

draft

**THE FREEDOM OF INFORMATION ACT,
2002
SRI LANKA**

An Act to provide every citizen the right of access to information **in the custody of** a public authority subject to certain exceptions and limitations, to set out the procedure for obtaining such information, to set out the duties and obligations of public authorities and for matters connected therewith or incidental thereto.

RECOGNISING THAT;

Preamble;

Whereas the Constitution of the Democratic Socialist Republic of Sri Lanka provides for the right of freedom of speech and expression including publication, and the State must respect, protect, promote and fulfil the aforementioned right which is the cornerstone of democracy in Sri Lanka;

Whereas the aforementioned right includes the right of access to information held by the State when that information is required for the exercise and protection of any rights of citizens, including information in times of a **declared state of emergency**;

Whereas **restrictions at all times, including in times of a declared state of emergency**, on freedom of information may only be imposed to the extent strictly required by the exigencies of the situation and that they be reasonable and justifiable in an open transparent and democratic society based on human dignity, equality and freedom as specifically set out in this Act and such decisions on the **non-disclosure** of information should be reviewed independently of government.

Whereas there is a need to foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to **official information** and thereby actively promote a society in which the people of Sri Lanka have effective access to information to enable them to more fully exercise and protect all their rights **and to participate in the process of good governance**;

Be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

Short title

1. This Act may be cited as the Freedom of Information Act, No...of 2002.

Freedom of Information

2. Subject to the provisions of this Act, all citizens shall have access to information held by Public Authorities and nothing in this Act shall limit or otherwise restrict the disclosure of information pursuant to any other written law, policy or practice.

Application of the Act

3. This Act shall apply to information in the possession, custody and control of all Public Authorities, save and except information referred to in Section 13 of this Act.

Duties of Public Authorities

4. Every Public Authority shall:
 - (1) Be under an obligation to maintain its records in a manner which facilitates the right to information as provided for in this Act.
 - (2) Ensure that adequate procedures are in place for [the collection](#) of personal information.
 - (3) Publish within six months from the commencement of this Act and [at least once every year](#) thereafter;-
 - a) the particulars of its organisation, functions and duties
 - b) the powers and duties of its officers and employees and the procedure followed by them in the decision making process
 - c) the norms set by the Public Authority for the discharge of its functions
 - d) rules, regulations, instructions, manuals and other categories of records under its control used by its employees for discharging its functions
 - e) the details of facilities available to citizens for obtaining information
 - f) the name, designation, [contact number and address, both postal and electronic](#) and other particulars of the Public Information Officer
 - (4) Publish all material information regarding its decisions and policy formulations when announcing such decisions and policies.
 - (5) Give reasons for [and make public](#) its decisions, whether administrative or quasi-judicial.
 - (6) Before initiating any project, publish or communicate to the public generally or to the persons affected or likely to be affected by such project in particular, [without delay](#), the facts available to it or to which it has reasonable access, and which should be known to them, in the best interests of maintaining and protecting democratic principles.
 - (7) Ensure the provision of appropriate training [from time to time](#) for its officials on the right to information and the effective implementation of this Act.
 - (8) Ensure that [each](#) Public Information Officer [appointed under this Act](#) shall annually submit to the Freedom of Information Commission [established under this Act](#) and the Human Rights Commission of Sri Lanka, a report on the activities of the Public Authority pursuant to, or to promote compliance with, this Act, which shall include information about:

- a) The number of requests for information received, granted in full or in part, and refused;
- b) How often and which section of the Act were relied upon to refuse, in part or in full, requests for information;
- c) Appeals from refusals to communicate information;
- d) Fees charged for requests for information;
- e) Its activities pursuant to this section

Public Information Officers

- 5. (1) The Public Services Commission shall, for the purposes of this Act, appoint one or more officers as Public Information Officers for every public authority.

(2) Every Public Information Officer shall deal with requests for information and shall render **all possible** assistance to any person seeking such information.

(3) The Public Information Officer may seek the assistance of any other **public** officer, as he considers necessary for the proper discharge of his duties **provided that the approval of the Secretary to the Ministry is first obtained for this purpose**.

(4) Any officer whose assistance has been sought under Sub-section (3) shall render all assistance to the Public Information Officer seeking his assistance;

The Freedom of Information Commission

6. (1) There shall be a Freedom of Information Commission established for the purpose of determining appeals from decisions of Public Information Officers under the provisions of this Act.

(2) The Freedom of Information Commission shall comprise of three persons of eminence and integrity who have distinguished themselves in public life, who are not members of any political party or affiliated to the same and who, at the time of appointment, or at any time thereafter, do not hold any public or judicial office.

(3) Members of the Freedom of Information Commission shall be appointed by the President of the Republic on the recommendations of the Constitutional Council

(4) Every member of the Commission shall hold office for a period of five years.

(5) The office of a member shall become vacant

- a) upon the death of such member;
- b) upon such member resigning such office by writing addressed to the President;
- c) upon such member being removed from office on any ground specified in section 6; or
- d) on expiration of his term of office.

