

**Federal State-Funded Educational Institution of Higher Education
«RUSSIAN PRESIDENTIAL ACADEMY OF NATIONAL ECONOMY
AND PUBLIC ADMINISTRATION»**

NORTH-WEST INSTITUTE OF MANAGEMENT, branch of RANEPA

Manuscript copyright

KLIMENKO Sergey Nikolaevich

A handwritten signature in blue ink, appearing to be 'S. Klimenko', is written over the printed name and extends upwards and to the right.

**ADMINISTRATIVE AND LEGAL REGULATION OF INFORMATION
SECURITY: BY WAY OF EXAMPLE OF THE ACTIVITIES OF THE
CUSTOMS AUTHORITIES OF THE RUSSIAN FEDERATION**

Specialty 12.00.14 - Administrative Law; Administrative Process

Abstract the dissertation

on competition of a scientific degree candidate of legal Sciences

Saint-Petersburg
2020

In the field of public administration, the key factor of increasing the efficiency of the state institutions has become information and communication technologies which make it possible to reach the effectiveness of the functions entrusted, first of all, the control, collection and analysis of information, development of measures based on them and directed at carrying out effective administrative and management decisions and provision of the security of information of limited access.

Information and communication technologies render substantial assistance to the formation of mutual relations between the broad segments of the population and various government bodies, providing an opportunity to implement constitutional civil rights to access the information and participate in the public life of the state.

The relevance of the topic is increasing in the conditions when the development of the information and communication technologies industry and their active large-scale implementation in everyday life, along with the advantages, carry in themselves rather serious and quite tangible threats, and it is so significant that the problem of ensuring the necessary level of information security in the modern world becomes paramount. It is vital to take effective actions aimed at ensuring information security of both government bodies and other organizations and citizens.

The emergence of modern challenges and real threats has a considerable effect on the legal security of the state, which is not just the most important component of the national security of the Russian Federation, but it is its key aspect which has the most direct impact on the state of protection, first of all, the legal one, of the national interests of the state.

The strategic objectives, which will ensure the security of the Russian Federation in the information sphere, are aimed, first of all, at creating a legal basis for the implementation of the main policies of the state authorities in the field of countering real and potential threats to the information security, and involves the formation and development of a system of administrative and legal regulation of public relations as well as the organization of the relevant rule-making process.

The actualization of the provisions identified in the work is caused by the problems of implementing the effective functioning of the information security system being built by the Federal Customs Service (FCS of Russia).

The activities of the customs authorities of the Russian Federation are directly dependent on the implemented state policy for the fulfillment of social, economic and foreign policy programs. Hence, the strategic goal of forming a system of customs management is to ensure the state regulation of foreign trade and, as a result, to provide the security of the economic interests of the state which often has serious difficulties.

The problems of safe, sustainable and continuous management at the customs are associated with various factors, especially with the high degree of centralization of the power of officials; rapidly changing operating conditions which depend on both internal and external influences; a very high degree of responsibility for decisions made in which mistakes can lead to both most serious economic and political consequences; and the effect of criminal structures.

Against the background of these factors, the Federal Customs Service is building its own information security system providing not only the protection of each critical object of customs infrastructure separately, but also, most importantly, comprehensive information security.

At the same time, the optimal ratio of used both organizational and legal, technical, operational-search, economic and other measures as well as the personal responsibility of customs officers and employees, regardless of their administrative and legal status, for the fulfillment of regulatory requirements for ensuring information security must be preserved.

Thus, the need for theoretical and practical understanding of the problems related to the administrative and legal regulation of information security on the example of the activities of the customs authorities of the Russian Federation through the mechanism of legal regulation against the background of shortcomings of domestic legislation predetermined the relevance of this dissertation research.

The following scientific novelty, the main conclusions and provisions are submitted for defense:

1. It has been proven that the legal category "access to the information" under the Federal Law of July 27, 2006, No. 149-FZ "On Information, Information Technologies and Information Protection" should be understood solely as "authorized by the owner of the information or in other cases, provided by federal laws, the familiarization of a certain person with this information."

Two approaches were considered:

firstly, "access to the information" is "familiarization" as a legal fact (event, action);

secondly, "access to the information" is "the possibility of obtaining information and using it (familiarization)", i.e. the right to commit legally significant actions.

Determined that:

a) "access to the information" in all cases is a legal fact;

b) "the possibility of obtaining and using information" is the right to perform legally significant actions which does not become reality unconditionally and which under certain circumstances may be limited.

