



FREEDOM OF INFORMATION BILL, 2012

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FREEDOM OF INFORMATION BILL, 2012

A BILL FOR AN ACT TO GIVE TO THE PUBLIC A GENERAL RIGHT OF ACCESS TO RECORDS HELD BY PUBLIC AUTHORITIES AND TO MAKE PROVISION FOR INCIDENTAL AND CONNECTED PURPOSES.

Enacted by the Parliament of The Bahamas

PART I

PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Freedom of Information Act, 2012.
- (2) This Act shall come into operation on such date as the Minister may appoint by notice published in the Gazette, and different dates may be so appointed for different provisions.

2. Interpretation.

In this Act—

- “**appointed day**” means the day appointed pursuant to section 1(2);
- “**Chief Officer**” means in the case of a Ministry, the Permanent Secretary and in all other cases the head of the respective public authority;
- “**Commissioner**” means the Information Commissioner referred to in section 35;
- “**exempt matter**” means matter that is exempt from disclosure, whether or not the rest or part of the rest of the record is liable to disclosure;
- “**exempt record**” means a record referred to in Part III;

“hold”, in relation to a record that is liable to production under this Act, means in a public authority’s possession, custody or control;

“information manager” means the person appointed as such under section 49;

“Minister” means the Minister who has been assigned responsibility for government information;

“public authority” means —

- (a) a Ministry or Department of Government;
- (b) a statutory body or authority, whether incorporated or not;
- (c) a public corporation which—
 - (i) is wholly owned by the Government or in which the Government holds more than fifty per cent of the shares; or
 - (ii) is specified in an Order under section 3(2);
- (d) any other body or organization specified in an Order under section 3(2);

“public corporation” means a corporation in which the government has a controlling interest and includes a subsidiary of such corporation;

“record” means information held in any form including—

- (a) a record in writing;
- (b) a map, plan, graph or drawing;
- (c) a photograph;
- (d) a disc, tape, sound track or other device in which sounds or other data are embodied, whether electronically or otherwise, so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (e) any film (including microfilm), negative, tape or other device in which one or more visual images are embodied whether electronically or otherwise, so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom,

held by a public authority in connection with its functions as such, whether or not it was created by that authority or before the commencement of this Act;

“relevant decision” means a decision made in relation to the disclosure or otherwise of a record;

“responsible Minister” in relation to a public authority means the Minister of government who has ministerial responsibility for the public authority that holds the record.

3. Application.

- (1) Subject to subsection (2), this Act applies to—
 - (a) public authorities; but this paragraph shall not be read so as to allow access to records containing information that may not be disclosed under —
 - (i) section 38 of the Central Bank of The Bahamas Act (*Ch. 351*);
 - (ii) section 28 of the Securities Industry Act, 2011 (*No. 10 of 2011*);
 - (iii) section 74 of the Insurance Act (*Ch. 347*);
 and any other body or class of information which the Minister may, by Order, specify;
 - (b) records, regardless of the date when they were created.
- (2) The Minister may after consulting the entity concerned where he considers such consultation appropriate, by Order, declare that this Act shall apply to—
 - (a) such companies, in addition to those specified in paragraph (c)(i) of the definition of “public authority”, as may be specified in the Order;
 - (b) any other body or organization which provides services of a public nature which are essential to the welfare of the Bahamian society, or to such aspects of their operations as may be specified in the Order;
 - (c) any other body or organization which receives government appropriations on a regular basis.
- (3) An Order under subsection (2) may be made subject to such exceptions, adaptations or modifications, as the Minister may consider appropriate.
- (4) The Minister may, by Order, declare that the application of this Act in relation to any public corporation specified in paragraph (c)(i) of the definition of "public authority" shall be subject to such exceptions, adaptations or modifications as the Minister may consider appropriate and such Order shall be subject to negative resolution.
- (5) This Act does not apply to—
 - (a) the judicial functions of—
 - (i) a court;
 - (ii) the holder of a judicial office or other office connected with a court;

- (b) the security or intelligence services (as defined in subsection (7)) in relation to their strategic or operational intelligence gathering activities;
 - (c) such statutory body or authority as the Minister may specify by Order;
 - (d) private holdings of the National Archives where the contract or other arrangements under which the holdings are held do not allow disclosure in the circumstances prescribed under this Act.
- (6) This Act applies to records of an administrative nature held in a registry or other office of a court.
- (7) In subsection (5), "security or intelligence services" includes—
- (a) the Royal Bahamas Police Force;
 - (b) the Royal Bahamas Defence Force;
 - (c) the Department of Customs;
 - (d) the Department of Immigration;
 - (e) the Financial Intelligence Unit.

4. Objects of this Act.

The objects of this Act are to reinforce and give further effect to certain fundamental principles underlying the system of constitutional democracy, namely—

- (a) governmental accountability;
- (b) transparency; and
- (c) public participation in national decision making,

by granting to the public a general right of access to records held by public authorities, subject to exemptions which balance that right against the public interest in exempting from disclosure governmental, commercial or personal information.

PART II

RIGHT OF ACCESS

5. Publication of information by public authorities.

- (1) A public authority shall cause to be published within twelve months of—
- (a) the appointed day;
 - (b) its establishment; or

(c) the coming into operation of an Order under section 3(2) which specified that authority;

whichever is later, an initial statement of its organization and functions, containing the information specified in the *Schedule*.

