

**A BILL**  
**FREEDOM OF INFORMATION (STATE OF SELANGOR) ENACTMENT**  
**2010**

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ARRANGEMENT OF CLAUSES

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PART I

PRELIMINARY

Clause

1. Short title and commencement
2. Interpretation

PART II

INFORMATION OFFICER

3. Appointment of Information Officer
4. Control of information

PART III

ACCESS TO INFORMATION

5. Access to information
6. Application for information
7. Response to application
8. Refusal to application
9. Appeal to Board of Appeal
10. Modes of access to information
11. Information not in possession

- 12. Vexatious, unreasonable or repetitive application
- 13. Personal information of an individual third party

PART IV  
THE APPEAL BOARD

- 14. The Appeal Board

PART V  
GENERAL

- 15. Offences
- 16. Prosecution
- 17. Power of State Authority to make regulations

A BILL

*intituled*

An Enactment to enhance disclosure of information for the public interest, to provide to every individual an opportunity to access to information made by every department of the State Government.

[ ]

**ENACTED** by the Legislature of the State of Selangor as follows:

PART I

PRELIMINARY

**Short title and commencement**

**1.** (1) This Enactment may be cited as the Freedom of Information (State of Selangor) Enactment 2010.

(2) This Enactment shall come into operation on a date to be appointed by His Royal Highness the Sultan by notification in the *Gazette*.

**Interpretation**

**2.** In this Enactment, unless the context otherwise requires —

“document” has the same meaning as defined under the Evidence Act 1950 [Act 56];

“department” means any department of the State Government;

“information” means any documents made by any department of the State Government but does not include document —

(a) which has been classified under the Official Secrets Act 1972 [Act 88];

- (b) which has the information obtained –
  - (i) from a third party and to communicate it would constitute an actionable breach of confidence;
  - (ii) in confidence from a third party and it contains a trade secret or to communicate it would, or would be likely to, seriously prejudice the commercial or financial interests of a third party; or
  - (iii) in confidence from another state or international organization, and to communicate it would, or would be likely to, seriously prejudice relations with that state or international organization;
- (c) where if disclosed would, or would be likely to –
  - (i) cause serious prejudice to the effective formulation or development of the State Government policy;
  - (ii) seriously frustrate the success of the State Government policy, by premature disclosure of that policy;
  - (iii) cause serious prejudice to the administration of any department or the State Government;
  - (iv) cause serious prejudice to economy development or security of the State Government;
  - (v) significantly undermine the deliberative process of any department by inhibiting the free and frank provision of advice or exchange of views; or
  - (vi) significantly undermine the effectiveness of a test or audit procedure used by any department; or
- (d) any other documents which may be specified, from time to time, by the State Authority by notification in the *Gazette*.

“Information Officer” means any person appointed under section 3 of this Enactment.

## PART II

### INFORMATION OFFICER

#### **Appointment of Information Officer**

3. (1) The State Authority may by *Gazette* appoint an Information Officer for every department.

(2) The Information Officer shall, in addition to any obligation specifically provided for in other sections of this Enactment, have the following responsibilities:

- (a) to enhance within the department the best practices in relation to maintenance, archiving and disposal of information;
- (b) to provide training for the department in relation to maintenance, archiving and management of applications for information; and
- (c) to serve as an intermediary to the department for receiving applications and assisting individuals seeking information.

#### **Control of information**

4. (1) Every department shall have control over all informations made by the department.

(2) Every Information Officer is under an obligation to maintain information under his control in accordance with the instruction and guidelines which is in effect.

## PART III

### ACCESS TO INFORMATION

#### **Access to information**

5. (1) Any person may be given access to information made by every department.

(2) If the information sought to be accessed by any person is contained in a document disclosure of which is subject to any written law, access to such information shall be subject to such written law.

### **Application for information**

**6.** (1) Any person who applies to access information shall make an application to the department in a form prescribed by the State Authority.

