

GUYANA

BILL No. of 2011

ACCESS TO INFORMATION BILL 2011

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SCHEDULE

**A BILL
Intituled**

AN ACT to provide for setting out a practical regime of right to information for persons to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of the Government and public authorities and for the appointment of the Commissioner of Information.

A.D. 2011.

Enacted by the Parliament of Guyana:-

**PART I
PRELIMINARY**

Short title and commencement.

1.This Act may be cited as the Access to Information Act 2011 and shall come into force on the date the Minister may, by order, appoint.

Interpretation.

2.In this Act-

“applicant” means a person who has made a request in accordance with section 16;

“Commissioner of Information” means the person appointed by the President under section 5;

“designated officer” means an officer within a public authority designated by the authority to perform such functions as may be determined by the authority;

Cap.1:01. “disciplined force” has the same meaning as in Article 154 of the Constitution-

“disciplined force means –

- (a) any group of persons functioning whether wholly or partially as a naval, military, para-military or air force;
- (b) a police force;
- (c) a prison service; or
- (d) a fire service;”;

“document”-

Cap.5:03.

(a) has the same meaning as in section 89 A of the Evidence Act-

“document includes –

- (i) books, maps, plans, graphs, drawings and photographs;
- (ii) any disc, tape, soundtrack or other device in which sound or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (iii) Any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom”;

(b) includes any copy of a record which can be produced from a machine readable record under the control of a public authority however generated, such copy being deemed to be a record under the control of the public authority;

“exempt document” means a document referred to in Part V;

“exempt information” means information the inclusion of which in a document causes the document to be an exempt document;

“information” means any material in any form, including records, documents, memos, electronic mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law;

“Minister” means the Minister to whom responsibility for information is assigned;

“official document” means a document held by a public authority in connection with its functions as such, and created after the commencement of this Act and, for the purposes of this definition, a

document is held by a public authority if it is in its possession, custody or power;

“personal information” means information about a person, including-

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, marital or family status of the person;
- (b) information relating to the education, medical, psychiatric, psychological, criminal or employment history of the person or information relating to financial transactions in which the person has been involved;
- (c) any identifying number, symbol or other particular assigned to the person, finger-prints, blood type or DNA profile of the person;
- (d) the postal and email addresses, and telephone number of the person;
- (e) the personal opinions or views of the person except where they relate to another person;
- (f) correspondence sent to a public authority by the person that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence;
- (g) the views or opinions of another person about the person; and
- (h) the person’s name where it appears with other personal information relating to the person or where the disclosure of the name would reveal other personal information about the person;

“prescribed” means prescribed by the Minister by regulations made under section 46;

“public authority” means-

- (a) the National Assembly inclusive of parliamentary committees subject to the Standing Orders;
- (b) subject to section 4(2), the Caribbean Court of Justice, the Court of Appeal, the High Court, the Income Tax Board of Review or a Court of summary jurisdiction;
- (c) the Cabinet as constituted under the Constitution;
- (d) a Ministry or a department or division of a Ministry;
- (e) Local democratic Organs established under the Municipal and District Councils Act, Local Government Act, Local Democratic Organs Act;
Cap. 28:01.
Cap. 28:02.
Cap. 28:09.
- (f) a Regional Health Authority established under the Regional Health Authorities Act 2005;
No.4 of 2005.
- (g) a statutory body, responsibility for which is assigned to a Minister;
- (h) a company incorporated under the laws of Guyana which is owned or controlled by the State;
- (i) a Constitutional Commission or any other Commission established by law; or
- (j) a body corporate or an unincorporated entity-
 - (i) in relation to any function which it exercises on behalf of the State;
 - (ii) which is established by or on behalf of the State; or
 - (iii) which is supported, directly or indirectly, by Government funds and over which Government exercises control;

“record” includes-

- (a) any document, manuscript or file;
- (b) any microfilm, microfiche or facsimile copy of a document;
- (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and

- (d) any other material produced by a computer or any other device;

“responsible Minister”, in relation to a public authority, means the Minister responsible for the public authority which holds an official document;

“right of access to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

- (a) inspect any work, documents or records;
- (b) take notes, extracts or certified copies of documents or records;
- (c) take certified samples of material;
- (d) obtain information in the form of floppy disks, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other similar device;

“third party” means a person other than the person making a request for information and includes a public authority.

Object of the Act.

3. (1) The objective of this Act is to extend the right of members of the public to access information in the possession of public authorities by –

- (a) making available to the public, information about the operations of public authorities and, in particular, ensuring that the authorisations, policies, rules and practices affecting members of the public in their dealings with public authorities are readily available to persons affected by those authorisations, policies, rules and practices; and
- (b) creating a general right of access to information in documentary form in the possession of public authorities limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and

business affairs of persons in respect of whom information is collected and held by public authorities.

(2) The provisions of this Act shall be interpreted so as to further the objective set out in subsection (1) and any discretion conferred by this Act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.

Application of
the Act.

4. (1) This Act does not apply to-

- (a) the President, provided that the functions of the Office of President shall not be exempt for the purposes of this Act;
- (b) a Commission of Inquiry issued by the President, or information obtained or created in the course of an investigation, examination or audit conducted by or under the authority of the Auditor General, unless the investigation or audit and all related proceedings, if any, are finally concluded;
- (c) a public authority or function of a public authority as the President may, by order subject to negative resolution of the National Assembly, determine.

(2) For the purposes of this Act-

- (a) in relation to its or his judicial functions, a court or the holder of a judicial office or other office pertaining to a court in his capacity as the holder of that office, shall not be regarded as a public authority;
- (b) a registry or other office of court administration, and the staff of such a registry or other office of court administration in their capacity as members of that staff in relation to those matters which relate to court administration, shall be regarded as part of a public authority;
- (c) the disciplined forces in relation to their strategic or operational activities shall not be regarded as public authorities.

PART II
COMMISSIONER OF INFORMATION

Commissioner of
Information.

5. (1) The President shall appoint a Commissioner of Information who shall be a person of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(2) The Commissioner of Information shall be a clearing house for processing requests and shall discharge the functions assigned to him under this Act.

(3) The Commissioner of Information shall be provided with requisite staffing and budgetary support in order to discharge his functions under this Act.

(4) The Minister shall provide the Commissioner of Information with such officers and employees as may be necessary for the efficient discharge of the functions of the Commissioner under this Act, and the salaries and allowances payable to, and the other terms and conditions of service of, the officers and employees appointed for the purpose of this Act shall be such as may be determined by the Minister.

Removal of the
Commissioner of
Information.

6. (1) The President may remove the Commissioner of Information from office if the Commissioner of Information –

- (a) is adjudged an insolvent;
- (b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude;
- (c) engages during his term of office in any paid employment outside the duties of his office;
- (d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or
- (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as Commissioner of Information.

(2) Before removing the Commissioner of Information from office the President shall afford the Commissioner of Information an opportunity of making representations.

