

2023-11-17

OBJECTS AND REASONS

This Bill would amend the *Mutual Assistance in Criminal Matters Act*, Cap. 140A to make provision for mutual assistance in matters relating to computer-related crimes and for related matters.

Arrangement of Sections

1. Short title
2. Amendment of section 18 of Cap. 140A
3. Insertion of new section 18A into Cap. 140A
4. Insertion of new section 20A and 20B into Cap. 140A
5. Amendment of section 29 of Cap. 140A
6. Insertion of new section 34A into Cap. 140A

BARBADOS

A Bill entitled

An Act to amend the *Mutual Assistance in Criminal Matters Act*, Cap. 140A to make provision for mutual assistance in matters relating to computer-related crimes and for related matters.

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Mutual Assistance in Criminal Matters (Amendment) Act, 2023*.

Amendment of section 18 of Cap. 140A

2. *Section 18 of the Mutual Assistance in Criminal Matters Act, Cap. 140A in this Act referred to as the principal Act is amended by*

- (a) inserting immediately after subsection (3) the following new subsections:*

“(3A) Where an action on a request for assistance would prejudice a criminal investigation or a criminal proceeding conducted by its authorities, the central authority for Barbados may postpone an action.

(3B) Before refusing or postponing assistance, the central authority for Barbados shall, where appropriate after having consulted with the Commonwealth country, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

(3C) The central authority for Barbados shall

- (a)* promptly inform the Commonwealth country of the outcome of the execution of a request for assistance;
- (b)* give reasons for any refusal or postponement of the request;
or
- (c)* inform the Commonwealth country of any reasons that render impossible the execution of the request or are likely to delay it significantly.”;

- (b) deleting subsection (4) and substituting the following:*

“(4) Where a Commonwealth country makes a request for assistance, the central authority for Barbados may supply information or material on the condition that it is

(a) kept confidential; or

(b) not used for investigations or proceedings other than those stated in the request for assistance.”; and

(c) *inserting immediately after subsection (4) the following new subsections:*

“(4A) Where a Commonwealth country cannot comply with a condition referred to in subsection (4), it shall promptly inform the central authority for Barbados.

(4B) Where a Commonwealth country has informed the central authority for Barbados that it is unable to comply with a condition under subsection (4), the central authority for Barbados shall determine whether the information is to be provided.

(4C) A Commonwealth country that accepts a condition in accordance with subsection (4) shall be bound by it.

(4D) Where the central authority for Barbados supplies information or material subject to a condition referred to in subsection (4), it may require the Commonwealth country to explain, in relation to that condition, the use made of such information or material.

(4E) Where, in the opinion of the central authority for Barbados, the expense involved in complying with a request for assistance would be of an extraordinary nature, the central authority for Barbados

(a) shall consult with the central authority for the country as to the terms and conditions under which compliance with the request may continue; or

- (b) may refuse to continue further with the request in the absence of an agreement as to the terms and conditions for compliance with a request.”.

Insertion of new section 18A into Cap. 140A

- 3.** *The principal Act is amended by inserting immediately after section 18 the following new section:*

“Confidentiality of request for assistance

18A.(1) A Commonwealth country may require that a request for assistance under this Act be kept confidential except to the extent necessary for its execution.

(2) Where a request for confidentiality under subsection (1) cannot be complied with, the central authority for Barbados shall promptly inform the Commonwealth country.

(3) Where the central authority for Barbados has informed a Commonwealth country that it is unable to comply with a request for confidentiality under subsection (1), the Commonwealth country shall determine whether the request for assistance is to be executed.”.

Insertion of new section 20A and 20B into Cap. 140A

- 4.** *The principal Act is amended by inserting immediately after section 20 the following new sections:*

“Assistance in expediting preservation of computer data

20A.(1) A Commonwealth country may request that the central authority for Barbados obtain an order for the expeditious preservation of data stored in a computer system

- (a) located within Barbados; and
- (b) in respect of which the country intends to submit a request for mutual assistance in relation to
 - (i) search or similar access of the data;
 - (ii) seizure or similar securing of the data; or
 - (iii) disclosure of the data.

