



REPUBLIC OF KENYA

DRAFT

FREEDOM OF INFORMATION ACT 2005

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BILLS 2005

A Bill for

An Act of Parliament to enable members of the public obtain access, to the widest extent possible and consistent with the public interest and the right to privacy, to information in the possession of Government or bodies owned or controlled by government and to enable citizens to have personal information relating to them in the possession of such bodies corrected; and further to provide for a right of access to records held by such bodies, for necessary exceptions to that right and for assistance to persons to enable them to exercise that right, to provide for the independent review both of decisions of such bodies relating to that right; and for the operation of this Act.

PART I - PRELIMINARY

1. Short Title and Commencement

This Act may be cited as the “Freedom of Information Act, 2005” and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint and in this regard the Minister may appoint different dates for different provisions.

2. Object

(1) The object of this Act is to extend as far as possible the right of the Kenyan citizens to access information in the possession of the Government by:

(a) making available to the public information about the operations of government and, in particular, ensuring that rules and practices affecting members of the public in their

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dealings with the government are readily available to persons affected by those rules and practices; and

- (b) creating a general right of access to information in documentary form in the possession of government departments, agencies and local 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 government; and
- (c) creating a right to bring about the amendment of records containing personal information that is incomplete, incorrect, out of date or misleading.

3. Definitions

“agency” means an organization that is owned or controlled by the government.

“applicant” means a person who has made a request for information.

“Cabinet notebook” means a notebook or other like record that contains notes of discussions or deliberations taking place in a meeting of the Cabinet or of a committee of the Cabinet, being notes made in the course of those discussions or deliberations by, or under the authority of, the Secretary to the Cabinet.

“document” includes:

(1) any of, or any part of any of, the following things:

- (i) any paper or other material on which there is writing;
- (ii) a map, plan, drawing or photograph;

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- (iii) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
 - (iv) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;
 - (v) any article on which information has been stored or recorded, either mechanically or electronically;
 - (vi) any other record of information; or
- (2) any copy, reproduction or duplicate of such a thing; or
- (3) any part of such a copy, reproduction or duplicate; but does not include:
- (i) library material maintained for reference purposes; or
 - (ii) Cabinet notebooks.

“edited copy”, in relation to a document, means a copy of the document from which deletions have been made under section 17.

“Information Access Office” means a place that is an Information Access Office for the purposes of section 20.

“Information” includes data, text, images, sound, codes, computer programmes, software and data bases or micro film or computer generated micro fiche;

“Minister” means minister in responsible for information.

“minister” means minister responsible for a government department or agency.

“Personal information” means information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

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PART II: PUBLICATION OF DOCUMENTS AND INFORMATION

4. Publication of information maintained by the government.

(1) The responsible minister of a government agency shall:

(a) cause to be published in the Kenya Gazette, as soon as practicable after the commencement of this section but not later than 12 months after that commencement, in a form approved by the Minister administering this Act:

- (i) a statement setting out particulars of the agency and functions of the agency, indicating, as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions;
- (ii) a statement setting out particulars of any arrangements that exist for bodies or persons outside the government to participate, either through consultative procedures, the making of representations or otherwise, in the formulation of policy by the agency, or in the administration by the agency, of any other business of the agency;
- (iii) a statement of particulars of the facilities, if any, provided by the agency for enabling members of the public to obtain access to the documents of the agency in electronic and printed form; and
- (iv) a statement of any information that needs to be available to the public concerning particular procedures of the agency in relation to Part III of this Act, and particulars of the officer or officers to whom, and the place or places at

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which, initial inquiries concerning access to documents may be directed; and

(b) during the year commencing on 1 January next following the publication, in respect of the agency, of the statement under subsection (1) (a) that is the first statement published under that subparagraph, and during each succeeding year, cause to be published statements bringing up to date the information contained in the previous statement or statements published under that subsection.

(2) In approving a form under subsection (1), the Minister shall have regard, amongst other things, to the need to assist members of the public to exercise effectively their rights under this Act.

(3) The information to be published in accordance with this section shall be contained in the annual report of the agency to the responsible Minister of the agency relating to the activities, operations, business or affairs of the agency.

(4) Nothing in this section requires the publication of information that is of such a nature that its inclusion in a document of the agency would cause that document to be an exempt document.

(5) Subsection (1) applies in relation to an agency that comes into existence after the commencement of this section as if the references in that subsection to the commencement of this section were references to the day on which the agency comes into existence.