- (2) The *Schedule* applies for the purposes of making available to the public the records described in that *Schedule*.
- (3) The information required under subsection (1) shall be published in such manner and be updated with such frequency as may be prescribed.
- (4) The Minister may by Order amend the *Schedule*.

6. General right of access.

- (1) Subject to the provisions of this Act, every —
 - (a) Bahamian citizen; or
 - (b) permanent resident within the meaning of the Immigration Act (*Ch. 191*),
 shall have a right to obtain access to a record other than an exempt record.
- (2) The exemption of a record or part thereof from disclosure shall not apply after the record has been in existence for thirty years unless otherwise stated in this Act.
- (3) An applicant for access to a record shall not be required to give any reason for requesting access to that record.
- (4) Where a record is—
 - (a) open to access by the public pursuant to any other written law as part of a public register or otherwise; or
 - (b) available for purchase by the public in accordance with administrative procedures established for that purpose,
 access to that record shall be obtained in accordance with the provisions of that written law or those procedures.
- (5) Where the factors in favour of disclosure and those favouring non-disclosure are equal, the doubt shall be resolved in favour of disclosure but subject to the public interest test prescribed under section 26.

7. Application for access.

- (1) A person who wishes to obtain access to a record shall make an application to the public authority which holds that record.
- (2) An application under subsection (1)—
 - (a) shall be made in writing addressed to the information manager and may be transmitted by way of facsimile or electronic mail;

- (b) shall provide such information concerning the record as is reasonably necessary to enable the public authority to identify it.
- (3) A public authority to which an application is made shall—
 - (a) upon request, assist the applicant in identifying the records to which the application relates;
 - (b) acknowledge receipt of every application made in the prescribed manner;
 - (c) grant to the applicant access to the record specified in the application if it is not an exempt record.
- (4) A public authority shall respond to an application as soon as practicable but not later than —
 - (a) thirty calendar days after the date of receipt of the application; or
 - (b) in the case of an application transferred to it by another authority pursuant to section 8, thirty calendar days after the date of the receipt by that authority,

so, however, that an authority may, for good cause, extend the period of thirty calendar days for a further period, not exceeding one period of thirty calendar days, in any case where there is reasonable cause for such extension.
- (5) The response of the public authority shall state its decision on the application, and where the authority or body decides to refuse or defer access or to extend the period of thirty calendar days, it shall state the reasons therefore, and the options available to an applicant.

8. Transfer of requests.

- (1) Where an application is made to a public authority for a record—
 - (a) which is held by another public authority; or
 - (b) the subject matter of which is more closely connected with the functions of another public authority,

the first mentioned public authority shall transfer the application or such part of it as may be appropriate to that other public authority, and shall inform the applicant immediately of the transfer or in such period as may be prescribed in regulations.
- (2) A transfer of an application pursuant to subsection (1) shall be made as soon as practicable but not later than fourteen calendar days after the date of receipt of the application.

9. Vexatious, repetitive or unreasonable requests.

A public authority is not required to comply with a request where—

- (a) the request is vexatious;
- (b) the public authority has recently complied with a substantially similar request from the same person;
- (c) compliance with the request would unreasonably divert its resources;
- (d) the information requested is already in the public domain.

10. Forms of access.

- (1) Access to a record may be granted to an applicant in one or more of the following forms—
 - (a) the applicant may be afforded a reasonable opportunity to inspect the record;
 - (b) the authority concerned may furnish the applicant with a copy of the record;
 - (c) in the case of a record from which sounds or visual images are capable of being reproduced, arrangements may be made for the applicant to hear the sounds or view the visual images;
 - (d) in the case of a record by which or in which words are—
 - (i) recorded in a manner in which they are capable of being reproduced in the form of sound and images; or
 - (ii) contained in the form of shorthand writing or in codified form,

the applicant may be furnished with a transcript of the data or the words, sounds and images recorded or contained in that record.
- (2) Subject to subsection (3), where an applicant requests that access be given in a particular form, access shall be given in that form.
- (3) A public authority may grant access in a form other than that requested by an applicant where the grant of access in the form requested would—
 - (a) be detrimental to the preservation of the record, or be inappropriate, having regard to its physical state;
 - (b) constitute an infringement of intellectual property rights subsisting in any matter contained in the record.
- (4) Copies of records to which access is granted shall be authenticated by such persons and in such manner as may be determined by the Attorney-General, including by whom and how this will be done.

11. Assistance and deferment of access.

- (1) Where the information provided by the applicant in relation to the record is not reasonably adequate to enable the public authority to identify it, the

authority shall afford the applicant a reasonable opportunity to consult with the authority with a view to reformulating the application so that the record can be identified.

- (2) A public authority may defer the grant of access to a record —
 - (a) if publication of the record within a particular period is required under the provisions of any written law, until the expiration of that period;
 - (b) if the record was prepared for presentation to Parliament or for the purpose of being made available to a particular person or body, until the expiration of thirty calendar days after its preparation for it to be so presented or made available to that person or body;
 - (c) if the premature release of the record would be contrary to the public interest, until the occurrence of any event after which or the expiration of any period beyond which, the release of the record would not be contrary to the public interest.
- (3) Where a public authority decides to defer access in accordance with subsection (2), it shall, within fourteen calendar days of its decision, inform the applicant of that decision and shall, where possible, indicate to him the period during which the deferment will operate.