(2) A request for preservation made under subsection (1), shall specify the following:

- (a) the authority seeking the preservation;
- (b) the offence that is the subject of a criminal investigation or proceedings and a brief summary of the related facts;
- (c) the stored computer data to be preserved and its relationship to the offence;
- (d) any available information identifying the custodian of the stored computer data or the location of the computer system;
- (e) the necessity of the preservation; and
- (f) that the Commonwealth country intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the stored computer data.

(3) Dual criminality shall not be a requirement to comply with a request under subsection (1).

(4) Notwithstanding any provision in this Part, the central authority for Barbados may refuse a request for preservation where

- (a) the request concerns an offence of a political character; or
- (b) the granting of the request would be contrary to the *Constitution* or would prejudice the security, international relations or any substantial interest relating to national security or other essential public policy of Barbados.

(5) Where in the opinion of the central authority for Barbados a request for preservation may

- (a) not ensure the future availability of the data; or
- (b) threaten the confidentiality of or prejudice the investigation of the Commonwealth country,

the central authority shall promptly inform the Commonwealth country.

(6) Where the Commonwealth country is informed in accordance with subsection (5), it shall determine whether the request for assistance is to be executed.

(7) The Commissioner of Police, or any other officer designated by him in writing, may make an *ex parte* application for a preservation order to a Judge or magistrate where

- (a) computer data, including traffic data, stored in a computer system is required for the purposes of a criminal investigation; and
- (b) there are grounds to believe that the computer data, including traffic data, stored in a computer system is particularly vulnerable to loss or modification.

(8) Where the Commissioner of Police satisfies a Judge or magistrate on the basis of the *ex parte* application made under subsection (7), the

Judge or magistrate may make an order requiring the person in control of the computer system to

- (a) ensure that the computer data specified in the order be preserved for a period of up to 90 days;
- (b) maintain the integrity of the computer data for a period of up to 90 days; and
- (c) keep confidential any information or action relating to the preservation order.

(9) Where the Commissioner of Police makes an *ex parte* application for an extension of a preservation order, a Judge or magistrate may extend the preservation order beyond the 90 day period for a further period of up to 90 days.

(10) For the purposes of this section,

“computer data” means any representation of facts, information or concepts in a form suitable for processing in a computer system, including a programme suitable to cause a computer system to perform a function;

“computer system” means a device or a group of inter-connected or related devices, one or more of which, pursuant to a programme, facilitates communication, performs automatic processing of data or any other function.

Assistance in expediting disclosure of preserved traffic data

20B.(1) Where in the execution of a request made under section 20A, Barbados discovers that a service provider in another country was involved in the transmission of the communication, Barbados shall expeditiously disclose to the Commonwealth country

- (a) a sufficient amount of traffic data to identify that service provider; and

- (b) the path through which the communication was transmitted.
- (2) Notwithstanding subsection (1), Barbados may refuse to disclose traffic data where
 - (a) the request concerns an offence of a political character;
 - (b) the granting of the request would be contrary to the *Constitution* or would prejudice the security, international relations or any substantial interest relating to national security or other essential public policy of Barbados.”.

Amendment of section 29 of Cap. 140A

- 5.** *Section 29 of the principal Act is amended in subsection (1)*
- (a) *in paragraph (a) by deleting the word “and” appearing immediately after the word “matters;”;*
 - (b) *by inserting immediately after paragraph (b), the following paragraph:*
 - “(c) to any country which is party to the Budapest Convention on Cybercrime.”.

Insertion of new section 34A into Cap. 140A

- 6.** *The principal Act is amended by inserting the following new section immediately after section 34:*

“Spontaneous information

34A.(1) Subject to any enactment relating to mutual assistance, the central authority may, without a request, forward information obtained

within the framework of its investigations to a country if the disclosure of such information is likely to

(a) assist the receiving country in initiating or carrying out an investigation or proceedings concerning criminal offences;
or

(b) lead to a request for co-operation by that country.

(2) Notwithstanding subsection (1), the central authority may request, that prior to providing such information, it be kept confidential or only used subject to conditions.

(3) Where the receiving country is unable to comply with a request made under subsection (2), it shall notify the central authority which shall determine whether the information should nevertheless be provided.

(4) Where the receiving country accepts the information subject to the conditions, it shall be bound by them.”.

Read three times and passed the House of Assembly this
day of _____, 2023.

Speaker

Read three times and passed the Senate this _____ day of
, 2023.

President