5. Documents to be available for inspection and purchase

(1) This section applies, in respect of an agency, to documents that are provided by the agency for the use of, or are used by, the agency or its officers in making decisions or recommendations, under or

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for the purposes of an enactment or scheme administered by the agency, with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to which persons are or may be entitled or subject, being:

- (a) manuals or other documents containing interpretations, rules, guidelines, practices or precedents including, but without limiting the generality of the foregoing, precedents in the nature of letters of advice providing information to bodies or persons outside the government;
- (b) documents containing particulars of such a scheme, not being particulars contained in an enactment as published apart from this Act;
- (c) documents containing statements of the manner, or intended manner, of administration or enforcement of such an enactment or scheme; or
- (d) documents describing the procedures to be followed in investigating breaches or evasions or possible breaches or evasions of such an enactment or of the law relating to such a scheme; but not including documents that are available to the public as published otherwise than by an agency or as published by another agency.

(2) The principal officer of an agency shall:

- (a) cause copies of all documents to which this section applies in respect of the agency that are in use from time to time to be made available for inspection and for purchase by members of the public;
- (b) cause to be prepared by a day not later than the relevant day in relation to the agency, and as soon as practicable after

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preparation to be made available, for inspection and for purchase by members of the public, at each Information Access Office, a statement (which may take the form of an index) specifying the documents of which copies are, at the time of preparation of the statement, available in accordance with subsection 2(a) and the place or places where copies may be inspected and may be purchased; and

(c) cause to be prepared within 3 months, if practicable, and in any case not later than 12 months, after the preparation of the last preceding statement prepared in accordance with paragraph (b) or this paragraph, and as soon as practicable after preparation to be made available, for inspection and for purchase by members of the public, at each Information Access Office, a statement bringing up to date the information contained in that last preceding statement.

(3) Where a person makes a request to inspect or to purchase a document of an agency concerning a particular enactment or scheme, being a document of a kind to which this section applies, the principal officer of the agency shall take all reasonable steps to ensure that the attention of that person is drawn to any document of the agency concerning that enactment or scheme that is relevant to the request and has become a document to which this section applies since the last occasion on which a statement in respect of documents of the agency was prepared and made available.

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PART III: ACCESS TO DOCUMENTS

6. Right of access

(1) Subject to this Act, every citizen has a legally enforceable right to obtain access in accordance with this Act to:

(a) an official document of a government department, other than an exempt document; or

(b) a document of an agency, other than an exempt document.

(2) Subject to this Act, a person's right of access is not affected by:

(a) any reasons the person gives for seeking access; or

(b) the agency's or minister's belief as to what are his or her reasons for seeking access.

7. Part not to apply to certain documents

(1) A person is not entitled to obtain access under this part to:

(a) a document, or a copy of a document, which is, under the *Archives Act 1983*, within the open access period within the meaning of that Act unless the document contains personal information (including personal information about a deceased person); or

(b) a document that is open to public access, as part of a public register or otherwise, in accordance with another enactment, where that access is subject to a fee or other charge; or a document that is open to public access, as part of a land title

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register, in accordance with the law where that access is subject to a fee or other charge; or

(c) document that is available for purchase by the public in accordance with arrangements made by an agency.

(2) A person is not entitled to obtain access under this section to a document or a part of a document that became a document of an agency before the date of commencement of this part unless the document or that part of the document contains information that is:

(i) personal information about that person; or

(ii) information relating to that person's business, commercial or financial affairs; or

(iii) the document or that part of the document is a document or a part of a document access to which is reasonably necessary to enable a proper understanding of a document of an agency or an official document of a Ministry to which that person has lawfully had access.

8. Documents in certain institutions

(1) A document shall not be deemed to be a document of an agency for the purposes of this Act by reason of its being:

(a) in the collection of library material maintained by the Kenya National Library Services;

(b) material included in the historical material in the possession of the Museums of Kenya; or

(c) in the custody of the Kenya National Archives.

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- (2) For the purposes of this Act, a document that has been placed in the custody of the National Archives, or in a collection referred to in subsection (1), by an agency shall be deemed to be in the possession of that agency or, if that agency no longer exists, the agency whose functions the document is most closely related.
- (3) Nothing in this Act affects the provision of access to documents by the National Archives in accordance with the Archives Act 1983.

9. Access to documents apart from Act

Nothing in this Act is intended to prevent or discourage ministers and agencies from publishing or giving access to documents (including exempt documents), otherwise than as required by this Act, where they can properly do so or are required by law to do so.