7. The Commissioner of Information has the power to-

- (a) require a public authority to take any steps as may be necessary to secure compliance with the provisions of this Act, including-
 - (i) by providing access to information, if so requested, in a particular form;
 - (ii) by publishing certain information or categories of information, that are needed urgently and are not published under any other provision of this Act;
 - (iii) by making necessary changes to its practices in relation to the maintenance, classification, management, retention and destruction of records;
 - (iv) by enhancing the provision of training on the right to information for its officials;
 - (v) by providing the Minister with an annual report;
- (b) require a public authority to compensate the complainant for any loss or other detriment suffered;
- (c) request and examine any disciplinary action taken against any officer in respect of the administration of this Act;
- (d) indicate efforts by the public authorities to administer and implement the spirit and intention of this Act;
- (e) make recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or the common law; or
- (f) address any other matter relevant for operationalising the right to access to information.

PART III
PUBLICATION OF CERTAIN DOCUMENTS AND INFORMATION

Publication in
official *Gazette* by
public authority.

8. (1) The Commissioner of Information shall in relation to a public authority and with the approval of the responsible Minister -

- (a) cause to be published in the *Gazette* and in a daily newspaper circulating in Guyana as soon as practicable after the commencement of this Act, -
 - (i) a statement setting out the particulars of the organisation and functions of the public authority, indicating, as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions and particulars of any arrangement that exists for consultation with, or representation by, members of the public in relation to the formulation of policy in, or the administration of, the public authority;
 - (ii) a statement of the categories of documents that are maintained in the possession of the public authority;
 - (iii) a statement of the material that has been prepared by the public authority under this Part for publication or inspection by members of the public, and the places at which a person may inspect or obtain that material;
 - (iv) a statement of the procedure to be followed by a person when a request for access to a document is made;
 - (v) a statement listing all boards, councils, committees and other bodies constituted by two or more persons, that are part of or that have been established for the purpose of advising the public authority;
 - (vi) a statement of the address and access to any library, reading room, documentation centre or official website maintained by the public authority;

- (b) following the initial publication and annually thereafter but no longer than two years cause to be published a bulletin to bring the material contained in the publication published under paragraph (a) up to date and to provide other useful information relating to the operation of this Act.

(2) Nothing in this section requires the publication of exempt information.

(3) Where a public authority is created on or after the commencement of this Act, the public authority shall comply with subsection (1), as soon as practicable after its creation.

Categories of documents to be available for inspection and purchase.

9. (1) This section applies to categories of documents that are provided by a public authority for the use or guidance of the public authority or its officers -

- (a) in making decisions or recommendations, or in providing advice to persons outside the public authority, with respect to rights, privileges, benefits, obligations, penalties or other detriments, being-
 - (i) documents containing interpretations or particulars of written laws or schemes administered by the public authority, not being particulars contained in another written law; or
 - (ii) manuals, rules of procedure, statements of policy, records of decisions, letters of advice to persons outside the public authority, or similar categories of documents containing rules, policies, guidelines, practices or precedents; and
- (b) in enforcing written laws or schemes administered by the public authority where a member of the public might be directly affected by that enforcement, being categories of documents containing information on the procedures to be

employed or the objectives to be pursued in the enforcement of, the written laws or schemes.

(2) The Commissioner of Information shall-

(a) as soon as practicable after the commencement of this Act-

(i) cause copies of categories of all documents to which this section applies in respect of the public authority to be made available for inspection and for purchase by members of the public; and

(ii) with the approval of the responsible Minister, cause to be published in the *Gazette* and in a daily newspaper circulating in Guyana, a statement (which may be in the form of an index) specifying the categories of documents that are, at the time of preparation of the statement, so available and the place or places where copies may be inspected and purchased; and

(b) not later than two years after the commencement of this Act and updated every twelve months with the approval of the responsible Minister cause to be published in the *Gazette* and in a daily newspaper circulating in Guyana statements bringing up to date the information on the categories of documents contained in the previous statement or statements.

(3) This section does not require a document of the kind referred to in subsection (1) containing exempt information to be made available in accordance with subsection (2), but, if such document is not so made available, the Commissioner of Information shall, except where impracticable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt information, and cause the document so prepared to be dealt with in accordance with subsection (2).

(4) A document from which exempt information has been excluded in accordance with subsection (3) shall indicate, to the extent practicable without exempt information being disclosed, the nature of the information excluded.

(5) Notwithstanding that a document of the kind referred to in subsection (1) is an exempt document, if the fact of the existence of that document can be published in accordance with subsection (2)(a)(ii) without exempt information being disclosed, the Commissioner of Information shall cause that fact to be published.

(6) A public authority that comes into existence on or after the commencement of this Act shall comply with the provisions of subsection (2)(a) as soon as practicable after the day on which it came into existence and not later than two years after that day, and thereafter in accordance with section 8(3).

Statement of possession of certain documents to be published.

10. (1) This section applies, in respect of a public authority, to any document that is-

- (a) a report, or a statement containing the advice or recommendations, of a body or entity established within the public authority;
- (b) a report, or a statement containing the advice or recommendations, of a body or entity established outside the public authority under a written law, or by a Minister of Government or other public authority for the purpose of submitting a report or reports, providing advice or making recommendations to the public authority or to the responsible Minister of that public authority;
- (c) a report, or a statement containing the advice or recommendations, of an inter-departmental committee whose membership includes an officer of the public authority;
- (d) a report, or a statement containing the advice or recommendations, of a committee established within the public authority to submit a report, provide advice or make recommendations to the responsible Minister of that public authority or to another officer of the public authority who is not a member of the committee;

- (e) a report (including a report concerning the results of studies, surveys or tests) prepared for the public authority by a scientific or technical expert, whether employed within the public authority or not, including a report expressing the opinion of such an expert on scientific or technical matters;
- (f) a report prepared for the public authority by a consultant who was paid for preparing the report;
- (g) a report prepared within the public authority and containing the results of studies, surveys or tests carried out for the purpose of assessing, or making recommendations on, the feasibility of establishing a new or proposed Government policy, programme or project;
- (h) a report on the performance or efficiency of the public authority, or of an office, division or branch of the public authority, whether the report is of a general nature or concerns a particular policy, programme or project administered by the public authority;
- (i) a report containing final plans or proposals for the re-organisation of the functions of the public authority, the establishment of a new policy, programme or project to be administered by the public authority, or the alteration of an existing policy, programme or project administered by the public authority, whether or not the plans or proposals are subject to approval by an officer of the public authority, another public authority, the responsible Minister of the public authority or Cabinet;
- (j) a statement prepared within the public authority and containing policy directions for the drafting of legislation;
- (k) a report of a test carried out within the public authority on a product for the purpose of purchasing equipment;

- (l) an environmental impact statement prepared within the public authority; and
- (m) a valuation report prepared for the public authority by a valuator, whether or not the valuator is an officer of the public authority.