It is recognized that the following conditions of access to the information can be established relatively: "access to the information is permitted", "access to the information is prohibited" and "the right to access the information is limited." Proposed to supplement the Federal Law of July 27, 2006, No. 149-FZ "On Information, Information Technologies and Information Protection" with the following regulatory prescriptions (Appendix No. 1 to the thesis):

- state the definition of "owner of the information" in the new edition (Clause 5 of Article 2 of the Law);

- state the definition of "access to the information" in the new edition (Clause 6 of Article 2 of the Law);

- in the text of the Federal Law, the word "access" shall be replaced by the phrase "the right to access" (Clause 2 of Article 3; Parts 1 and 2 of Article 5; Clause 1 of Part 3 of Article 6 and Clause 3 of Part 4 of Article 6; Part 1 of Article 7; Clause 4.1 from Part 4 of Article 8; Article 9; Parts 1, 2 and 2.1 of Article 9; Article 15.1-1; Parts 1, 4, 5, 6, 10 of Article 15-1; Article 15.2; Part 1 of Article 15.2; Part 2 of Article 15.2; Clause 2

of Part 2 of Article 15.2; Parts 3-7 of Article 15.2; Article 15.3; Parts 1.3, 1.4, 1.5 of Article 15.3; Clause 1 of Part 2 of Article 15.3; Parts 3 and 7.1 of Article 15.3; Article 15.4; Parts 2 and 3 of Article 15.4; Article 15.5; Part 1 of Article 15.5; Clause 5 of Part 2 of Article 15.5; Parts 6, 8-10, 10.1 of Article 15.5; Article 15.6; Clause 1 of Part 1 of Article 15.6; Parts 2, 2.1, 3 of Article 15.6; Article 15.6-1; Part 1 of Article 15.6-1; Clause 4 of Part 3 of Article 15.6-1; Part 4 of Article 15.6-1; Article 15.9; Parts 1 and 2 of Article 15.9).

The National Standard of the Russian Federation GOST R 50922-2006 "Protection of Information. The main terms and definitions" approved by the order of the Federal Agency for Technical Regulation and Meteorology of December 27, 2006 No. 373-st, has been proposed to supplement with the following regulations (Appendix No. 2 to the thesis):

- state the definition of "access to the information" in the new edition (Clause A.9 of Appendix A).

2. The mechanism for access of customs officials to state secrets, as an element of the administrative and legal regime for protecting information, consists of a set of procedures establishing the adoption of managerial and jurisdictional decisions involving the registration of the right of designated persons to access to the information classified as state secrets.

This mechanism lacks the norms defining the following conditions:

firstly, the establishment of the procedure for the performance of the duties of a temporarily absent employee (official), whose position provides for access to the information constituting a state secret, by persons, who do not have access to state secrets, without being released from work determined by the labour agreement (contract);

secondly, providing for periodic medical examination for the suitability to work with information constituting a state secret.

The state secret access mechanism proposes to introduce and use additional administrative procedures establishing that the mandatory conditions are:

a) the citizen's admission to state secrets, not only when he is appointed to the post, but also in the performance of the duties of a corresponding temporary absent employee (official);

b) obligatory annual medical examination.

As a result of the proposed measures, the following regulations need to be amended:

- in the Instructions on the procedure for allowing officials and citizens of the Russian Federation to state secrets approved by the resolution of the Government of the Russian Federation of February 6, 2010 No. 63 to set out Clauses 6, 7 and 12 in the new edition (Appendix No. 3 to the thesis);

- in the Instructions on the order of admission of employees, federal civil servants, customs officials and citizens of the Russian Federation, admitted to the customs service (work at Customs) to state secrets,, approved by the order of the Federal Customs Service of Russia on July 3, 2012 No. 1317 and to set out Clauses 6, 7, 11 in the new edition (Appendix No. 4 to the thesis);

- in the Law of the Russian Federation of July 21, 1993 No. 5485-1 "On State Secrets" to set out Articles 21 and 22 in the new edition (Appendix No. 5 to the thesis);

- in the Rules of Compulsory Health Insurance of subsidies to the budgets of territorial funds of compulsory health insurance to carry out additional prophylactic medical examination of working citizens approved by the resolution of the Government of the Russian Federation of December 31, 2010 No. 1228 set out Clause 2 in the new edition (Appendix No. 6 to the thesis);

- in the Procedure for the prophylactic medical examination of certain groups of adults, approved by the order of the Ministry of Health of the Russian Federation on March 13, 2019 No. 124n set out Clause 5 in the new edition (Appendix No. 7 to the thesis).