10. Requests for access

- (1) Subject to section 15 (1), a person who wishes to obtain access to a document of an agency or an official document of a ministry may request access to the document.
- (2) The request must:
- (a) be send in writing or in electronic form; and
 - (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the minister, to identify it; and

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- (c) specify an post office address in Kenya or an e-mail address at which notices under this Act may be sent to the applicant; and
 - (d) be sent by post or e-mail to the agency or minister, or delivered to an officer of the agency or a member of the staff of the minister, at the address of any central or regional office of the agency or Ministry specified in a current telephone directory; and
 - (e) be accompanied by the fee payable under the regulations in respect of the request.
- (3) Where a person wishes to make a request to an agency; or has made to an agency a request that does not comply with this section; it is the duty of the agency to take reasonable steps to assist the person to make the request in a manner that complies with this section,
- (4) Where a person has directed to an agency a request that should have been directed to another agency or to a minister, it is the duty of the first-mentioned agency to take reasonable steps to assist the person to direct the request to the appropriate agency or minister.
- (5) On receiving a request, the agency or ministry must:
- (a) as soon as practicable but in any case not later than 14 days after the day on which the request is received by or on behalf of the agency or minister, take all reasonable steps to enable the applicant to be notified that the request has been received; and
 - (b) as soon as practicable but in any case not later than the end of the period of 30 days after the day on which the request is received by or on behalf of the agency or minister, take all reasonable steps to enable the applicant to be notified of a decision on the request (including a decision under section 21 to defer the provision of access to a document).

11. Request for access to personnel records

(1) In this section:

“Personnel records”, in relation to an employee or former employee of an agency, means those documents containing personal information about him or her that are, or have been, kept by the agency for personnel management purposes.

(2) Where:

(a) there are established procedures in an agency (apart from those provided for by this Act) in accordance with which a request may be made by an employee of the agency for access to his or her personnel records; and

(b) a person who is or was an employee of the agency wishes to obtain access to his or her personnel records; the person must not apply under section 15 for access to such records unless the person has made a request for access to the records in accordance with the procedures referred to in paragraph (a); and either:

(i) is not satisfied with the outcome of the request; or

(ii) has not been notified of the outcome within 30 days after the request was made.

12. Transfer of requests

Where a request is made to an agency for access to a document and:

(a) the document is not in the possession of that agency but is, to the knowledge of that agency, in the possession of another agency; or

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(b) the subject-matter of the document is more closely connected with the functions of another agency than with those of the agency to which the request is made;

the agency to which the request is made may, with the agreement of the other agency, transfer the request to the other agency.

13. E-Mail and other Computer-based Requests

(1) Where:

(a) a request is made in accordance with the requirements of subsection 10(2) to the agency; and

(b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and

(c) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and

(d) the agency could produce a written document containing the information in discrete form by:

(i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or

(ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that

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information and, for that purpose, this Act applies as if the agency had such a document in its possession.

- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

14. Access to documents to be given on request

(1) Subject to this Act, where:

(a) a request is made in accordance with the requirements of subsection 10(2) by a person to an agency or ministry for access to a document of the agency or an official document of the ministry; and

(b) any charge that is required to be paid before access is granted has been paid; the person shall be given access to the document in accordance with this Act.

- (2) An agency or ministry is not required by this Act to give access to a document at a time when the document is an exempt document.

15. Forms of access

(1) Access to a document may be given to a person in one or more of the following forms:

(a) a reasonable opportunity to inspect the document;

(b) provision by the agency or minister of a copy of the document;

(c) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, the

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making of arrangements for the person to hear or view those sounds or visual images;

(d) 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, provision by the agency or ministry of a written transcript of the words recorded or contained in the document.

(2) Subject to subsection (3) and to section 17, where the applicant has requested access in a particular form, access shall be given in that form.

(3) If giving of access in the form requested by the applicant:

(a) would interfere unreasonably with the operations of the agency, or the performance by the minister of his or her functions, as the case may be;

(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, but for this Act, involve an infringement of copyright (other than copyright owned by the government or agency) subsisting in matter contained in the document, being matter that does not relate to the affairs of an agency or of an organization funded by the government;

access in that form may be refused and access given in another form.

(4) Subject to subsection 17(1), where a person requests access to a document in a particular form and, for a reason specified in subsection (3), access in that form is refused but access is given in

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another form, the applicant shall not be required to pay a charge in respect of the provision of access to the document that is greater than the charge that he or she would have been required to pay if access had been given in the form requested.