12. Partial access.

- (1) Where an application is made to a public authority for access to a record which contains exempt matter, the authority shall grant access to a copy of the record with the exempt matter deleted therefrom.
- (2) A public authority which grants access to a copy of a record in accordance with this section shall inform the applicant—
 - (a) that it is such a copy; and
 - (b) of the statutory provision by virtue of which such deleted matter is exempt matter.

13. Cost of access.

- (1) The communication of information is conditional upon the payment by the applicant of the prescribed fee for reproducing, preparing and communicating the information.
- (2) The Minister may make regulations providing—
 - (a) for fees and the manner in which fees are to be calculated;
 - (b) maximum fees payable, which shall not exceed the cost referred to in subsection (1);
 - (c) that no fee is to be charged in relation to certain cases.
- (3) No fee shall be charged in respect of a request for information.

14. Grant of access.

Subject to this Act, where—

- (a) an application is made in accordance with section 7 for access to a record; and
- (b) the cost incurred by the public authority in granting access has been paid by the applicant,

access to the record shall be granted in accordance with this Act.

PART III

EXEMPT RECORDS

15. Records affecting security, defence or international relations, etc.

Records are exempt from disclosure if—

- (a) the disclosure thereof would prejudice the security, defence or international relations of The Bahamas;
- (b) those records contain information communicated in confidence to the Government by or on behalf of a foreign government or by an international organization.

16. Records relating to law enforcement.

Records relating to law enforcement are exempt from disclosure if their disclosure would, or could reasonably be expected to—

- (a) endanger any person's life or safety;
- (b) affect—
 - (i) the conduct of an investigation or prosecution of a breach or possible breach of the law; or
 - (ii) the trial of any person or the adjudication of a particular case;
- (c) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, in relation to law enforcement;
- (d) reveal lawful methods or procedures for preventing, detecting, investigating or dealing with matters arising out of breaches or evasions of the law, where such revelation would, or could be reasonably likely to, prejudice the effectiveness of those methods or procedures;
- (e) facilitate the escape of a person from lawful detention; or
- (f) jeopardize the security of a prison.

17. Records subject to legal privilege, etc.

An official record is exempt from disclosure if—

- (a) it would be privileged from production in legal proceedings on the ground of legal professional privilege; or
- (b) the disclosure thereof would —
 - (i) constitute an actionable breach of confidence;
 - (ii) be in contempt of court; or
 - (iii) infringe the privileges of Parliament.

18. Records affecting national economy.

- (1) An official record of a type specified in subsection (2) is exempt from disclosure if its disclosure or, as the case may be, its premature disclosure would, or could reasonably be expected to, have a substantial adverse effect on the Bahamian economy, or the Government's ability to manage the economy.
- (2) The types of records referred to in subsection (1) include but are not limited to records relating to—
 - (a) duties;
 - (b) monetary policy,or records that are not liable to disclosure under any written law.

19. Records revealing Government's deliberative processes.

- (1) Subject to subsection (2), a record is exempt from disclosure if it contains —
 - (a) opinions, advice or recommendations prepared for;
 - (b) a record of consultations or deliberations arising in the course of, proceedings of the Cabinet or of a committee thereof.
- (2) Consultations or deliberations between the Prime Minister and the Governor-General.
- (3) Subsection (1) does not apply to records which contain material of a purely factual nature or reports, studies, tests or surveys of a scientific or technical nature.

20. Prejudice to effective conduct of public affairs.

- (1) A record is exempt from disclosure if—
 - (a) its disclosure would, or would be likely to, prejudice the maintenance of the convention of collective responsibility of Ministers;

- (b) its disclosure would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation;
 - (c) it is legal advice given by or on behalf of the Attorney-General; or
 - (d) its disclosure would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs.
- (2) The initial decision regarding—
- (a) subsection (1)(a) shall be made not by the information manager but by the Minister concerned;
 - (b) subsection (1)(b), (c) and (d) shall be made not by the information manager but by the responsible Minister or chief officer concerned.

21. Records relating to commercial interests.

- (1) Subject to subsection (2), a record is exempt from disclosure if—
- (a) its disclosure would reveal—
 - (i) trade secrets;
 - (ii) any other information of a commercial value, which value would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed;
 - (b) it contains information (other than that referred to in paragraph (a)) concerning the commercial interests of any person or organization (including a public authority) and the disclosure of that information would prejudice those interests.
- (2) Subsection (1) shall not apply where the applicant for access is the person or organization referred to in that subsection or a person acting on behalf of that person or organization.

22. Records relating to heritage sites, etc.

- (1) Subject to subsection (2), a record is exempt from disclosure if its disclosure would, or could reasonably be expected to result in the destruction of, damage to, or interference with, the conservation of—
- (a) any historical, archaeological or anthropological resources;
 - (b) anything which is eligible for preservation under The Bahamas National Trust Act (*Ch. 391*) or any other written law relating to the preservation of the heritage of The Bahamas;
 - (c) any species of plant or animal life so designated or which is endangered, threatened or otherwise vulnerable;
 - (d) any other rare or endangered living resource.
- (2) Records relating to subsection (1)(a) and (b) shall be exempt for seventy-five years.