(6) (1) A member of the Commission may be removed from office

- a) by the President, if that member
 - (i) is adjudged an insolvent by a court of competent jurisdiction;
 - (ii) engages in any paid employment outside the duties of his office, which in the opinion of the President, formed in consultation with the Constitutional Council, conflicts with his duties as a member of the Commission;
 - (iii) is declared to be of unsound mind by a court of competent jurisdiction;
 - (iv) is convicted of an offence involving moral turpitude; or
 - (v) absents himself from three consecutive meetings without obtaining leave of the Commission
- b) by an order of the President made after an address of Parliament, supported by a majority of the total number of members of Parliament (including those not present) has been presented to the President for such removal on the ground of proved misbehaviour or incapacity;

Provided however that no resolution for the presentation of such an address shall be entertained by the Speaker or placed on the Order Paper of Parliament, unless notice of such resolution is signed by not less than one-third of the total number of members of Parliament and sets out full particulars of the alleged misbehaviour or incapacity.

(2) The procedure for the presentation and passing on an address of Parliament for the Removal of a Judge of the Supreme Court or the Court of Appeal, shall apply in all respects to the presentation and passing of an address of Parliament for the removal of a member of the Commission

7. The Commission shall enjoy operational and administrative autonomy from any other person or entity, including the government and any of its agencies, except insofar as its determinations are subject to appeal to the Court of Appeal under Section 17 (3) of this Act.

8. (1) No criminal or civil proceedings lie against the Commission, or against any person acting on behalf or under the direction of the Commission, for anything done in good faith in the course of the exercise of its functions under this Act.

(2) For the purposes of the law of defamation, anything said or any information supplied pursuant to an investigation under this Act is privileged, unless that information is shown to have been said or supplied with malice.
9. (1) The powers of the Freedom of Information Commission pursuant to Section 17 (2) and Section 17 (4) may be invoked by an aggrieved party, or by another person **by proxy** on his behalf, by a communication in writing, addressed to the Commission.

(2) The Freedom of Information Commission shall, within six months of its establishment, formulate and publish other procedural requirements incidental to the preceding sub-section which shall be **gazetted**. In doing so, the Commission shall ensure that its services are as widely accessible as possible, and that the procedural constraints serve only to preclude frivolous or vexatious complaints.

(3) In coming to a determination pursuant Section 17 (2) and Section 17 (4), the Commission shall have the power to conduct a full investigation, including by issuing orders requiring the production of evidence and compelling witnesses to testify.

(4) The Commission may, during an investigation pursuant to the preceding Sub-sections, examine any record to which this Act applies, and no such record may be withheld from the Commission on any grounds.
10. Any determination of the Commission shall be final and conclusive, and shall be binding on any Public Authority, except insofar as provided for in Section 17 (3) of this Act, and except under the provisions of Article 140 and Article 126 (1), (2), (4) and (5) of the Constitution.

Right of Access

11. (1) A person desirous of obtaining information shall make a request in writing in the prescribed form to the relevant Public Information Officer at his or her address or fax number or electronic mail address;

(2) The prescribed form, for a request of access prescribed for the purposes of subsection (1) must at least require from the requester concerned;
 - (a) to provide sufficient particulars to enable the Public Information Officer concerned to identify the record or records requested;
 - (b) to state whether the information concerned is preferred in a particular language;
 - (c) to state whether the information is required urgently and if so, why
 - (d) in the case of a request for personal information, to state the capacity of the requester contemplated in subsection (3) of this section and furnish reasonable proof of the same;

Provided that where such request cannot be made in writing, the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce it to writing.

- (3) A request for access to personal information may be made-
 - (a) by the person to whom the personal information relates or that person's authorised representative;
 - (b) If the individual contemplated in paragraph (a) is
 - (i) under the age of 16 years, by a person having parental responsibility for the individual;

- (ii) incapable of managing his or her own affairs, by a person appointed by the court, to manage those affairs; or
- (iii) deceased, by the executor of his or her estate.

Disposal of Requests and Fee Structure

(12) (1) On receipt of a request under the preceding Section, the Public Information Officer shall, as expeditiously as possible, and in any case within fourteen working days of the receipt of the request, either provide the information requested on payment of such reasonable fees as may be prescribed by the Minister under this Act or reject the request for the reasons specified in Section 13.

(2) Where a request for information requires more than twenty days for processing, subject to Section 17, the Public Information Officer shall inform the person making the request, by a written communication, the reasons for the delay, as well as the date on which the information may be made available.

(3) A requester who wishes to obtain access to official information urgently must specify the same in the form and give reasons for the urgency whereupon the Public Information Officer shall, as expeditiously as possible, and in any case within two working days of the receipt of the request, either provide the information requested on payment of such reasonable fees as may be prescribed by the Minister under this Act or reject the request for the reasons specified in Section 13.