16. Deferment of access

(1) An agency which, or a minister who, receives a request may defer the provision of access to the document concerned:

(a) if the publication of the document concerned is required by law, until the expiration of the period within which the document is required to be published;

(b) if the document concerned has been prepared for presentation to Parliament or for the purpose of being made available to a particular person or body or with the intention that it should be so made available, until the expiration of a reasonable period after its preparation for it to be so presented or made available;

(c) if the premature release of the document concerned would be contrary to the public interest, until the occurrence of any event after which or the expiration of any period of time beyond which the release of the document would not be contrary to the public interest; or

(d) if a minister considers that the document concerned is of such general public interest that the Parliament should be informed of the contents of the document before the document is otherwise made public, until the expiration of 5 sitting days after presentation to the Parliament.

(2) Where the provision of access to a document is deferred in accordance with subsection (1), the agency or minister shall, in

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informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.

17. Deletion of exempt matter or irrelevant material

(1) Where:

(a) An agency or minister decides:

- (i) not to grant a request for access to a document on the ground that it is an exempt document; or
- (ii) that to grant a request for access to a document would disclose information that would reasonably be regarded as irrelevant to that request; and

(b) it is possible for the agency or minister to make a copy of the document with such deletions that the copy:

- (i) would not be an exempt document; and
- (ii) would not disclose such information; and

(c) it is reasonably practicable for the a agency or ministry, having regard to the nature and extent of the work involved in deciding on and making those deletions and the resources available for that work, to make such a copy; the agency or Ministry shall, unless it is apparent from the request or as a result of consultation by the agency or minister with the applicant, that the applicant would not wish to have access to such a copy, make, and grant access to, such a copy.

(2) Where access is granted to a copy of a document in accordance with subsection (1) the applicant must be informed:

- (a) that it is such a copy; and
- (b) of the ground for the deletions; and
- (c) if any matter deleted is exempt matter because of a provision of this Act – that the matter deleted is exempt matter because of that provision.

18. Decisions to be made by authorized persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

19. Requests may be refused in certain cases

- (1) The agency or minister dealing with a request may refuse to grant access to documents in accordance with the request, without having caused the processing of the request to have been undertaken, if the agency or minister is satisfied that the work involved in processing the request:

(a) in the case of an agency, would substantially and unreasonably divert the resources of the agency from its other operations; or

(b) in the case of a minister, would substantially and unreasonably interfere with the performance of the minister's functions.

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

(a) in identifying, locating or collating the documents within the filing system of the agency, or the office of the minister; 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 examining the documents; or

(ii) in consulting with any person or body in relation to the request; or

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

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

(3) The agency or minister is not to have regard to any maximum amount, specified in regulations, payable as a charge for processing a request of that kind.

(4) In deciding whether to refuse, under subsection (1), to grant access to documents, an agency or minister must not have regard to:

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- (a) any reasons that the person who requests access gives for requesting access; or
 - (b) the agency's or minister's belief as to what are his or her reasons for requesting access.
- (5) An agency or minister 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 to be an exempt document 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 is expressed to relate 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 22 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 agency or minister with the person making the request, that the person would not wish to have access to an edited copy of the document.

20. Information Access Offices

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- (1) The minister administering this Act shall cause to be published, as soon as practicable after the date of commencement of this Part, but not later than 12 months after that date, a statement setting out the addresses of such offices of the Government, throughout Kenya, as are to be Information Access Offices for the purposes of this section.
- (2) A person who is entitled to obtain access to a document of an agency or to an official document of a minister shall have that access provided, if the person so requests, at the Information Access Office having appropriate facilities to provide access in the form requested that is closest to his or her normal place of residence.

PART IV – EXEMPT DOCUMENTS

21 Documents affecting national security, defence or international relations

- (1) A document is an exempt document if disclosure of the document under this Act:
 - (a) would, or could reasonably be expected to, cause damage to:
 - (i) the security of the Republic;
 - (ii) the defense of the Republic; or
 - (iii) the international relations of the Republic; or
 - (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government, to an authority of the

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Government or to a person receiving the communication on behalf of the Government or of an authority of the Government.

- (2) Where a minister is satisfied that a document is an exempt document for a reason referred to in subsection (1), he or she may sign a certificate to that effect (specifying that reason) and, subject to the operation of Part VI, such a certificate, so long as it remains in force, establishes conclusively that the document is an exempt document referred to in subsection (1).
- (3) Where a minister is satisfied as mentioned in subsection (2) by reason only of matter contained in a particular part or particular parts of a document, a certificate under that subsection in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.
- (4) Where a minister is satisfied that information as to the existence or non-existence of a document as described in a request would, if contained in a document of an agency, cause the last-mentioned document to be an exempt document under this section for a reason referred to in subsection (1), he or she may sign a certificate to that effect (specifying that reason).
- (5) The responsible minister in charge of an agency may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him or her, delegate to the principal officer of the agency his or her powers under this section in respect of documents of the agency.
- (6) A power delegated under subsection (5), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the responsible minister.