23. Records relating to personal information.

- (1) Subject to the provisions of this section, a public authority shall not grant access to a record if it would involve the disclosure of personal information of any person, whether living or dead.
- (2) Subsection (1) shall not apply in any case where the application for access is made by the person to whose affairs the record relates.
- (3) Records relating to personal information shall be exempt without limitation as to time.
- (4) The extent to which third party rights are to be protected shall be set out in regulations made under this Act.

24. Records likely to endanger health and safety.

A record is exempt from disclosure if its disclosure would, or would be likely to

—

- (a) endanger the physical or mental health of any individual; or
- (b) endanger the safety of any individual.

25. Issuance of certificate regarding exempt record.

- (1) Where —
 - (a) the Minister is satisfied that an application for access relates to a record specified in section 20(1)(a);
 - (b) the Minister responsible is satisfied that an application for access relates to a record to which sections 15, 16, 20(1)(b), (c) and (d) and 22, as the case may be, applies,the Minister or the responsible Minister, as the case may require, may issue a certificate to the effect that the record is an exempt record and shall specify the basis of the exemption.
- (2) Where the Minister or the responsible Minister is satisfied as mentioned in subsection (1) by virtue of anything contained in any particular part or parts of a record, a certificate issued under that subsection in respect of that record shall identify that part or those parts of the record by reason of which the certificate is issued.
- (3) Where a certificate is issued under subsection (1) under the hand of the Minister, it shall be conclusive that the record is exempt and no judicial proceedings or quasi-judicial proceedings of any kind shall be entertained in relation thereto.

26. Some exemptions are subject to public interest test.

- (1) Notwithstanding that a matter falls within sections 18, 19(1)(a), 20(1)(b), (c) and (d), 21, 22, 23 and 24, access shall be granted if such access would nevertheless be in the public interest.
- (2) Public interest shall be defined in regulations made under this Act.

27. Making of decisions and reasons public.

Public authorities shall make their best efforts to ensure that decisions and the reasons for those decisions are made public unless the information that would be disclosed thereby is exempt under this Act.

PART IV

AMENDMENT AND ANNOTATION OF RECORDS

28. Application for amendment or annotation of records.

- (1) Where a person seeks or has been granted access to a record but claims that the record relating to his application contains personal information about himself that—
 - (a) is incomplete, incorrect, out of date or misleading; and
 - (b) has been used, is being used or is available for use by a public authority for administrative purposes;

the person may apply to the public authority for an amendment or an annotation of that record.
- (2) An application under this section shall be in writing and shall specify, as far as practicable, the record claimed to be the personal record requiring amendment or annotation and shall—
 - (a) in the case of an application for amendment, specify—
 - (i) whether information in the record is claimed to be incomplete, incorrect, out of date or misleading and the information in respect of which that claim is made;
 - (ii) the applicant's basis for making that claim; and
 - (iii) the nature of the amendment required by the applicant;
 - (b) in the case of an application for annotation, be accompanied by a statement specifying—
 - (i) the matters referred to in paragraph (a)(i) and (ii); and
 - (ii) the information that would make the record complete, correct, up to date and not misleading.

29. Amendment of records.

- (1) Where, in relation to any application under section 28, a public authority is satisfied as to the truth of the matters stated in the application, it shall, before or after first granting access, amend the record concerned in the prescribed manner.
- (2) Where a public authority decides not to amend a record it shall—
 - (a) take such steps as are reasonable to enable the applicant to provide a statement of the kind referred to in section 28(2)(b); and
 - (b) annotate the record by adding thereto the statement referred to in paragraph (a).

30. Annotation of records of personal information.

Where, in relation to an application for annotation of a record containing personal information before or after access is first granted, a public authority—

- (a) is satisfied as to the truth of the matters specified in that application, the authority shall annotate the record in the prescribed manner;
- (b) is not so satisfied, it may refuse to annotate the record.

31. Notice of amendments or annotations.

A public authority which amends or annotates a record pursuant to section 29 or 30, or decides not to do so, shall take reasonable steps to inform—

- (a) the applicant; and
- (b) any other public authority which it is satisfied has made prior use of the record, of the nature of the amendment or annotation or, as the case may require, of the decision and the reasons for that decision.

32. Transfer of applications for amendment or annotation.

Section 8 applies, with such modifications as may be necessary, to applications for amendments or annotations of personal records.

PART V

INTERNAL REVIEW

33. Application for internal review.

- (1) An applicant for access to a record may, subject to subsection (4), apply for an internal review of a decision by a public authority to—
 - (a) refuse to grant access to the record;
 - (b) grant access only to some of the records specified in an application;

- (c) defer the grant of access to the record.
- (2) An applicant for amendment or annotation of a personal record may, subject to subsection (4), apply for a review of a decision by a public authority to refuse to make that amendment or annotation.
- (3) For the purposes of subsections (1) and (2), a failure to give a decision on any of the matters referred to in subsection (1)(a) to (c) or to amend or annotate a personal record within the time required by this Act shall be regarded as a refusal to do so.
- (4) An application under subsection (1) or (2) may only be made where the decision to which the application relates was taken by a person other than the responsible Minister, or a chief officer of the public authority concerned.