3. Exclude from the List of confidential information approved by the Decree of the President of the Russian Federation of March 6, 1997 No. 188 such an element of personal data as "passport data" of the subject of personal data, namely "surname, name, middle name, place of residence."

Establish that such information is not an indispensable condition for maintaining an administrative and legal confidentiality regime.

To this end, it is proposed to:

a) supplement Section 1 of Article 3 of the Federal Law of July 27, 2006. No. 152-FZ "On personal data" with Clauses 12 and 13 which include the following regulations: "personal data regime" and "passport data" (Appendix No. 8 to the thesis);

b) state Cause 1 in the new version of the List of Confidential Information (Personal Data) approved by the Decree of the President of the Russian Federation of March 6, 1997 No. 188 (Appendix No. 9 to the thesis).

4. The reasoning is that the contents of the Strategy for the Development of the Customs Service of the Russian Federation should reflect the targets, priorities, objectives and mechanisms for the implementation of the Russian Federation's customs service policy in the field of ensuring not only economic but also information security.

It is proposed to supplement the Strategy for the Development of the Customs Service with the following regulations (Appendix No. 10 to the thesis):

- in Section I. "General provisions" paragraphs 2, 4, 5 should be supplemented with the phrase "information and other types of security", paragraph 6 to supplement with the phrase "information security";

- in Section IV. "Basic Areas of Development of the Customs Service of the Russian Federation" paragraph 3 is to be supplemented with the phrase "improving the information security";

- in Section IV. "Basic Areas of Development of the Customs Service of the Russian Federation" in paragraph 8 "improving information and technical support" paragraph 5 to exclude;

- Section IV. "Basic Areas of Development of the Customs Service of the Russian Federation" is due to be supplemented by Clause 9, outlining it in the following edition: "Improving the Information Security", the content of which is presented in Appendix No. 10 to the thesis.

5. It has been proven that providing (submission) of knowingly unauthentic information to the subject of legal relationship is an administrative offence that carries

more harm than the wrongful refusal to provide (represent) information and the late provision (submission) of information.

It is proposed to supplement the Code of the Russian Federation on Administrative Offences with new offences (Appendix No. 11 to the thesis):

- allocate to separate offences "providing knowingly unauthentic information" and, " submission of deliberately false information" (in Articles 5.39, 17.6, 19.7.2, 19.7.2-1, 19.7.8, 19.7.10, 19.8, 19.8.1, the Code of the Russian Federation on Administrative Offences).

6. Amend the following regulations to supplement them with legal categories:

"information processing" as "any action regarding the information (collection, record, storage, modification, copying, and other actions) using automation technology or without the use of automation tools";

"Disclosure of information" as "illegal actions expressed in any form as well as inactivity by a person who has the right to access this information on a legal basis and is actually familiar with it, making such information known to third parties".

To this end:

a) in the Federal Law of 27 July 2006, No. 149-FZ "On Information, Information Technology and Information Protection" supplement Article 2 "Basic Concepts Used in this Federal Law" with Clauses 21 "information processing" and 22 "disclosure of information" (Appendix No. 1 to the thesis);

b) in the National Standard of the Russian Federation GOST R 50922-2006 "Protection of Information. The Main Terms and Definitions" approved by the order of the Federal Agency for Technical Regulation and Meteorology of December 27, 2006 No. 373-st, Appendix A "Terms and Definitions of General Technical Concepts" ought to be supplemented with paragraphs A.18 "disclosure of information" and A.19 "processing of information" (Appendix No. 2 to the thesis).

7. Proposed to amend and supplement the Code of the Russian Federation on Administrative Offences with the following content (Appendix No. 11 to the thesis):

- in the disposition of Article 13.14 "Disclosure of information with limited access" the word "access" shall be replaced with the phrase "right to access" following the proposed definition of "access to information";

- allocate to separate administrative offences as "the processing of information of limited access, that is the information which is restricted by the federal law (unless the processing of information entails criminal liability) by a person who does not have the right to access it and who has access to such information for reasons beyond his control, i.e. randomly, if there is reason to believe that the confidentiality of the information was known to him" by adding to the Code of the Russian Federation on Administrative Offences with Article 13.14.1 "Limited Access Information Processing."