(2) The Commissioner of Information shall, with the approval of the responsible Minister-

- (a) cause to be published in the *Gazette* and in a daily newspaper circulating in Guyana as soon as practicable after the commencement of this Act, a statement (which may take the form of an index) specifying the documents to which this section applies which have been created since the date of commencement of this Act and are in the possession of the public authority;
- (b) not earlier than twelve months after publication of the statement required under paragraph (a) and not later than January 31st of each subsequent year, cause to be published in the *Gazette* and in a daily newspaper circulating in Guyana statements bringing up to date the information contained in the previous statement or statements.

(3) This section does not require a document of the kind referred to in subsection (1) containing exempt information to be referred to in a statement published in accordance with subsection (2)(a), if the fact of the existence of the document cannot be referred to in the statement without exempt information being disclosed.

Person to apply to Commissioner of Information where published statement does not specify a document or categories of documents.

11. (1) A person may serve upon the Commissioner of Information a notice in writing stating that, in the opinion of the person, a statement published by the Commissioner of Information under section 9(2) (a) (ii) or (b) or section 10(2) (a) or (b) does not specify a document or category of documents as described in section 9(1) or 10(1) that was required to be specified in the statement.

(2) The Commissioner of Information shall-

(a) make a decision within sixty days of receiving a notice and publish the decision in relation to the document referred to in subsection (1), no later than fourteen days thereafter in the *Gazette*;

(b) cause the person to be given notice in writing of its decision.

(3) Where the decision is adverse to the person's claim, the notice shall-

(a) state the findings on any material questions of fact, referring to the material on which those findings were based, and the reasons for the decision; and

(b) inform the person of his right to apply to the High Court for judicial review of the decision.

PART IV RIGHT OF ACCESS TO INFORMATION

Right of access to information.

12. (1) Notwithstanding any law to the contrary and subject to the provisions of this Act, it shall be the right of every Guyanese citizen or person domiciled in Guyana to obtain access to an official document.

(2) The Minister may, by order, extend the right to be given access to official documents under subsection (1) to include persons not referred to in that subsection and may set such conditions as the Minister deems appropriate.

(3) Nothing in this Act shall prevent a public authority from-

(a) giving access to documents or information;

(b) amending documents,

where it is required to do so by any written law or order of a Court.

13.(1) As soon as possible after the commencement of this Act, every public authority shall, as far as practicable, maintain its records duly catalogued, classified and indexed in a manner and form which facilitates the right of access to information under this Act and ensure that all records that are appropriate are computerised within a reasonable time, and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records which are open to access is facilitated.

(2) The records may be classified in accordance with the security level required as top secret, secret, confidential, restricted or general and the information contained in all documents which are classified as general shall be accessible by the public in accordance with the provisions of this Act.

(3) It shall be a constant endeavour of every public authority to take steps in accordance with this Act to provide as much information of its own volition to the public at regular intervals through various means of communication so that the public have minimum necessity to have recourse to the provisions of this Act to obtain information.

(4) For the purpose of subsection (1), every piece of information shall, as far as practicable, be disseminated in such form and manner that is easily accessible to the public.

(5) All materials shall be disseminated taking into consideration the cost effectiveness and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format on payment of fee or at such cost of the medium or in print as may be prescribed.

(6) Every public authority shall determine the retention period of the records generated or possessed by it and for this purpose prepare a retention schedule, but in no case shall this be less than twenty years.

14. (1) Subject to subsections (3) and (4) and subject to the provisions of any other written laws, access to records under this Act applies to all records in the custody or under the control of a public authority, including court administration records, but does not apply to the following-

- (a) a record in a court file in the registry of the Caribbean Court of Justice, the Supreme Court, the Magistrates' Court or a record of a justice of the peace;
- (b) a personal note, communication or draft decision of a person who is acting in a judicial or quasi-judicial capacity;
- (c) a record that is created by or for, or is in the custody or control of, an officer of the National Assembly and that relates to the exercise of that officer's functions under any law or standing orders or the disclosure of which will amount to a breach of privilege;
- (d) a record of a question that is to be used on an examination or test;
- (e) a record containing teaching materials or research information of employees of a post-secondary educational body;
- (f) material placed in the archives of the Government of Guyana by or for a person or agency other than a public authority;
- (g) material placed in the archives of a public authority by or for a person or agency other than a public authority;
- (h) a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed;
- (i) a record of an elected official of a local authority that is not in the custody or control of the local authority;
- (j) a record or information the disclosure of which, in the opinion of the head of the public authority, is not in the public interest or in the interest of the security of any person;

(k) records specifically classified as top secret, secret or confidential unless they are re-classified as general.

(2) This Act does not limit the information available by law to a party to a proceeding.

(3) Nothing in this Act shall be construed as requiring a public authority to disclose any information or allow inspection or taking extracts or copies of documents which are governed by any other written law.

(4) Nothing in this Act shall be construed as compelling a public authority to disclose or make available any information or record created before the commencement of this Act.

Documents
exempted from
right of access.

15. A person is not entitled to obtain, in accordance with the procedure provided for in this Part, access to-

- (a) a document which contains information that is open to public access or on an official website, as part of a public register or otherwise, in accordance with any other written law, where even that access is subject to a fee or other charge;
- (b) a document which contains information that is available for purchase by the public in accordance with arrangements made by a public authority;
- (c) a document that is available for public inspection in a registry maintained by the Registrar General, the National Archives, Parliament or other public authority.

Procedure to
make request.

Schedule.

16. (1) A person who wishes to obtain access to an official document shall make a request in the form-

- (a) set out in the Schedule; or
- (b) on the website of, or by other electronic means to, the Commissioner of Information.

(2) A request shall identify the official document, or provide sufficient detail to enable the Commissioner of Information or an officer of the public

authority who is familiar with the relevant documents, to identify the document with reasonable effort.

(3) A request may specify in which of the forms described in section 20 the applicant wishes to be given access.

(4) Subject to section 25, a request under this section may be made for access to all records of a particular description or all records relating to a particular subject.

Duty to assist applicant.

17. The Commissioner of Information, in collaboration with the relevant public authority, shall take reasonable steps to assist any person who-

- (a) wishes to make a request under section 16; or
- (b) has made a request which does not comply with the requirements of section 16(2), and shall afford that person an opportunity,

to make a request in a manner which complies with that section.

Time-limit for determining request.

18. (1) On receipt of a request, the Commissioner of Information shall acknowledge receipt of the request in thirty days from the date of its receipt and advise the applicant if the request is approved or denied in sixty days from the date the request is received.

(2) The Commissioner of Information may extend the period of sixty days for approval or denial and inform the applicant of the reasons therefor.

(3) Where the Commissioner of Information fails to give access within the time-limit, he shall be deemed to have refused to give access.

Giving of access and deletion of exempt information.

19. (1) Subject to this Act, where -

- (a) a request is duly made by an applicant to the Commissioner of Information for access to an official document;
- (b) the request is approved by the Commissioner of Information; and

- (c) any fee prescribed under section 21 that is required to be paid before access is granted has been paid,

the Commissioner of Information shall forthwith give the applicant access to the official document.

(2) Where an application is made to the Commissioner of Information for access to an official document which contains exempt matter, the Commissioner of Information shall grant access to a copy of the document with the exempt matter deleted therefrom.