(2) An application under subsection (1) shall —

- (a) be addressed to the Information Officer;
- (b) state the name of the applicant and an address for correspondence;
- (c) describe the information applied; and
- (d) state the reason and purpose for application.

(3) Every application shall be submitted together with payment of fee as prescribed by the State Authority.

(4) Notwithstanding the provisions under subsections (1) and (2), any person who is unable, because of illiteracy or disability, may make an application orally, and the Information Officer who receives an oral application shall, reduce it into writing and give a copy of the application form to the applicant.

(5) An Information Officer who receives the application shall acknowledge the application and provide the applicant with an acknowledgement receipt.

### **Response to applications**

**7.** (1) Every department shall response to the application made under section 6 within thirty (30) days from the date of acknowledgement of the application.

(2) Notwithstanding provision of subsection (1), any application for information which relates to the life or liberty of an individual, a response shall be made within seven (7) days from the date of acknowledgement receipt of such application.

(3) If there is no response as specified in subsections (1) and (2), such application shall be deemed to be rejected.

(4) An access to the information shall be given when —

- (a) the application to access information has been approved; and

- (b) fee under subsection 6(3) has been paid.

### **Refusal to application**

**8.** (1) The application to access information may be refused by the department when —

- (a) the applicant is not entitled to access the information; or
- (b) information applied does not exist or not under the control of the department.

(2) When the application to access information is refused under subsection (1), the Information Officer shall inform the applicant of such refusal and shall –

- (a) state the reasons of the refusal to the application; and
- (b) state the name of the Information Officer making such decision.

### **Appeal to Board of Appeal**

**9.** Any applicant who is dissatisfied with the decision of the Information Officer shall, within twenty one (21) days after the date of receipt of the notice informing such decision under subsection 8(2), appeal against such decision to the Board of Appeal by submitting written representation.

### **Modes of access to information**

**10.** (1) Access to information may be in the following manner:

- (a) in the situation where the information is an article or thing from which sounds or visual images are capable of being reproduced, an appointment may be made for the applicant to hear or view those sounds or visual images; or
- (b) in the situation where the information are words in the form of record which are capable of being reproduced in the form of sound or words in the form of shorthand writing or in codified form, the department may reproduce the information in the form of a written copy.

(2) Access to information may be given in the form or manner that is most practical to the department, subject to the form of the information itself.

- (3) If access to information applied by the applicant –
  - (a) would interfere unreasonably with the operations of the department;
  - (b) would be detrimental to the preservation of the information or, after having regard to the physical nature of such information, would not be appropriate; or
  - (c) would involve an infringement of copyright (other than copyright owned by the State Government) subsisting in the information,

the access may be refused and access may be given in another form subject to subsection (2).

(4) Any person who is unable, because of illiteracy or disability, to access information in the form in which it is stored or copied, shall be given an option to have the information communicated to him in an alternative form in which he can access to it.

**Information not in possession**

11. Any Information Officer who receives an application and finds that the information applied for is not in the possession of the department, shall inform the applicant of the matter in writing.

**Vexatious, unreasonable or repetitive applications**

12. Every department is not required to comply with an application for information which is vexatious, unreasonable or a similar application from the same person which has been complied with.

**Personal information of an individual third party**

13. (1) Every department may refuse to indicate whether or not it holds an information, or refuse to communicate information, where to do so would involve the disclosure of personal information of an individual third party.

- (2) Subsection (1) does not apply if –
  - (a) the third party has effectively consented to the disclosure of the information; or



- (b) the person making the application is the legal guardian of the third party, the legal next of kin or the legal administrator of a deceased third party.

#### PART IV

#### THE APPEAL BOARD

#### **The Appeal Board**

14. (1) For the purposes of this Enactment, there shall be constituted an Appeal Board.