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(7) A delegation under subsection (5) does not prevent the exercise of a power by the responsible minister.

22 Documents affecting relations with Other Governments

(1) Subject to subsection (5), a document is an exempt document if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to relations between the Government and a foreign state; or

(b) would divulge information or matter communicated in confidence by or on behalf of the Government or a body established by government, to the or to a person receiving the communication on behalf of the Government or of a body established by government or Parliament.

(2) Where a minister is satisfied that a document:

(a) is an exempt document for a reason referred to in subsection (1); and

(b) is not a document containing matter the disclosure of which under this Act would be, on balance, in the public interest; the minister may sign a certificate to that effect, specifying that reason.

Subject to the operation of Part VI, such a certificate, so long as it remains in force, establishes conclusively that the document:

(a) is an exempt document referred to in subsection (1); and

(b) does not contain matter the disclosure of which under this Act would, on balance, be in the public interest.

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(3) Where a minister is satisfied as mentioned in subsection (2) by reason only of matter contained in a particular part or particular parts of a document, a certificate under that subsection in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.

(4) Where a minister is satisfied that information as to the existence or non-existence of a document as described in a request would, if contained in a document:

(a) cause the last-mentioned document to be an exempt document for a reason referred to in subsection (1); and

(b) not cause the last-mentioned document to be a document containing matter the disclosure of which under this Act would be, on balance, in the public interest; the minister may sign a certificate to that effect, specifying that reason.

(4A) Subject to the operation of Part VI, such a certificate, so long as it remains in force, establishes conclusively that the document:

(a) would be an exempt document referred to in subsection (1); and

(b) would not contain matter the disclosure of which under this Act would, on balance, be in the public interest.

(5) The responsible minister of an agency may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him or her, delegate to the principal officer of the agency his or her powers under this section in respect of documents of the agency.

(6) A power delegated under subsection (6), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the responsible minister.

(7) A delegation under subsection (5) does not prevent the exercise of a power by the responsible minister.

23 Cabinet documents

(1) A document is an exempt document if it is:

(a) a document that has been submitted to the Cabinet for its consideration or is proposed by a minister to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Cabinet;

(b) an official record of the Cabinet;

(c) a document that is a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or

(d) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was officially published.

24 Internal working documents

(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, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in

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the functions of an agency or minister or of the Government;
and

(b) would be contrary to the public interest.

(2) In the case of a document of the kind referred to in subsection 9(1), the matter referred to in paragraph (1)(a) of this section does not include matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in subsection 9(1).

(3) Where a minister is satisfied, in relation to a document to which subsection (1)(a) applies, that the disclosure of the document would be contrary to the public interest, he or she may sign a certificate to that effect (specifying the ground of public interest in relation to which the certificate is given) and, subject to the operation of Part VI, such a certificate, so long as it remains in force, establishes conclusively that the disclosure of that document would be contrary to the public interest.

(4) Where a minister is satisfied as mentioned in subsection (3) by reason only of matter contained in a particular part or particular parts of a document, a certificate under that subsection in respect of the document shall identify that part or those parts of the document as containing the matter by reason of which the certificate is given.

25 Periods for which certain certificates remain in force

(1) The regulations may, in respect of certificates, prescribe:

(a) periods as the maximum periods during which such certificates may remain in force; and

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(b) the manner in which such certificates may be revoked before the end of such periods.

(2) Where a regulation made for the purposes of subsection (1) provides a maximum period during which certificates of a particular kind may remain in force, a certificate of that kind (whether made before or after the regulation came into force) remains in force for that period unless it is revoked, in accordance with the regulations, before the end of that period.

26 Documents affecting enforcement of law and protection of public safety

(1) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

(a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance;

(b) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; or

(c) endanger the life or physical safety of any person.

(2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

(a) prejudice the fair trial of a person or the impartial adjudication of a particular case;

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- (b) disclose lawful 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; or
- (c) prejudice the maintenance or enforcement of lawful methods for the protection of public safety.

27 Documents affecting financial or property interests of the Government

- (1) Subject to subsection (2), a document is an exempt document if its disclosure under this Act would have a substantial adverse effect on the financial or property interests of the Government or of an agency.
- (2) This section does not apply to a document in respect of matter in the document the disclosure of which under this Act would, on balance, be in the public interest.