(3) The Commissioner of Information on granting access to a copy of an official document in accordance with this section shall inform the applicant –

- (a) that it is such copy; and
- (b) of the statutory provision by virtue of which such deleted matter is exempted matter.

Form of access to document in printed form or otherwise.

20. (1) Where a document to which access is required to be given under this Act is held by a public authority in whatever form available, the Commissioner of Information shall give access to it by supplying a copy of it to the applicant or, if the applicant so requests, by making it available to the applicant for inspection.

(2) Where a document to which access is required to be given under this Act is held by a public authority other than in printed form, the Commissioner of Information shall, if the applicant so requests, give access to it–

- (a) by supplying a copy of it to the applicant;
- (b) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, by making arrangements for the applicant to hear or view those sounds or visual images;
- (c) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of

shorthand writing or in codified form, by supplying a printed transcript of the words recorded or contained in the document.

(3) Subject to this section and to section 19(2), where the applicant has requested access in a particular form, access shall be given in that form.

(4) If the form of access requested by the applicant –

- (a) would interfere unreasonably with the operations of the public authority;
- (b) would be detrimental to the preservation of the document or having regard to the physical nature of the document, would not be appropriate; or
- (c) would involve an infringement of copyright subsisting in a person other than the State,

access in that form shall be refused but access may be given in another form.

Fees.

21. (1) No fee shall be charged by the Commissioner of Information and a public authority for the making of a request for access to an official document.

(2) Where access to an official document is to be given in the form of printed copies, or copies in some other form, such as on tape, disc, film or other material, the applicant shall pay the prescribed fee.

(3) The fees payable, in accordance with regulations made under section 46, by the applicant shall be commensurate with the cost incurred in making documents available and the fees shall be accompanied by a deposit in respect of a large document.

(4) Notwithstanding subsection (2), where the Commissioner of Information fails to give an applicant access to an official document within fourteen working days of the payment of the relevant fee pursuant to section 19(1) (c), the applicant shall, in addition to access to the official document requested, be entitled to a refund of the fee paid unless there are extenuating circumstances and the applicant is so informed within the said fourteen days.

(5) The Commissioner of Information shall have the authority to waive fees in fit cases.

Deferral of request
to access public
information.

22. (1) The Commissioner of Information on receipt of a written request may defer the provision of access to the document concerned if-

- (a) the document has been prepared-
 - (i) for presentation to Parliament;
 - (ii) for release to the media; or
 - (iii) solely for inclusion, in the same or in an amended form in a document to be prepared for a purpose specified in subparagraph (i) or (ii),
and the document is yet to be presented or released, or included in a document to be presented or released, as the case may be;
- (b) the premature release of the document 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 document would not be contrary to public interest.

(2) The Commissioner of Information on receipt of a written request may defer the provision of access to the document concerned until the happening of a particular event (including the taking of some action required by law or some administrative action) or until the expiration of a specified time, where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices.

(3) Where the provision of access to a document is deferred in accordance with this section, the Commissioner of Information shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.

Procedure where applicant is not entitled to document as requested.

23. (1) Where in relation to a request for access to a document of a public authority, a decision is made under this Part that the applicant is not entitled to access to the document in accordance with the request or that provision of access to the document be deferred or that no such document exists, the Commissioner of Information shall cause the applicant to be given notice in writing of the decision, and the notice shall –

- (a) state the reasons for the decision;
- (b) where the decision does not relate to a request for access to a document which if it existed, would be an exempt document but access is given to a document in accordance with section 19(2), state that the document is a copy of a document from which exempt information has been deleted;
- (c) inform the applicant of his right to apply to the High Court for judicial review of the decision;
- (d) so state where the decision is to the effect that the document does not exist or cannot, after a thorough and diligent search, be located.

(2) In a notice under subsection (1), the Commissioner of Information –

- (a) shall not be required to include any matter that is of such a nature that its inclusion in a document of a public authority would cause that document to be an exempt document;
- (b) if the decision relates to a request for access to a document which is an exempt document under section 27, 28 or 31 or which, if it existed, would be an exempt document under section 27, 28 or 31, may state the decision in terms which neither confirm nor deny the existence of any document.

Decision in respect of request may be made on behalf of public authority.

24. (1) A decision in respect of a request made to a public authority through the Commissioner of Information may be made, on behalf of the public authority, by the responsible Minister, a Permanent Secretary, a Head of Department, a Chief Executive Officer or a designated officer of the public

authority or by an officer of the public authority acting within the scope of authority exercisable by him in accordance with arrangements approved by the responsible Minister, a Permanent Secretary, a Head of Department or a Chief Executive Officer.

(2) Where a request is made to the Commissioner of Information for a document, and no arrangements in respect of documents of that type have been made and published, a decision on that request shall, for the purpose of enabling an application for judicial review to be made, be deemed to have been made by the responsible Minister of the public authority.

Requests may be refused in certain cases.

25. (1) The Commissioner of Information dealing with a request may refuse to grant access to documents in accordance with the request, without starting the processing of the request, where –

- (a) the work involved in processing the request would substantially and unreasonably divert the resources of the public authority from its other operations; and
- (b) in refusing to provide information on these grounds the Commissioner of Information has taken reasonable steps to assist the applicant to reformulate the application in a manner that leads to its grant.

(2) Subject to subsection (3) but without limiting the matters to which the Commissioner of Information may have regard in deciding whether to refuse under subsection (1) to grant access to the documents to which the request relates, the Commissioner of Information is to have regard to the resources that would have to be used -

- (a) in identifying, locating or collating the documents within the archival system of the public authority; or
- (b) in deciding whether to grant, refuse or defer access to documents to which the request relates, or to grant access to edited copies of such documents, including resources that would have to be used –

- (i) in searching for and examining documents;
- (ii) in consulting with any person or body in relation to the request;

(c) in making a copy, or an edited copy of the documents; or

(d) in notifying any interim or final decision on the request.

(3) Notwithstanding subsection (2), the Commissioner of Information shall have regard to the fees prescribed in the regulations, in relation to the request.

(4) In deciding whether to refuse, under subsection (1), to grant access to documents, the Commissioner of Information shall not have regard to –

(a) any reasons that the applicant gives for requesting access; or

(b) the public authority's belief as to what are the applicant's reasons for requesting access.

(5) The Commissioner of Information may refuse to grant access to the documents in accordance with the request without having identified any or all of the documents to which the request relates and without specifying, in respect of each document, the provision or provisions of this Act under which that document is claimed if –

(a) it is apparent from the nature of the documents as described in the request that all of the documents to which the request relates are exempt documents; and

(b) either-

(i) it is apparent from the nature of the documents as so described that no obligation would arise under section 19(2) in relation to any of those documents to grant access to an edited copy of the document; or

(ii) it is apparent from the request or as a result of consultation by the Commissioner of Information with the applicant, that the applicant would not wish to have access to an edited copy of the document.