34. Procedure for internal review.

- (1) An internal review shall be conducted —
 - (a) by the responsible Minister in relation to records referred to in sections 15, 16 and 18;
 - (b) in any other case, by the chief officer in the relevant ministry or public authority whose decision is subject to review;
 but no review shall be conducted by the same person who made the decision or a person junior in rank to him.
- (2) An application for internal review shall be made—
 - (a) within thirty calendar days after the date of a notification (in this subsection referred to as “the initial period”) to the applicant of the relevant decision, or within such further period, not exceeding thirty calendar days, as the public authority may permit; or
 - (b) where no such notification has been given, within thirty calendar days after the expiration of the period allowed for the giving of the decision or of any other period permitted by the authority.
- (3) A person who conducts an internal review—
 - (a) may take any decision in relation to the application which could have been taken on an original application;
 - (b) shall take that decision within a period of thirty calendar days after the date of receipt of the application.

PART VI

INFORMATION COMMISSIONER

35. Office of Information Commissioner.

There is hereby established the position of Information Commissioner for the purposes of this Act, the holder of which shall be the holder of the office of Data Protection Commissioner appointed under the Data Protection (Privacy of Personal Information) Act (*Ch. 324A*).

36. Independence and powers.

- (1) The Commissioner shall have all powers, direct and incidental, as are necessary to undertake his functions as provided for under this Act, and for this purpose may establish a Freedom of Information Unit.
- (2) In the exercise of his powers, the Commissioner shall be responsible to Parliament.

37. Information Commissioner to be subject to Public Service Act.

Except as otherwise stated in this Act, the Commissioner shall be subject to the Public Service Act (*Ch. 39*).

38. Staff.

The Governor-General acting on the advice of the appropriate service commission may appoint such officers and employees from within or outside the public service as are necessary to enable the Commissioner to perform his functions.

39. Additional powers and responsibilities of Commissioner.

In addition to any other powers and responsibilities provided for in this Act, the Commissioner may—

- (a) hear, investigate and rule on appeals filed under this Act;
- (b) monitor and report on the compliance by public authorities with their obligations under this Act;
- (c) make recommendations for reform both of a general nature and directed at specific public bodies;
- (d) refer to the appropriate authorities cases where it appears that a criminal offence has been committed; and
- (e) publicise the requirements of this Act and the rights of individuals under it.

40. Reports.

- (1) The Commissioner shall, as soon as practicable after the end of each year, lay before Parliament—
 - (a) a report of the operation of this Act during the year, containing the matters specified in subsection (2) and may from time to time submit such other reports as he thinks appropriate;
 - (b) audited accounts.
- (2) The matters referred to in subsection (1) are those relating to compliance by the Commissioner's office with this Act and otherwise relating to the activities of his office including but not limited to—
 - (a) the number of applications for access received, granted, deferred, refused or granted subject to deletions;
 - (b) the categories of exemptions claimed and the numbers of each category;
 - (c) the number of applications received for—
 - (i) amendment of personal records;
 - (ii) annotation of personal records;
 - (d) the number of—
 - (i) applications for internal review of relevant decisions;
 - (ii) appeals against relevant decisions, and the rate of success or failure thereof.
- (3) A public authority shall from time to time and in any case by the end of the year send to the Commissioner a written report containing the details contained in subsection (2) to the extent that such information is in their custody or control.

41. Protection of the Commissioner.

- (1) Neither the Commissioner nor any member of staff of his office shall be liable in damages for anything done or omitted in the discharge of their respective functions under this Act unless it is shown that the act or omission was in bad faith.
- (2) For the purposes of the law of libel or slander, anything said or any record supplied pursuant to an investigation under this Act is privileged, unless that record is shown to have been said or supplied maliciously.

PART VII

ENFORCEMENT BY COMMISSIONER

42. Appeal to Commissioner.

- (1) A person who has made a request for a record and has exhausted the other means of redress provided for under this Act except this section may in writing apply to the Commissioner for a decision that a public authority has—
 - (a) failed to indicate whether or not it holds a record;
 - (b) failed to communicate the information contained in a record within the time allowed by this Act or at all;
 - (c) failed to respond to a request for a record within the time limits established in this Act;
 - (d) failed to provide a notice in writing of its response to a request for a record;
 - (e) charged a fee that is in contravention of this Act; or
 - (f) otherwise failed to comply with an obligation imposed under this Act.
- (2) An appeal—
 - (a) shall be made within thirty calendar days after the date of the notification to the appellant of the relevant decision or of the decision taken on an internal review; or
 - (b) shall, where no notification has been given, be given within the period required by this Act, within thirty calendar days after the expiration of that period.
- (3) Where an appeal is not made within the period specified in subsection (2), the Commissioner may extend that period if he is satisfied that the appellant's delay in doing so is not unreasonable.
- (4) On the consideration of an appeal, the Commissioner—
 - (a) may, subject to paragraph (b), make any decision which could have been made on the original application;
 - (b) shall not nullify a certificate issued under section 25.

43. Decision on appeal.

- (1) The Commissioner shall, subject to subsection (2), decide an appeal under the relevant section of this Act as soon as is reasonably practicable, and in any case within thirty calendar days, after giving both the appellant and the relevant public authority an opportunity to provide its views in writing, but the Commissioner may, for good cause, extend this period for

one further period not exceeding thirty calendar days so long as before the expiry of the first period of thirty calendar days he gives written notice to the parties as to why the period has to be extended.