(2) The State Authority shall, by notification in the State Gazette, appoint -

(a) a Chairman and a Deputy Chairman of the Appeal Board, being ex-judges or advocates and solicitors of the High Court or former members of the Judicial and Legal Service of Malaysia or who have had judicial experience or other suitable qualifications and experience; and

(b) such number of fit persons, not exceeding six persons, as the State Authority considers adequate, to be additional members of the Appeal Board.

(3) A person appointed under subsection (2) shall, unless he sooner resigns his office or his appointment is sooner revoked, hold office for such period not exceeding three(3) years as the State Authority shall specify in the notification of appointment, but shall be eligible for reappointment.

(4) The State Authority may revoke the appointment of a member of the Appeal Board without assigning any reason therefore.

(5) When the Chairman is unable to exercise his functions owing to illness, absence from Malaysia, or any other cause, the Deputy Chairman shall exercise the functions of the Chairman; and in exercising those functions, the Deputy Chairman shall, for the purposes of this Enactment, be deemed to be the Chairman of the Appeal Board.

(6) Whenever a need arises for the Appeal Board to be convened, the Chairman shall call upon any two of the members appointed under subsection 2(b), to serve with him on the Appeal Board; and it shall be the duty of every members so called upon, to serve on the Appeal Board, unless he is excused by the Chairman, on such grounds as the Chairman considers reasonable, from so serving.

(7) A member of the Appeal Board having an interest in any matter before it shall, as soon as he is aware of his interest, disclose the fact and nature thereof to the Chairman and shall take no part or further part in the proceedings of the Appeal Board relating to the matter.

(8) Every disclosure of interest made under subsection (7) shall be recorded.

(9) Every decision of the Appeal Board shall be made by the Chairman after considering the opinions of the other two members, but in making the decision the Chairman shall not be bound to conform to the opinions of the other two members or either of them, but if the Chairman dissents therefrom, he shall inform his reasons for dissenting.

(10) In respect of an appeal before it, the Appeal Board—

- (a) shall hear the appellant and the Information Officer;
- (b) may summon and examine witnesses;
- (c) may require any person to bind himself by an oath to state the truth;
- (d) may compel the production and delivery of any document that it considers relevant or material to the appeal but not including document which is rejected by the Information Officer;
- (e) may confirm, vary or reverse the order or decision appealed against;  
and
- (f) may make any order whether or not provided for by, and not inconsistent with, this Enactment.

(11) Every person summoned by the Appeal Board to attend its proceedings is legally bound to attend at the place and time specified in the summons, and every person required by the Appeal Board to produce or deliver any document to the Appeal Board or to any public servant is legally bound to so produce or deliver the document.

(12) All summonses, notices and orders issued, made, or given under the hand of the Chairman shall be deemed to be issued, made, or given by the Appeal Board.

(13) An order made by the Appeal Board on an appeal before it shall be final, shall not be called into question in any court, and shall be binding on all parties to the appeal or involved in the matter.

(14) For the purposes of the Penal Code [*Act 574*], the Appeal Board shall be deemed to be a court and every member thereof shall be deemed to be a public servant.

(15) The State Authority may make rules to prescribe the procedure of appeals to the Appeal Board and the fees payable in respect thereof, and to regulate the proceedings of the Appeal Board.

(16) Members of the Appeal Board shall be paid, from the State Consolidated Funds, such allowances as the State Authority may determine.

## PART V

### GENERAL

#### **Offences**

- 15.** (1) It is an offence if a person —
- (a) uses any information obtained under this Enactment contrary to the reason and purpose of such application is made; or
  - (b) gives false information in the form under subsection 6(1).
- (2) Any person who commits an offence under subsection (1) shall be liable on conviction, to a fine not exceeding RM50,000.00 or to imprisonment not exceeding 5 years or both.

#### **Prosecution**

**16.** No prosecution shall be instituted for an offence under subsection 15(1) without the consent in writing of the Public Prosecutor.