(6) The Commissioner of Information shall not refuse to grant access to a document under subsection (1) unless the Commissioner of Information has –

- (a) given the applicant a written notice -
 - (i) stating the intention to refuse access; and
 - (ii) identifying an officer of the Commissioner of Information with whom the applicant may consult with a view to making the request in a form that would remove the ground for refusal;
- (b) given the applicant a reasonable opportunity so to consult; and
- (c) as far as is reasonably practicable, provide the applicant with any information that would assist the making of the request in a form that would remove the ground for refusal.

(7) For the purposes of section 18, the period commencing on the day an applicant is given notice under subsection (6)(a) and ending on the day the applicant confirms or alters the request following the consultation referred to in subsection (6) is to be disregarded in the computation of the sixty days period referred to in section 18.

Grounds for refusal to grant access to public information.

26. (1) The Commissioner of Information dealing with a request under this Part for access to documents, or an application under section 39 for the correction of personal information, may refuse to grant access to documents, or to correct information, in accordance with the request or application, without having caused the processing of the request or application to have been undertaken or at any later time, if the Commissioner of Information is satisfied that -

- (a) the request or application is made by, or on behalf of, a person who, on at least one previous occasion, has made a request or application to the Commissioner of Information for access to the same documents or for the same correction;

- (b) the request or application was refused and the High Court, on reviewing the decision to refuse the request or application, confirmed the decision; and
- (c) there are no reasonable grounds for making the request or application again.

(2) The Commissioner of Information shall give notice of a refusal under subsection (1) and shall inform the applicant of -

- (a) the reason for the refusal; and
- (b) the right to apply to the High Court for judicial review of the decision.

PART V EXEMPT DOCUMENTS

Cabinet document.

27. (1) A document is an exempt document if it is –

- (a) the official record of any deliberation or decision of Cabinet;
- (b) a document that has been prepared by a Minister of Government or on his behalf or by a public authority for the purpose of submission for consideration by Cabinet or a document which has been considered by Cabinet and which is related to issues that are or have been before Cabinet;
- (c) a document prepared for the purpose of briefing a Minister of Government in relation to issues to be considered by Cabinet;
- (d) a document that is a copy or draft of, or contains extracts from, a document referred to in paragraph (a),(b) or (c); or
- (e) a document the disclosure of which would involve the disclosure of any deliberation or decision of Cabinet, other than a document by which a decision of Cabinet was officially published.

(2) Subsection (1) shall cease to apply to a document brought into existence on or after the commencement of this Act when a period of twenty years

have elapsed since the last day of the year in which the document came into existence.

(3) Subsection (1) does not apply to a document that contains purely statistical, technical or scientific material which may be an appendage to a Cabinet document unless the disclosure of the document would involve the disclosure of any deliberation or decision of Cabinet.

(4) For the purposes of this Act, a certificate signed by the Secretary to Cabinet certifying that a document as described in a request would, if it existed be one of a kind referred to in subsection (1), establishes conclusively that if such a document exists, it is an exempt document.

(5) In this section-

- (a) "Cabinet" includes a committee or subcommittee of Cabinet;
- (b) a reference to a document is a reference to a document created after the commencement of this Act.

Document exempted if containing information likely to prejudice defence of State, etc.

28. (1) An exempt document includes a document if it contains information, the disclosure of which –

- (a) would be likely to prejudice the defence of Guyana or any State allied or associated with Guyana;
- (b) could reasonably be expected to be injurious to the detection, prevention or suppression of subversive or hostile activities in Guyana;
- (c) would be contrary to public interest for a reason mentioned in this section or would be likely to prejudice the lawful activities of the disciplined forces.

(2) For the purposes of this Act, a certificate signed by the Minister certifying that a document as described in a request would, if it existed, be one of a kind referred to in subsection (1), establishes conclusively that if such a document exists, it is an exempt document.

International relations documents.

29. (1) A document is an exempt document if disclosure under this Act would be contrary to the public interest and disclosure –

- (a) would prejudice relations between the Government of Guyana and the government of any other State;
- (b) would prejudice relations between the Government of Guyana and an international organisation of States or a body thereof;
- (c) would divulge any information or matter communicated in confidence by or on behalf of the government of another State to the Government of Guyana or to a person receiving a communication on behalf of the government of that State; or
- (d) would divulge any information communicated in confidence by or on behalf of an international organisation of States or a body thereof to the Government of Guyana or to a person receiving a communication on behalf of that international organisation or body.

(2) For the purposes of this Act, a certificate signed by the Minister certifying that a document as described in a request would, if it existed, be one of a kind referred to in subsection (1), establishes conclusively that if such a document exists, it is an exempt document.

Internal working documents.

30. (1) Subject to this section, a document is an exempt document if it is a document the disclosure of which under this Act-

- (a) would disclose matter in the nature of opinion, advice or recommendation prepared by a public officer, adviser, consultant or Minister of Government, or consultation or deliberation that has taken place between officers, Ministers of Government, or an officer and a Minister of Government, in the course of, or for the purpose of, the deliberative processes involved in the functions of a public authority; and
- (b) would be contrary to the public interest.

(2) Subsection (1) shall cease to apply to a document brought into existence on or after the commencement of this Act when a period of twenty years has elapsed since the last day of the year in which the document came into existence.

(3) In the case of a document of the kind referred to in section 9(1), the matter referred to in subsection (1)(a) does not include –

- (a) matter that is provided for the use or guidance of, or is used or may be used for, the purpose of making decisions or recommendations, or enforcing written laws or schemes, referred to in section 9(1);
- (b) factual information;
- (c) the analysis, interpretation or evaluation of, or any projection based on factual information;
- (d) a statistical survey;
- (e) a report by a valuator, whether or not the valuator is an officer of the public authority;
- (f) an environmental impact statement or similar record;
- (g) a report of a test carried out on a product for the purpose of purchasing equipment for a public authority or a consumer test report;
- (h) a report or study on the performance or efficiency of a public authority, whether the report or study is of a general nature or is in respect of a particular programme or policy;
- (i) a feasibility or other technical study, including a cost estimate, relating to a policy or project of a public authority;
- (j) a report containing the results of field research undertaken before the formulation of a policy proposal;
- (k) a final plan or proposal to change a programme of a public authority, or for the establishment of a new programme, including a budgetary estimate for the programme, whether or not the plan or proposal is subject to approval, unless the

plan or proposal is to be submitted to Cabinet or a committee or subcommittee of Cabinet;

- (l) a report of an inter-departmental committee task force within a public authority, which has been established for the purpose of preparing a report on a particular topic, unless the report is to be submitted to Cabinet or a committee or subcommittee of Cabinet;
- (m) a report of a committee, council or other body which is attached to a public authority and which has been established for the purpose of undertaking inquiries and making reports and recommendations to the public authority;
- (n) the reasons for a final decision, order or ruling of a public authority made during or at the conclusion of the exercise of discretionary power conferred under a written law or scheme administered by the public authority, whether or not the written law or scheme allows an appeal to be taken against the decision, order or ruling, and whether or not the reasons –
 - (i) are contained in an internal memorandum of the public authority or in a letter from an officer or employee of the public authority; or
 - (ii) were given by the officer who made the decision, order or ruling or were incorporated by reference into the decision, order or ruling.

