is therefore important that a potential whistleblower has various options to suit those circumstances, whilst still afforded the protections and remedies under the PID Bill.

The PID Bill places a whistleblower in the position in which they can either disclose the information either 'inside' the organisation, or if the conditions are met in Article 5, 'external' disclosure. Both routes of disclosure are applicable to all disclosers and both offer the same level of protection. Again this highlights that the proposed legislation is both well-balanced and fair.

It is paramount to the effective operation of public interest disclosure legislation that a whistleblower has the option to disclose wrongdoing in the public interest to third parties and the media if it is inappropriate to do so through internal channels. There is overwhelming public support among Icelanders for this position, as illustrated by the random sample poll detailed below in the annexure to this submission. This does not mean that an unfettered license is given to a whistleblower to take all information to the media, and the Bill contains sensible limits and constraints. These are however well balanced to also provide flexibility to empower whistleblowers in the varied circumstance in which they find themselves.

Further, the qualifications that a discloser needs to satisfy in order to disclose externally ensure that it is only done in appropriate circumstances, such as those that are enumerated in Articles 5(a) to (f). Primarily, its focus is on the 'public interest'. The PID Bill makes it clear that information of such a serious kind should be in the public domain and that Iceland prefers transparency over secrecy.

4 Suitable protections and remedies for whistleblowers

A whistleblower may take on serious risk to their financial position, reputation and personal safety when disclosing wrongdoing in the public interest. After making a disclosure, a whistleblower may be subject to threats and reprisal from fellow employees or another person as a result of that disclosure. Accordingly, it is appropriate to have not simply protective measures for that whistleblower, but also to allow for effective compensatory remedies to return them to a position they would otherwise have been in but for the making of the disclosure and any resulting reprisal taken against them.

The PID Bill allows protection from adverse action, it limits contractual and non-contractual liability arising from a disclosure, it ensures the security of employment for public employees, it guarantees anonymity where the discloser so desires and ensures the right to proper compensation. In short, the remedies and protections ensure that the serious risks that a whistleblower takes on when coming forward in the public interest are balanced by the community's will to protect these persons.

Public interest disclosure should be underpinned by an acknowledgement that it is often very difficult and risky for a whistleblower to come forward and expose wrongdoing. Effective compensation and favourable costs provisions only seek to encourage the exposure of wrongdoing by making the path to such disclosure more achievable for a whistleblower.

5 Public support for law reform

Blueprint commissioned the Social Science Research Institute (**SSRI**) of The University of Iceland to conduct a survey on Icelanders' attitudes towards whistleblowing¹.

The poll categorically demonstrates that Icelandic people support whistleblowers, whistleblowing as a method for exposing corruption, and reform to improve protections for those who disclose information in the public interest. The reader is directed to Annexure 'A' for a summary of the findings. The proposed Bill is consistent with the beliefs expressed by a strong majority of Icelanders.

We would like to take the opportunity again to thank the committee for allowing us to submit to this inquiry. Again, we stress the importance of the PID Bill and congratulate the Icelandic Parliament and people for leading the world in openness and transparency. We hope your example may serve to encourage and lead others to match your leadership in international best-practice.

We would be pleased to answer any further questions about these or any other matters.

Yours faithfully

Simon Wolfe

¹ Full Report, Whistleblowing Study, Findings from Iceland, February 2013, Social Science Research Institute of The University of Iceland

Head of Research

E: simon@blueprintforfreespeech.net

PO Box 187, Fitzroy VIC Australia 3065

Annexure 'A'

The below is a summary of the findings of a poll commissioned by Blueprint, by the University of Iceland's Social Science Research Institute, *Whistleblowing Study, Findings from Iceland*, February 2013, Social Science Research Institute of The University of Iceland.

- 63% of Icelandic people believe that in Iceland, **too much information is kept secret** in organisations, whereas 15% believe it's about the right amount, 3% say not enough is kept secret and 19% say it's neither or cannot say;
- 77% believe that it is **acceptable** for someone to **reveal inside information** about serious wrongdoing **by other staff or workers in an organisation**, whereas 10% say it is unacceptable and 13% say neither or cannot say;
- 83% believe that it is **acceptable** for someone to **reveal inside information** about serious wrongdoing by people **in charge of an organisation**, whereas 9% say it is unacceptable and 8% say neither or cannot say;
- 87% believe that **people should be supported for revealing serious wrongdoing**, even if it means revealing inside information, whereas only 3% say people should be punished and 9% say neither or cannot say;
- **Yet only 38% believe that management in their organisation is serious about protecting people** who report wrongdoing, whereas 18% disagree and 44% say neither or cannot say;
- In Icelandic society, the **most effective way to stop serious wrongdoing** is:
 - According to 47% of Icelandic people, via internal channels;
 - 19% to journalists or news organisations;
 - 6% directly to the public via the internet, Twitter, Facebook or online blogs; whereas
 - 18% believe there is no effective way to report wrongdoing; and
 - 10% either cannot say or believe some other way is most effective.
- 90% believe that if someone in an organisation has inside information about serious wrongdoing, **they should be able to use a journalist, the media, or the internet** to draw attention to it (9% in any situation, 27% whenever there become specific reasons to do so and 54% as a last resort), whereas only 4% say never and 6% cannot say.

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