- (2) In any appeal under section 42, the burden of proof shall be on the public authority to show that it acted in accordance with its obligations under this Act.
- (3) In his decision pursuant to subsection (1), the Commissioner may—
 - (a) reject the appeal;
 - (b) require the public authority to take such steps as may be necessary to bring it into compliance with its obligations under the Act;
 - (c) in cases of egregious or wilful failures to comply with an obligation under this Act, refer the matter to the appropriate disciplinary authority.
- (4) The Commissioner shall serve notice of his decision, including any rights of appeal, on both the appellant and the public authority.
- (5) For the purposes of sections 43 and 44, the appropriate disciplinary authority shall be the disciplinary committee as prescribed.

44. Implementation of decision.

- (1) The Commissioner may, after giving a public authority an opportunity to provide its views in writing, decide that the public authority has failed to comply with an obligation under this Act.
- (2) In his decision pursuant to subsection (1), the Commissioner may require the public authority to take such steps as may be necessary or expedient to bring it into compliance with its obligations under the Act, and in exercise of this power, may—
 - (a) order the publishing of certain information or categories of information;
 - (b) recommend the making of certain changes to the practices of the public authority concerned in relation to the keeping, management and destruction of records, and the transfer of records to the national archives, but such recommendations shall not be at variance with any written law for the time being in force in relation to such matters;
 - (c) recommend the provision of training to the public authority's officials on the right of access to records; or
 - (d) refer a matter to the appropriate disciplinary authority where there has been an egregious or wilful failure to comply with an obligation under this Act.

- (3) The Commissioner shall serve notice of his decision on the public authority concerned and the person who was seeking access to records, which notice shall include a statement of the right of appeal.

45. Commissioner's powers generally to investigate.

- (1) In coming to a decision pursuant to section 43 or 44, the Commissioner shall have the power to conduct a full investigation, including by issuing orders requiring the production of evidence and compelling witnesses to testify; in the exercise of this power he may call for and inspect an exempt record, so however, that, where he does so, he shall take such steps as are necessary or expedient to ensure that the record is inspected only by members of staff of the Commissioner acting in relation to that matter.
- (2) The Commissioner may, during an investigation pursuant to subsection (1), examine any record to which this Act applies, and no such record may be withheld from the Commissioner on any grounds unless the Minister, under his hand, certifies that the examination of such record would not be in the public interest.
- (3) A certificate given by the Minister under subsection (2) shall not be subject to challenge in judicial or quasi-judicial proceedings of any kind.

46. Investigations on Commissioner's initiative.

Notwithstanding the provisions of this Act relating to appeal, the Commissioner may on his own initiative conduct an investigation into any matter and where he does so, the matter shall be treated as an appeal to the extent practicable.

47. Appeal from Commissioner's decisions and orders.

- (1) The complainant, or the relevant public or private body, may, within forty-five days, appeal to the Supreme Court by way of judicial review of a decision of the Commissioner pursuant to section 43 or 44, or an order pursuant to section 45 (1).
- (2) In any appeal from a decision pursuant to section 43, the burden of proof shall be on the public authority to show that it acted in accordance with its obligations under the Act.

48. Decisions and orders of Commissioner binding.

Upon expiry of the forty-five day period for appeals referred to in section 47, the Commissioner may certify in writing to the court any failure to comply with a decision made under section 43 or 44, or an order under section 45, and the court may consider such failure under the rules relating to contempt of court.

PART VIII

MEASURES TO PROMOTE OPENNESS

49. Information managers.

- (1) Every public authority shall appoint an information manager who, in addition to any duties specifically provided for under this Act, shall, under the general and specific supervision of the head of the authority concerned —
 - (a) promote in the public authority best practices in relation to record maintenance, archiving and disposal; and
 - (b) receive requests for records, assist individuals seeking access to records, paying special attention to people with relevant disabilities, and receive complaints regarding the performance of the public authority relating to information disclosure.
- (2) The public authority concerned shall ensure that members of the public know the name, function, contact details and such other information relating to the information manager as the authority may consider necessary or expedient to make available to the public.
- (3) The information manager may be full-time or be appointed from among staff performing other functions for the public authority concerned.

50. Whistleblowers.

- (1) No person may be subject to any legal, administrative or employment related sanction, regardless of any breach of a legal or employment-related obligation, for releasing information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment, as long as he acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrong-doing or a serious threat to health, safety or the environment.
- (2) For the purposes of subsection (1), “wrongdoing” includes but is not limited to—
 - (a) the commission of a criminal offence;
 - (b) failure to comply with a legal obligation;
 - (c) miscarriage of justice; or
 - (d) corruption, dishonesty, or serious maladministration.

51. Guidance on duty to publish.

The Permanent Secretary in the Ministry with responsibility for Information, Privacy and Data Protection shall—

- (a) publish a code on minimum standards and best practices regarding the duty of public bodies to publish information pursuant to section 5; and
- (b) upon request, provide guidance to the public authority regarding the duty to publish.