(4) Where a decision is made under Part IV that an applicant is not entitled to access to a document by reason of the application of this section, the notice under section 23 shall state the public interest considerations on which the decision is based.

Law enforcement documents.

31. (1) Subject to this section, a document is an exempt document if its disclosure under this Act would, or would be reasonably likely to -

- (a) prejudice the investigation of a breach or possible breach of the law or prejudice the enforcement or proper administration of the law in a particular instance;
- (b) prejudice the fair trial of a person or the impartial adjudication of a particular case;
- (c) disclose, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law;
- (d) disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures;
- (e) endanger the lives or physical safety of persons engaged in or in connection with law enforcement or persons who have provided confidential information in relation to the enforcement or administration of the law;
- (f) facilitate the escape of a person from lawful detention; or
- (g) jeopardise the security of any correctional facilities.

(2) This section does not apply to any document that is -

- (a) a document revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law;
- (b) a document revealing the use of illegal methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law;
- (c) a document containing any general outline of the structure of any programme adopted by a public authority for investigating breaches of, or enforcing or administering the law;

- (d) a report on the degree of success achieved in any programme adopted by a public authority for investigating breaches of, or enforcing or administering the law;
- (e) a report prepared in the course of routine law enforcement inspections or investigations by a public authority which has the function of enforcing and regulating compliance with a particular law other than the criminal law;
- (f) a report on a law enforcement investigation, where the substance of the report has been disclosed to the person who, or the body which, was the subject of the investigation, if it is in the public interest that access to the document should be granted under this Act.

Documents affecting legal proceedings or subject to legal professional privilege.

32. (1) A document 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.

(2) A document of the kind referred to in section 9(1) is not an exempt document by virtue of subsection (1) by reason only of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 9(1).

Documents affecting personal privacy.

33. (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person).

(2) The provisions of subsection (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of information relating to that person.

(3) A document referred to in subsection (1) shall not be released without the consent of the person who is the subject of the information in the document.

(4) Nothing in this Act shall be taken to require the Commissioner of Information to give information as to the existence or non-existence of a document of a kind referred to in subsection (1) where information as to the existence or non-existence of that document, if included in a document of a public authority, would cause the last-mentioned document to be an exempt document by virtue of this section.

(5) Notwithstanding subsection (3) where a request is made by a person other than a person referred to in subsection (2) for access to a document referred to in subsection (1) and the Commissioner of Information does not obtain the consent for disclosure of the person who is the subject of the information in the document (or in the case of a deceased person, that person's next-of-kin) the Commissioner of Information may subject to subsection (6) grant access to the document.

(6) Before granting access the Commissioner of Information shall consider whether the public interest in the disclosure of the information outweighs the concerns of the person referred to in subsection (1) and only if the answer is in the affirmative shall the Commissioner of Information decide to grant access to the document, but the Commissioner of Information shall inform the person referred to in subsection (1) of his decision and notify that person of his right to take injunctive action or apply to the High Court for judicial review.

Documents relating
to trade secrets.

34. (1) A document is an exempt document if its disclosure under this Act would disclose information acquired by a public authority from a business, commercial or financial undertaking, and –

- (a) the information relates to trade secrets or other matters of a business, commercial or financial nature;
- (b) the disclosure of the information under this Act would be likely to expose the undertaking to disadvantage; or

- (c) the disclosure of such information would prejudice the competitive position of the public authority or interfere with contractual or other negotiations of the public authority.

(2) In deciding whether disclosure of information would expose an undertaking to disadvantage, for the purposes of subsection (1) (b), the Commissioner of Information may take account of any of the following considerations-

- (a) whether the information is generally available to competitors of the undertaking;
- (b) whether the information would be exempt information if it were generated by a public authority;
- (c) whether the information could be disclosed without causing substantial harm to the competitive position of the undertaking;
- (d) whether there are any considerations in the public interest in favour of disclosure which outweigh considerations of competitive disadvantage to the undertaking, for instance, the public interest in evaluating aspects of regulation by a public authority of corporate practices or environmental controls, and of any consideration or considerations which in the opinion of the public authority is or are relevant; and
- (e) whether the information would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of the Government or the public authority to obtain similar information in the future.

(3) Prior to making a determination under subsection (1) as to whether the disclosure of information would expose an undertaking to disadvantage, the Commissioner of Information shall notify the undertaking which has supplied the relevant document or documents that the Commissioner of Information has

received a request for access to the document and shall –

- (a) seek the undertaking's view as to whether disclosure should occur; and
- (b) notify the undertaking where the Commissioner of Information after consultation has decided to disclose the document and in such a case notify the undertaking of the right to apply to the High Court for judicial review of the decision.

(4) A document is an exempt document if -

- (a) it contains the results of scientific or technical research undertaken by a public authority, and-
 - (i) the research could lead to a patentable invention;
 - (ii) the disclosure of the results in an incomplete state under this Act would be reasonably likely to expose a business, commercial or financial undertaking unreasonably to disadvantage;
 - (iii) the disclosure of the results before the completion of the research would be reasonably likely to expose the public authority unreasonably to disadvantage; or
- (b) it is an examination paper, a paper submitted by a student in the course of an examination, an examiner's report or similar document and the use or uses for which the document was prepared have not been completed.

Documents containing material obtained in confidence.

35. (1) A document is an exempt document if its disclosure under this Act would divulge any information or matter communicated in confidence by or on behalf of a person or a government to a public authority, and-

- (a) the information would be exempt information if it were generated by a public authority; or
- (b) the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure

would be reasonably likely to impair the ability of a public authority to obtain similar information in the future.

(2) This section does not apply to information-

- (a) acquired by a public authority from a business, commercial or financial undertaking; and
- (b) that relates to trade secrets or other matters of a business, commercial or financial nature.

Documents affecting the economy, commercial affairs and certain documents concerning operations of a public authority.

36. (1) A document is an exempt document if –

- (a) its premature disclosure under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to have a substantial adverse effect on the economy of Guyana, including but not limited to, the premature disclosure of proposed introduction, abolition or variation of any tax, duty, interest rate, exchange rate or instrument of economic management;
- (b) its disclosure under this Act would be contrary to the financial interests of a public authority by giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into with the public authority for the acquisition or disposal of property or the supply of goods or services;
- (c) its disclosure under this Act, by revealing information to a competitor of a public authority, would be likely to prejudice the lawful commercial activities of the public authority;
- (d) subject to subsection (2), it contains information obtained by a public authority from a third party who has consistently treated it as confidential and the disclosure of that information to a competitor of a third party, would be likely to prejudice the lawful commercial or professional activities of the third party;

- (e) its disclosure under this Act would be contrary to the public interest by reason that it would disclose instructions issued to, or provided for the use or guidance of, officers of a public authority on the procedures to be followed or the criteria to be applied in negotiation, including financial, commercial and labour negotiation, in the execution of contracts, in the defence, prosecution and settlement of cases, and in similar activities relating to the financial, property or personal management and assessment interests of the State or of a public authority;
- (f) its disclosure under this Act by revealing a contemplated change in conditions of operations of a financial institution, a contemplated sale or purchase of securities of foreign or Guyanese currency or a contemplated sale or acquisition of land or property would reasonably be expected to be materially injurious to the interests of Guyana or any of its public authorities.