28 Documents concerning certain operations of agencies

- (1) Subject to subsection (2), a document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:
 - (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by a agencies;
 - (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;

(c) have a substantial adverse effect on the management or assessment of personnel by the Government or by an agency;

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

29 Documents affecting personal privacy

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

30 Documents subject to legal professional privilege

A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

31 Documents relating to business affairs etc.

(1) A document is an exempt document if its disclosure under this Act would disclose:

(a) trade secrets;

(b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or

(c) information (other than trade secrets or information to which paragraph (b) applies) concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organization or undertaking, being information:

- (i) the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organization or undertaking in respect of its lawful business, commercial or financial affairs; or
- (ii) the disclosure of which under this Act could reasonably be expected to prejudice the future supply of information to the Government or an agency for the purpose of the administration of a law of Kenya or the administration of matters administered by the agency.

32 Documents relating to research

(1) A document is an exempt document if:

- (a) it contains information relating to research that is being, or is to be, undertaken by an officer of an agency; and
- (b) disclosure of the information before the completion of the research would be likely unreasonably to expose the agency or officer to disadvantage.

33 Documents affecting national economy

(1) A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that it:

- (a) would, or could reasonably be expected to, have a substantial adverse effect on the ability of the Government to manage the economy; or
- (b) could reasonably be expected to result in an undue disturbance of the ordinary course of business in the country, or an undue benefit or detriment to any person or class of persons, by reason

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of giving premature knowledge of or concerning proposed or possible action or inaction of the Government or Parliament.

(2) The kinds of documents to which subsection (1) may apply include, but are not limited to, documents containing matter relating to:

(a) currency or exchange rates;

(b) interest rates;

(c) taxes, including duties of customs or of excise;

(d) the regulation or supervision of banking, insurance and other financial institutions;

(e) proposals for expenditure;

(f) foreign investment in Kenya; or

(g) borrowings by the State or bodies owned by the government.

34 Documents disclosure of which would be contempt of court or Parliament

A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity granted by law:

(a) be in contempt of court;

(b) be contrary to an order made or direction given by a Court or by a tribunal or other person or body having power to take evidence on oath; or

(c) infringe the privileges of the Parliament.

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34 Electoral rolls and related documents

(1) Subject to this section, a document is an exempt document if it is:

- (a) an electoral roll; or
- (b) a print, or a copy of a print, of an electoral roll; or
- (c) a microfiche of an electoral roll; or
- (d) a copy on tape or disk of an electoral roll; or
- (e) a document that:
 - (i) sets out particulars of electors; and
 - (ii) was derived from an electoral roll.

(2) The part of an electoral roll that sets out the particulars of an elector is not an exempt document in relation to the elector.

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PART V – AMENDMENT AND ANNOTATION OF PERSONAL RECORDS

35 Application for amendment or annotation of personal records

Where a person claims that a document of an agency or an official document of a minister to which access has been lawfully provided to the person, whether under this Act or otherwise, contains personal information about that person:

- (a) that is incomplete, incorrect, out of date or misleading; and
- (b) that has been used, is being used or is available for use by the agency or minister for an administrative purpose;

the person may apply to the agency or minister for:

- (c) an amendment; or
- (d) an annotation;

of the record of that information kept by the agency or minister.

36 Requirements of an application for amendment

An application for amendment must:

- (a) be in writing; and
- (b) as far as practicable, specify:
 - (i) the document or official document containing the record of personal information that is claimed to require amendment; and
 - (ii) the information that is claimed to be incomplete, incorrect, out of date or misleading; and

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- (iii) whether the information is claimed to be incomplete, incorrect, out of date or misleading; and
- (iv) the applicant's reasons for so claiming; and
- (v) the amendment requested by the applicant; and
- (vi) specify an address in Kenya to which a notice under this Part may be sent to the applicant;

37 Amendment of records

(1) Subject to section 37 (c), where the agency or minister to whom such an application is made is satisfied that:

(a) the record of personal information to which the request relates is contained in a document of the agency or an official document of the minister, as the case may be; and

(b) the information is incomplete, incorrect, out of date or misleading; and

(c) the information has been used, is being used or is available for use by the agency or minister for an administrative purpose;

the agency or minister may amend the record of information.

(2) The agency or minister may make the amendment:

(a) by altering the document or official document concerned to make the information complete, correct, up to date or not misleading; or

(b) by adding to that document or official document a note:

- (i) specifying the respects in which the agency or minister is satisfied that the information is incomplete, incorrect, out of date or misleading; and
 - (ii) in a case where the agency or minister is satisfied that the information is out of date – setting out such information as is required to bring the information up to date.
- (3) To the extent that it is practicable to do so, the agency or minister must, when making an amendment under paragraph (2)(a), ensure that the record of information is amended in a way that does not obliterate the text of the record as it existed prior to the amendment.