52. Maintenance of records.

- (1) Every public authority shall maintain its records in a manner which facilitates access to information under this Act and in accordance with the code of practice provided for in subsection (3).
- (2) Every public body shall ensure that there are adequate procedures and facilities for the correction of personal information.
- (3) The Permanent Secretary shall, after consultation with interested parties and upon the recommendation of the Archivist, issue from time to time a code, which shall contain the practices relating to the keeping, management and disposal of records, as well as the transfer of records to The Bahamas Archives.

53. Training of officials.

Every public authority shall ensure that training is provided for its officials regarding the right to information and the effective implementation of this Act.

PART IX

MISCELLANEOUS

54. Protection from liability regarding defamation, breach of confidence and intellectual property rights.

- (1) Nothing in this Act shall be construed as authorizing the disclosure of any official record —
 - (a) containing any defamatory matter; or
 - (b) the disclosure of which would be in breach of confidence or of intellectual property rights.
- (2) Where access to a record referred to in subsection (1) is granted in the bona fide belief that the grant of such access is required by this Act, no action for defamation, breach of confidence or breach of intellectual property rights shall lie against —
 - (a) the Government, a public authority, Minister or public officer involved in the grant of such access, by reason of the grant of access or of any re-publication of that record; or

- (b) the author of the record or any other person who supplied the record to the Government or the public authority, in respect of the publication involved in or resulting from the grant of access, by reason of having so supplied the record.
- (3) The grant of access to a record in accordance with this Act shall not be construed as authorization or approval—
 - (a) for the purpose of the law relating to defamation or breach of confidence, of the publication of the record or its contents by the person to whom access is granted;
 - (b) for the purposes of any law relating to intellectual property rights, of the doing by that person of any act comprised within the intellectual property rights in any work contained in the record.

55. Offences.

- (1) A person commits an offence, if in relation to a record to which a right of access is conferred under this Act, he—
 - (a) alters or defaces;
 - (b) blocks or erases;
 - (c) destroys; or
 - (d) conceals,the record with the intention of preventing its disclosure.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
- (3) Where access to a record is granted in accordance with this Act, the person who authorizes such access and any other person concerned in the granting thereof shall not, by reason only of so doing, be guilty of a criminal offence.
- (4) For the avoidance of any doubt, it is hereby declared that the Official Secrets Act shall apply in relation to the grant of access to an official document in contravention of this Act.

56. Regulations.

The Minister after consultation with the Information Commissioner may, make regulations—

- (a) generally for giving effect to the provisions and purposes of this Act;
- (b) prescribing the period of time for the doing of any act under this Act;

- (c) for anything that is required or permitted to be prescribed under this Act.

57. Review of Act by Parliamentary Committee.

- (1) This Act shall be reviewed from time to time by a committee of Parliament appointed for that purpose.
- (2) The first such review shall be conducted not later than eighteen months after the appointed day.

58. Act to bind Crown.

This Act binds the Crown.

SCHEDULE

INFORMATION TO BE PUBLISHED BY PUBLIC AUTHORITIES

- 1. The information referred to in section 5 of this Act is—
 - (a) a description of the functions of the public authority;
 - (b) a list of the departments and agencies of the public authority and—
 - (i) subjects handled by each department and agency;
 - (ii) the locations of departments and agencies;
 - (iii) opening hours of the offices of the authority and its departments and agencies;
 - (c) the title and business address of the information manager;
 - (d) a statement of the records specified in sub paragraph (e) being records that are provided by the public authority for the use of, or which are used by the authority or its officers in making decisions or recommendations, under or for the purposes of, any written law or scheme administered by the authority with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons are or may be entitled or subject;
 - (e) the records referred to in sub paragraph (d) are—
 - (i) manuals or other records containing interpretations, rules, guidelines, practices or precedents;
 - (ii) records containing particulars of a scheme referred to in subparagraph (d), not being particulars contained in any written law or published under this Act.

2. The information manager of the authority shall—
 - (a) cause copies of such of the records specified in paragraph 1 (e) as are in use from time to time to be made available for inspection and for purchase by members of the public;
 - (b) within twelve months after the publication of the statement under paragraph 1(d) and thereafter at intervals of not more than twelve months, cause to be published in the *Gazette*, statements bringing up to date information contained in the previous statement or statements.
3. The information manager is not required to comply fully with paragraph 2 (a) before the expiration of twelve months after the appointed day, but shall, before that time, comply with that paragraph so far as is practicable.
4. This Schedule does not require a record of the kind specified in paragraph 1(e) containing exempt matter to be made available in accordance with paragraph 2, but, if such a record is not so made available, the information manager shall, unless impracticable or unreasonable to do so, cause to be prepared a corresponding record, altered only to the extent necessary to exclude the exempt matter, and cause the record so prepared to be dealt with in accordance with paragraph 2.
5. Paragraphs 2 and 3 apply in relation to a public authority that either comes into existence after the commencement of this Act, or has been specified by Order under section 3(2) of the Act as if the references in paragraph 3 to the appointed day were references to the day on which the authority comes into existence or has been so specified.

OBJECTS AND REASONS

This Bill seeks to reinforce and give effect to certain fundamental principles underlying the system of constitutional democracy, that is, governmental accountability, transparency and public participation in national decision-making by granting to the public a general right of access to records held by public authorities, subject to exemptions which balance that right against the public interest in exempting from disclosure governmental, commercial or personal information.