(2) A document referred to in subsection (1) (d) is not an exempt document if the third party has consented to its disclosure to the applicant.

Documents to which secrecy provisions apply.

37. A document is an exempt document if there is in force a written law applying specifically to information of a kind contained in the document and prohibiting persons referred to in the written law from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.

Disclosure of exempt document in the public interest.

38. Notwithstanding any law to the contrary, the Commissioner of Information shall give access to an exempt document where there is reasonable evidence that significant-

- (a) abuse of authority or neglect in the performance of official duty;

- (b) injustice to a person;
- (c) danger to the health or safety of a person or of the public; or
- (d) unauthorised use of public funds,

has or is likely to have occurred or in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so.

PART VI MISCELLANEOUS

Where document
contains inaccurate
personal information.

39. (1) Where a document (whether or not it is one to which access has been given under this Act) contains personal information of a person and that person alleges that the information is inaccurate, the public authority which holds the document may, on the application, in writing, of that person, correct the information.

(2) In subsection (1), “inaccurate” means incorrect, incomplete, out of date, misleading or not relevant to the purpose for which the document is held.

(3) For the purpose of this section, information may be corrected by amending or annotating it.

(4) An application under this section shall specify as far as practicable, the document claimed to be the personal record requiring amendment or annotation, as the case may be, and shall-

- (a) in the case of an application for amendment, specify-
 - (i) whether information in the record is claimed to be incorrect, incomplete, out of date, misleading or not relevant and the information in respect of which that claim is made;
 - (ii) the applicant’s basis for making that claim; and
 - (ii) 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 correct, complete, up to date, not misleading and relevant.

Third party information.

40. (1) Where the Commissioner of Information intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Commissioner of Information shall, within fourteen days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Commissioner of Information may consider disclosing the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Commissioner of Information under subsection (1) to a third party in respect of any information or record or part thereof, the third party shall, within twenty-one days from the date of receipt of such notice, be given the opportunity to make representation to the Commissioner of Information.

Request made to the media.

41. Notwithstanding any other provision of this Act, where a request is made for access to a document held by the media, the media shall not be required to give access under this Act to any part of the document which discloses the source of any information obtained in the course of making any programme or broadcast.

Access to
information given
in good faith.

42. (1) Where access to a document has been given in accordance with the requirements of this Act or in good faith, in the belief that it was required to be given in accordance with this Act, unless malice is proved –

- (a) no action for defamation, breach of confidence or infringement of copyright may be brought against the Commissioner of Information, the public authority, the Minister, the responsible Minister, or an officer or employee of the public authority as a result of the giving of access;
- (b) no action for defamation or breach of confidence may be brought, in respect of any publication involved in the giving of access by the Commissioner of Information, against –
 - (i) any person who was the author of the document; or
 - (ii) any person as a result of that person having supplied the document or the information contained in it to the public authority;
- (c) no person shall be guilty of an offence by reason only of having authorised, or having been involved in the giving of the access.

(2) The giving of access to a document, including an exempt document, in consequence of a request shall not be taken for the purposes of the law relating to defamation, breach of confidence or copyright, to constitute an authorisation or approval of the publication of the document or its contents by the person to whom access is given.

(3) The giving of access to a document including an exempt document in consequence of a request shall impose on the person to whom access is given, the obligation to disclose accurately when and if disclosure is intended.

(4) Nothing in this Act affects any privilege, whether qualified or absolute, which may attach at common law to the publishing of a statement.

(5) Nothing in this Act shall be construed as authorising the disclosure of any official document –

- (a) containing any defamatory matter; or

- (b) the disclosure of which would be in breach of confidence or of copyright.

Aggrieved person may apply to the High Court for judicial review.

43. (1) For the removal of doubt, a person aggrieved by a decision of the Commissioner of Information under this Act may apply to the High Court for judicial review of the decision.

(2) Notwithstanding any other law to the contrary, where an application for judicial review of a decision of the Commissioner of Information under this Act is made to the High Court, that application shall be heard and determined by a Judge in Chambers, unless the Court, with the consent of the parties, directs otherwise.

(3) In this section, “decision of the Commissioner of Information” includes the failure of the Commissioner of Information to comply with section 18 or 19(1).

Annual reports.

44. (1) The Minister shall, as soon as practicable after the end of each year, prepare a report on the operation of this Act during that year and cause a copy of the report to be laid in the National Assembly.

(2) Each responsible Minister shall, in relation to the public authorities responsibility for which has been assigned to him, furnish to the Minister such information as he requires for the purpose of the preparation of any report under this section and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section.

(3) A report under this section shall include in respect of the year to which the report relates the following-

- (a) the number of requests made to the Commissioner of Information;
- (b) the number of decisions that an applicant was not entitled to access to a document pursuant to a request, the provisions of

- this Act under which these decisions were made and the number of times each provision was invoked;
- (c) the number of applications for judicial review of decisions under this Act and the outcome of those applications;
 - (d) the number of complaints made to the Commissioner of Information with respect to the operation of this Act and the nature of those complaints;
 - (e) the number of notices served upon the Commissioner of Information under section 11(1) and the number of decisions by the Commissioner of Information which were adverse to the person's claim;
 - (f) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;
 - (g) the amount of fees collected by the Commissioner of Information under this Act;
 - (h) particulars of any reading room or other facility including official websites provided by each public authority for use by applicants or members of the public;
 - (i) any other facts which indicate an effort by public authorities to administer and implement the spirit and intention of this Act.

Programme for dissemination of information.

45. (1) The responsible Minister may, to the extent of availability of financial and other resources-

- (a) develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights conferred under this Act;
- (b) encourage public authorities to participate in creating public awareness, in particular of disadvantaged communities as to how to exercise the rights conferred under this Act;

- (c) encourage public authorities to participate in the development and organisation of programmes referred to in paragraph (a) and to undertake such programmes themselves;
- (d) promote timely and effective dissemination of accurate information by public authorities about their activities; and
- (e) train public authorities to produce relevant training materials for use by the public authorities themselves and by the public.

(2) The Minister shall, within eighteen months from the commencement of this Act, compile a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act, and periodically update the guide as necessary.

Regulations.

46. (1) The Minister may make regulations for giving effect to the purposes of this Act and for prescribing anything required or authorised by this Act to be prescribed.

(2) Regulations made under this section shall be subject to negative resolution of the National Assembly.

(3) Where fees have not been prescribed for access to a document or to any information, the fees chargeable shall be on a cost recovery basis.

Removal of difficulties.