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PART VI—REVIEW OF DECISIONS

38 Internal review

- (1) Subject to subsection (2) , where a decision has been made, in relation to a request to an agency, otherwise than by the responsible minister or principal officer of an agency, being:
- (a) a decision refusing to grant access to a document in accordance with a request; or
 - (b) a decision granting access to a document but not granting, in accordance with the request, access to all documents to which the request relates; or
 - (c) a decision purporting to grant, in accordance with a request, access to all documents to which the request relates, but not actually granting that access; or
 - (d) a decision to defer the provision of access to a document; or
 - (e) a decision relating to imposition of a charge or the amount of a charge; or
 - (f) a decision relating to remission of an application fee; or
 - (g) a decision to grant access to a document only to a qualified person; or
 - (h) a decision refusing to amend a record of personal information in accordance with an application made under section 35; or
 - (i) a decision refusing to annotate a record of personal information in accordance with an application made under section 35;

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the applicant may, by application in writing to the agency accompanied by any application fee in respect of the application, request a review of the decision.

- (2) The application must be made: (a) in the case of a decision of a kind mentioned in subsections (1)(a), (c), (d), (e), (g) and (h) – within 30 days, or such further period as the agency allows, after the day on which the decision is notified to the applicant; or (b) in the case of a decision of a kind mentioned in paragraph (1)(b), (c) or (f):
- (i) within 30 days, or such further period as the agency allows, after the day on which the decision is notified to the applicant; or
 - (ii) within 15 days after the day on which the access referred to in that paragraph was granted; whichever period is longer.
- (3) A decision by the agency to allow a further period for making an application may be made whether or not the time for making such an application has already expired.

PART VII - MISCELLANEOUS

39 Establishment of Public Information Directorate

(1) There is to be established a directorate to be known Public Information Directorate, headed by the Director of Public information and comprising such other officials as may be determined from time to time.

(2) The functions of the Directorate shall be to:-

- (a) determine what information it is expedient to give the public concerning the operation of this Act; good practices; and other matters within the scope of this Act;
- (b) give advice to any person as to any of the matters covered by this Act including approving publication schemes of government departments and agencies; and
- (c) from time to time make proposals to ministers regarding the exercise by them of their functions under this Act.

40 Publication Schemes

(1) It shall be the duty of every government agency:

- (a) to design and maintain a scheme which relates to the publication of information by the agency and is approved by the Director of Public Information (in this Act referred to as a "publication scheme"),
- (b) to publish information in accordance with its publication scheme, and
- (c) from time to time to review its publication scheme.

(2) A publication scheme must-

- (a) specify classes of information which the public authority publishes or intends to publish,
- (b) specify the manner in which information of each class is, or is intended to be, published, and
- (c) specify whether the material is, or is intended to be, available to the public free of charge or on payment.

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(3) In adopting or reviewing a publication scheme, a public authority shall have regard to the public interest:-

- (a) in allowing public access to information held by the authority, and
- (b) in the publication of reasons for decisions made by the authority.

(5) The Director of Public Information may, when approving a scheme, provide that his approval is to expire at the end of a specified period.

(6) Where the Director of Public Information:-

- (a) refuses to approve a proposed publication scheme, or
- (b) revokes his approval of a publication scheme,

he must give the public authority a statement of his reasons for doing so.

41 Establishment and constitution of Appeals Tribunal

There shall be established an appeals Tribunal for the purpose of arbitrating in cases where disputes arise between parties under this Act which shall consist of:

- (a) a chairman who shall be a person who holds or has held a judicial office in Kenya or who is an advocate of not less than seven years standing and entitled to practice before any of the courts of Kenya; and

(b) two other members who are persons possessing expert knowledge of the matters likely to come before the Tribunal and who are not in the employment of the Government.

(2) The chairman and other members of the Tribunal shall be appointed by the Minister in consultation with the Attorney-General and the provisions set out in the first Schedule shall have effect in relation to the membership, procedure and sittings of the Tribunal.

(3) The Minister may from time to time publish in the gazette amend the schedule as he deems fit.

(4) The members of the Tribunal shall hold office for a period of three years but shall be eligible for reappointment for one further term of a period not exceeding three years.

42 Applications to the Information Tribunal

(1) Subject to this section, an application may be made to the Information Tribunal for review of:

(a) a decision refusing to grant access to a document in accordance with a request; or

(b) a decision granting access to a document but not granting, in accordance with a request, access to all documents to which the request relates; or

(c) a decision purporting to grant, in accordance with a request, access to all documents to which the request relates, but not actually granting that access; or

(b) a decision to defer the provision of access to a document; or

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- (d) a decision relating to imposition of a charge or the amount of a charge; or
- (e) a decision relating to remission of an application fee; or
- (f) a decision to grant access to a document only to a qualified person; or
- (g) a decision refusing to amend a record of personal information in accordance with an application made under section 37.