Part I deals with preliminary matters.

Of note is the meaning of “public authority” and “record”. A public authority is defined to mean a Ministry, statutory body, a public corporation or any other body or organization specified by Order. (Clause 2).

Record is defined to mean a record in writing; a map, plan, graph or drawing, a photograph, a disc, tape, sound track or other device in which sounds or other data are embodied. (Clause 2)

The Act does not apply to the judicial functions of a court or the holder of a judicial office, the Royal Bahamas Police Force, the Royal Bahamas Defence Force, the Department of Customs, the Department of Immigration, or the Financial Intelligence Unit in relation to their strategic or operational intelligence-gathering activities, and such statutory body or authority as specified by Order. (Clause 3).

Part II deals with the right of access to information.

Clause 6 declares that every Bahamian citizen and permanent resident within the meaning of the Immigration Act, shall have a right to obtain access to a record other than an exempt record. An application for access to a record will not require a reason for requesting access to the record.

A person who wish to obtain information to a record will make an application to the public authority which holds the record. The public authority is required to respond to an application not later than 30 calendar days after the date of the receipt of the application. (Clause 7).

The communication of information is conditional upon the payment by the applicant of the prescribed fee for reproducing, preparing and communicating the information. The manner in which fees are to be calculated will be made by regulations. (Clause 13).

Part III deals with exempt records.

Records are exempt from disclosure if the disclosure would prejudice the security, defence or international relations of The Bahamas. (Clause 15).

Records relating to law enforcement are exempt from disclosure if disclosure would endanger any person's life or safety; affect the conduct of an investigation or prosecution, the trial of any person, or jeopardize the security of a prison. (Clause 16).

An official record is exempt from disclosure if it would be privileged from production in legal proceedings on the ground of legal professional privilege; or the disclosure would constitute an actionable breach of confidence, be in contempt of court or infringe the privileges of Parliament. (Clause 17).

A record is exempt from disclosure if it contains opinions, advice or recommendations prepared for proceedings of the Cabinet or of a committee of Cabinet. (Clause 19).

A record is exempt from disclosure if its disclosure would reveal trade secrets or if it contains information concerning the commercial interests of any person or organization and the disclosure would prejudice those interests. (Clause 21).

A record is exempt from disclosure if its disclosure would result in the destruction, damage or interference in respect of the conservation of any historical, archaeological or anthropological resources; or any species of plant or any animal life is endangered, threatened or otherwise vulnerable. (Clause 22).

Access to a record will not be granted if it would involve the disclosure of personal information of any living or deceased person. (Clause 23).

A record is exempt from disclosure if its disclosure would endanger the physical or mental health of an individual or endanger the safety of an individual. (Clause 24).

Part IV deals with annotation of records.

Where a person has been granted access to a record but claims that the record contains information about himself or herself is incomplete, incorrect, out of date or misleading the person may apply to the public authority for an amendment or an annotation of the record. (Clause 28).

Where a public authority is satisfied as to the truth of the matters complained of it shall amend the record. (Clause 29).

Part V deals with internal reviews of decisions of public authorities.

An applicant for access to a record may apply for an internal review of a decision by a public authority's refusal to grant access to the record or refusal to make an amendment or annotation. (Clause 33).

An internal review will be conducted by the responsible Minister in respect of certain records and in other cases by the chief officer of the relevant ministry or the public authority. (Clause 34).

Part VI deals with the office of the Information Commissioner.

Clause 35 establishes the position of Information Commissioner for the purposes of this Act, the holder of which shall be the holder of the Office of Data Protection Commissioner appointed under the Data Protection (Privacy of Personal Information) Act. (Clause 35).

The Commissioner will have all the powers as are necessary to undertake his functions. (Clause 36).

The Commissioner will be responsible to Parliament. (Clause 37).

The appropriate service commission may appoint officers and employees as are necessary to enable the Commissioner to perform his functions. (Clause 38).

The Commissioner may hear, investigate and rule on appeals filed under the Act, monitor and report on the compliance by public authorities with their obligations under the Act; and publicise the requirements of the Act and the rights of individuals under it. (Clause 39).

The Commissioner and members of his staff are not liable in damages for anything done in the discharge of their functions unless it is shown that the act was in bad faith. (Clause 41).

Part VII deals with enforcement by the Commissioner.

A person who has made a request for a record and has exhausted the other means of redress under the Act may appeal to the Commissioner for a decision that a public authority has failed to indicate whether or not it holds a record, failed to communicate the information contained in the record within the time allowed under the Act, charged a fee that is in contravention of the Act, or has otherwise failed to comply with an obligation imposed under the Act. (Clause 42).

The complainant or the relevant public authority may appeal to the Supreme Court by way of judicial review of a decision of the Commissioner. (Clause 47).

Part VIII deals with measures to promote openness.

Every public authority will appoint an information manager, who shall promote in the public authority best practices in relation to record maintenance, archiving and disposal and receive requests for records and complaints regarding the performance of the public authority relating to information disclosure. (Clause 49).

Part IX deals with miscellaneous matters.

Nothing in the Act shall be construed as authorizing the disclosure of any official record containing any defamatory matter; or the disclosure of which would be in breach of confidence or of intellectual property rights. (Clause 54).