47. (1) If any difficulty arises in giving effect to the provisions of this Act, the Minister may, by order, make provisions as appear to the Minister to be necessary or expedient for removal of the difficulty.

(2) Every order made under this section shall be subject to negative resolution of the National Assembly.

Act not in
derogation.

48. The provisions of this Act are in addition to and not in derogation of the provisions of the Official Secrets Act 1911 of the United Kingdom as applicable to Guyana or any other law or any instrument having effect by virtue of any law other than this Act.

Bar of
jurisdiction of
courts.

49. No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

Penalties.

50. (1) A public authority shall maintain and preserve records in relation to its functions and a copy of all official documents which are created by it or which come at any time into its possession, custody or power.

(2) A person who wilfully destroys or damages a record or document required to be maintained and preserved under subsection (1), commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and imprisonment for six months.

(3) A person who knowingly destroys or damages a record or document which is required to be maintained and preserved under subsection (1) while a request for access to the record or document is pending commits an offence and is liable on summary conviction to imprisonment for one year.

(4) A person who knowingly is in unlawful possession of an exempt document commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and to imprisonment for six months.

(5) A person to whom access to a document is given and that person alters or defaces, obliterates or erases, destroys or conceals any part of the document with the intention of preventing the accurate disclosure of its contents, if published, is liable on summary conviction to a fine of three hundred thousand dollars and imprisonment for six months.

(6) A person who obstructs the Commissioner of Information or any person acting on behalf or under the direction of the Commissioner of Information in the performance of the Commissioner of Information's duties and functions

under this Act commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and imprisonment for six months.

(7) A person who discloses any content of exempt documents commits an offence and is liable on summary conviction to imprisonment for six months.

(8) A person who publishes exempt information on a website, blog site, any other social networking site, internet radio, or any other media commits an offence and is liable on summary conviction to imprisonment for one year.

ACCESS TO INFORMATION ACT 2011

**Request for Access to official document (s)
(pursuant to section 16)**

To the Commissioner of Information

- 1. Name of applicant
- 2. Address of applicant
- 3. Telephone number of applicant
- 4. **Doc. No. - Description of Document (s) - Requested Form of Access**
 - (a)
 - (b)
 - (c)

(NOTE: Applicants shall identify the document(s), or provide sufficient information to enable the Commissioner of Information or an officer of a public authority who is familiar with the relevant documents, to identify the document (s) requested with reasonable effort.

Continue on a separate page if necessary.

Subject to the provisions of this Act, access to a document may be granted by supplying a printed copy of it or by making it available for inspection or, if appropriate, by supplying a copy of a tape, disk, film or other material or by making arrangements for the hearing or viewing of such tape, disk, film or other material).

- 5. Assuming that all documents requested are exempt documents, give the Doc. No. of the documents described above of which you would like to have access to an edited version, if possible.

The making of this request is free of charge, but where access to a document is to be given in the form of a copy (printed or otherwise), the applicant shall be required to pay the prescribed fee.

Date of application

Signature of applicant

EXPLANATORY MEMORANDUM

The Bill is in accord with Article 146 of the Constitution and Article 19 of the Universal Declaration of Human Rights. The right to freedom of information is increasingly accepted as a necessary adjunct to participatory democracy the world over. The rationale for the right stems from the concept of open and transparent government and freedom of information may be viewed as capable of advancing a number of desirable objectives in the society. It helps to make government more accountable. It acts as a weapon in the fight against corruption and contributes to improving the quality of official decision-making.

This Bill provides for setting out a practical regime of right to information for persons to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of the Government and public authorities and for the appointment of the Commissioner of Information.

The Bill is divided into six Parts and has a Schedule.

Part I deals with preliminary matters. It sets out the short title to the Act and its commencement. It identifies the definition of terms and expressions used in the Bill. It states the objectives of the Act which are to extend the right of members of the public to access information in the possession of a public authority. This Part also addresses the application of the Act.

Part II deals with the appointment, removal and powers of the Commissioner of Information.

Part III addresses the publication in the *Gazette* and in a local daily newspaper by the Commissioner of Information of certain documents and information. It identifies the documents and categories of documents provided by a public authority for the use and guidance of the public authority or its officers. Statements of possession of certain documents have also to be published. The public authority has to make stipulated documents available for inspection to the public. A person may serve upon the Commissioner of Information a notice in writing stating that a statement published by the Commissioner does not specify a document or category of documents that is required to be specified in the statement.

Part IV deals with the right of access to information. It provides the right of all Guyanese or persons domiciled in Guyana to obtain access to an official document. This right may also be extended by the Minister by order to non-Guyanese and persons not domiciled in Guyana. Public authorities have the onus to maintain all their records duly catalogued, classified and indexed in a manner and form which facilitates the right of access to information. This Part lists documents which are exempted from right of access and the circumstances under which the Commissioner of Information may defer the provision of access. It stipulates the different forms in which access to a document may be given. It states the procedure by which a person may make a request, namely by, the form set out in the Schedule to the Bill, on the website of the Commissioner of Information or by other electronic means. The person must provide sufficient information to enable the Commissioner of Information or an officer of the public authority to identify the documents with reasonable effort. Application for access is free, however, where access is to be given in printed copies or copies in some other form, the applicant must pay a prescribed fee. In certain circumstances a document requested may contain exempt matter. In these circumstances,

the Commissioner of Information may advise the applicant to revise his application or inform the applicant that he can be given access to the document with the exempted matter deleted. There are also instances where the Commissioner of Information may refuse to grant access to documents where he is satisfied that the request is made by or on behalf of a person who on at least one previous occasion has made a request for access to the same document, where the request was refused in the High Court or where there are no reasonable grounds for making the request again.

Part V deals with exempt documents. It identifies the various types of documents which are exempt. These include, cabinet documents, documents which are likely to prejudice the defence of the State, international relations documents, law enforcement documents, documents subject to legal professional privilege, documents relating to trade secrets, documents affecting the economy, commercial affairs, the operations of a public authority and documents to which secrecy provisions apply. This Part provides that after a period of twenty years since the last day of the year in which a cabinet document or an internal working document came into existence, it shall cease to be an exempt document. Despite a document being exempt, the Commissioner of Information shall give access to the document where there is reasonable evidence that where giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so.

Part VI deals with miscellaneous matters. Where there are documents which contain inaccurate personal information, it allows for the person to whom the information relates to apply in writing to the public authority which holds the document to correct the information by amending or

annotating the document. It provides that where the Commissioner of Information intends to disclose any information about a third party, the Commissioner of Information must give written notification to the third party and invite that person to make a submission. This Bill does not require the media to give access to any part of a document which discloses the source of any information obtained in the course of making any programme or broadcast. An aggrieved person may apply to the High Court for judicial review of the decision of the Commissioner of Information. The Minister shall prepare an annual report on the operation of the Act and cause a copy of the report to be laid in the National Assembly. The Minister may make regulations to give effect to the purposes of this Act. The Bill makes provisions for offences and penalties.

The Schedule to the Bill contains the form in which a request for access to an official document is made.

Prime Minister