43 Application to Information Tribunal where decision delayed

(1) Subject to this section, where:

- (a) a request has been made to an agency or Minister in accordance with section 15; and
- (b) the period of 30 days, in relation to the request, mentioned in paragraph 15(5)(b), or that period as extended under subsection 15(6), has expired since the day on which the request was received by or on behalf of the agency or Minister; and
- (c) notice of a decision on the request has not been received by the applicant;

the principal officer of the agency or the minister shall, for the purpose of enabling an application to be made to the Tribunal, be deemed to have made, on the last day of that period, a decision refusing to grant access to the document.

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44 Powers of the Tribunal

- (1) Subject to this section, in proceedings under this Part, the Commission has power, in addition to any other power, to review any decision that has been made by an agency or minister in respect of the request and to decide any matter in relation to the request that, under this Act, could have been or could be decided by an agency or minister, and any decision of the Tribunal under this section has the same effect as a decision of the agency or minister.
- (2) Where, in proceedings under this Act, it is established that a document is an exempt document, the Tribunal does not have power to decide that access to the document, so far as it contains exempt matter, is to be granted.
- (3) Where there is in force in respect of a document a certificate under section 33, 33A, 34, 35 or 36, the powers of the Tribunal do not extend to reviewing the decision to give the certificate, but the Tribunal may determine such question in relation to that certificate as is provided for in whichever of subsections (4), (5) and (5A) applies in relation to that certificate.
- (4) Where application is or has been made to the Commission for the review of a decision refusing to grant access to a document in accordance with a request, being a document that is claimed to be an exempt document under section 33, 33A, 34 or 35 and in respect of which a certificate (other than a certificate of a kind referred to in subsection (5A)) is in force under that section, the Tribunal shall, if the applicant so requests, determine the question whether there exist reasonable grounds for that claim.

45. Repeal of Cap187 and Savings

The Official Secrets Act is repealed.

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FIRST SCHEDULE

MEETINGS OF THE APPEALS TRIBUNAL

1. Appointment of members

The members of the Tribunal shall hold office for a period, not exceeding two years, such member shall hold and vacate his office in accordance with the terms and conditions of his appointment.

2. Resignation

Any member may at any time by notice in writing to the Minister resign his office.

3. Vacation of Office by a member

(1) If a member of the Tribunal becomes is appointed to the service of the Government his office shall become vacant.

(2) The chairman or a member of 'the Tribunal may be removed from office by the Minister if he is :-

- (a) unable to discharge the functions of his office by reason of mental or physical infirmity; or
- (b) an undischarged bankrupt; or
- (c) convicted of an offence involving fraud or dishonesty; or
- (d) convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or a fine exceeding ten thousand shillings.

5. Vacancy

Where the office of any member becomes vacant, whether by death or otherwise, the Minister may appoint another person to be a member of the Tribunal for the remainder of the term of the member whose vacancy caused the appointment.

6. Temporary members

In the event of the inability of any member of the Tribunal to attend for the purpose of any particular proceedings, the members, the Minister may appoint a temporary member for the purposes of those proceedings.

7. Majority Decisions

The decision of the Tribunal shall be that of the majority and shall be signed by the members thereof agreeing thereto.

8. Powers

The Tribunal shall have the powers of the High Court:-

- (a) to administer oaths to the parties and witnesses to the proceedings;
- (b) to summon witnesses and to require the production of documents;
- (c) to order the payment of costs; and the provisions of the law relating to Commissions of Inquiry in Kenya with respect to:
 - (i) the protection of the members of the Tribunal from suit;
 - (ii) the form of summonses to witnesses;
 - the giving or fabricating of false evidence;

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the duty and indemnity of witnesses, and the penalty for contumacy, insult or interruption of proceedings; and

the appearance of advocates;

shall with any necessary adaptations or modifications, apply to the members o the witnesses before, and the proceedings before, the Tribunal in like manner as they apply to Commissions of Inquiry.

9. Venue

The Tribunal shall sit at such place as it may consider most convenient having regard to all the circumstances of the particular proceedings.

10. Rules

Subject to the provisions of this Schedule, the Tribunal shall have power to make rules governing its procedure.

11. Proof of documents

A document purporting to be a copy of any order of the Tribunal, and certified by the Chairman to be a true copy thereof, shall in any legal proceedings be prima facie evidence of the order.

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