#### **Power of State Authority to make Regulations**

- 17.** (1) The State Authority may make such rules as may appear to it to be necessary or expedient for carrying out the provisions of this Enactment.
- (2) Without prejudice to the generality of subsection (1), regulations may be made for all or any of the following purposes:
- (a) to prescribe forms and fees for the purpose of this Enactment;

- (b) to prescribe the responsibilities of the Information Officer; and
- (c) any other regulations as it deems fit and expedient by the State Authority.

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EXPLANATORY STATEMENT

This Bill is intended to enhance disclosure of information for the public interest, to provide to every individual an opportunity to access to information made by every department of the State Government.

PART I

- 2. Part I of this Bill provides for preliminary matters.
- 3. *Clause 1* contains short title and power of His Royal Highness to appoint a date the proposed Enactment shall come into operation.
- 4. *Clause 2* defines certain words and expressions used in the proposed Enactment.

PART II

- 5. Part II of this Bill provides for the appointment and responsibility of the Information Officer.
- 6. *Clause 3* provides for the appointment of the Information Officer by every department. This *Clause* also provides for the additional responsibilities of the Information Officer.
- 7. *Clause 4* provides for the control of the department over the information and the obligation of the Information Officer to maintain information under his control.

PART III

- 8. Part III of this Bill provides for provisions relating to access to information.
- 9. *Clause 5* provides for an access to information under control of the department and if the disclosure of any documents is subject to any written laws, an opportunity to get access is also subject to such written laws.
- 10. *Clause 6* provides that an application shall be in the prescribed form and the informations that need to be filled in such form. Oral application can be made by an illiterate or disable person and the Information Officer shall reduce it into writing

and make an acknowledgement receipt of such application and give a copy of the application form to the applicant.

11. *Clause 7* provides for response to application that shall be made by the department within thirty (30) days from the date of acknowledgement receipt of such application. If it relates the life or liberty of a person, a response shall be provided within seven (7) days from the date of acknowledgement receipt of such application. If there is no respond, such application shall be deemed to be rejected. An access to the information shall be given when the application is approved and fee has been paid.

12. *Clause 8* provides for refusal of an application when the applicant is not entitled to access the information or when such information does not exist or not under the control of the department. The refusal shall be informed to the applicant together with the reasons of the decision and the name of the Information Officer making such decision.

13. *Clause 9* provides for appeal to the Appeal Board that shall be made within twenty one (21) days after receiving the notice informing the decision. The appeal shall be made by submitting written representation.

14. *Clause 10* provides for modes to access to information.

15. *Clause 11* provides for information not in possession of the department and the Information Officer shall inform of the matter to the applicant.

16. *Clause 12* provides for vexatious, unreasonable or repetative applications and the department is not required to comply with such applications.

17. *Clause 13* provides that the department may refuse to unreasonable disclosure of information including personal information of a third party and its exceptions.

#### PART IV

18. Part IV of this Bill provides for provisions relating to an Appeal Board.

19. *Clause 14* provides for the establishment of an Appeal Board together with its powers to hear an appeal from the applicant. Further, any order made by the Appeal Board shall be final, shall not be called into question in any court and shall be binding on all parties to the appeal or involved in the matter. Allowances to the members of the Appeal Board, as may be determined by the State Authority shall be paid from the State Consolidated Funds.

## PART V

20. Part V of this Bill provides for general provisions of the proposed Enactment.
21. *Clause 15* provides for offences and sentences.
22. *Clause 16* provides for prosecution that shall not be instituted without the consent in writing of the Public Prosecutor.
23. *Clause 17* provides for powers of the State Authority to make regulations for carrying out the provisions of the proposed Enactment.

### *FINANCIAL IMPLICATIONS*

This Bill will involve the State Government in additional monetary expenditures which the amount cannot be determined at this present time.

SHAH ALAM

Dated 30 June 2010

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DATIN PADUKA ZAUYAH BE BT. T. LOTH KHAN

*State Legal Adviser*

*Selangor*