(4) The communication of information pursuant to a request under Section 11 by a public authority may, subject to Sub-sections (5), (6), (7) and (8), be made conditional upon payment by the person making the request of a reasonable fee, which shall not exceed the actual cost of searching for, preparing and communicating the information.

(5) For requests for personal information, only nominal fees shall be chargeable.

(6) Within one month but in any event not more than three months from the commencement of this Act, the Minister in charge of the subject of Information shall prescribe by regulations made under this Act;

- (a) the form in which a request for information is made
- (b) the fees to be charged for-

- (i) Processing requests for information, including requests for personal information
- (ii) Searching for records and information
- (iii) Copying documents and records
- (iv) The conditions under which the pre-payment of fees maybe required; and
- (v) The circumstances under which such fees maybe waived, and by whom

(7) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or such later date as may be specified.

(8) Every regulation made by the Minister shall, immediately after its publication in the Gazette, be brought before Parliament for approval. Every regulation not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder. Notification of the date on which any regulation is deemed to be rescinded shall be published in the Gazette.

(9) Before taking any decision under Sub-section (1), the Public Information Officer shall take into consideration, the representations made by a third party under Section 15 of this Act.

(10) Information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of a public authority or would be detrimental to the safety or preservation of the record in question.

Exemptions to the Right to Information and Disclosure

13. The Public Information Officer may refuse a request made for information under the following circumstances:

(1) If the disclosure of such information infringes upon the personal privacy of a party, including such party's medical records and income tax/bank statements, unless such party has consented to the disclosure in writing;

(2) If such information, subject to the provisions of section 15,

- a) was obtained from a third party and to communicate it would constitute an actionable breach of confidence; or
- b) was obtained in confidence from a third party and;
 - i. it contains a trade secret; or
 - ii. to communicate it would, or would be likely to, seriously prejudice the commercial or financial interests of that third party.

(3) If the disclosure of such information could reasonably be expected to endanger the defence or national security of Sri Lanka.

(4) If such information was obtained in confidence from another State or international organisation, and to communicate it would seriously prejudice relations with that State or international organisation.

(5) If the disclosure of such information could reasonably be expected to endanger the safety of any person; or

(6) If disclosure could cause serious prejudice to:

- a) The prevention or detection of a crime
- b) The apprehension or prosecution of offenders
- c) The administration of justice
- d) The assessment or collection of any tax or duty by the Inland Revenue Department
- e) The operation of immigration controls
- f) The assessment by a Public Authority whether civil or criminal proceedings, or regulatory action pursuant to any enactment, would be justified.

(7) If such disclosure prejudices public economic interests. That is to say:

- a) Where the disclosure could reasonably be expected to cause serious prejudice to the ability of the government to manage the economy of Sri Lanka
- b) Where the disclosure could reasonably be expected to cause serious cause serious prejudice to the legitimate commercial or financial interests of a Public Authority.

14. (1) Notwithstanding anything in Section 13, a Public Authority may not refuse to indicate whether or not it holds a record, or refuse to disclose information:

- (a) unless the harm to the protected interest outweighs the public interest in disclosure; or
- (b) if the information which is the subject of the request is already in the public domain.

(c) unless where, in a state of emergency, such refusal or restriction placed on freedom of information is strictly proportionate to the legitimate aim of protecting public security and order.

(2) Where a request is rejected under the preceding Sub-section or Section 13, the Public Information Officer shall communicate to the person making the request:

- a) the reasons for such rejection;
- b) the period within which the appeal against such rejection may be preferred;
- c) the particulars of the appellate authority

Third Party Information

15. Where a Public Authority intends to disclose information on a request made by a party which relates to, or has been supplied by, a third party and has been treated as confidential by that third party, the Public Information Officer shall, by notice to such third party, invite representations against the proposed disclosure, if any, within seven days from the date of receipt of that notice.

Severability under certain circumstances

16. If a request for information is rejected on any of the grounds specified above, access may be given to that part of the record which does not contain any information that is exempted from disclosure under this Act, and which can reasonably be severed from any part that contains exempted information.

Appeals

17. (1) Any person aggrieved by a decision of the Public Information Officer under this Act ([hereinafter referred to as an aggrieved person](#)) may within thirty days of receipt of such decision, prefer an appeal to the said Public Authority and the said Public Authority shall be obliged to arrive at a decision regarding the appeal within three weeks of receipt of same.

(2) Where an [aggrieved person](#) is not satisfied with the decision of the Public Authority given under Sub-section (1), that person may appeal against that decision to the Freedom of Information Commission, which shall arrive at its determination within three weeks of receipt of the said appeal.

(3) Where an [aggrieved person](#) or the respondent Public Authority is not satisfied with the determination of the Freedom of Information Commission, a further appeal lies to the Court of Appeal.

(4) Appeals preferred under the preceding Sub-sections may relate to decisions by the Public Information Officer, or the Public Authority on appeal, regarding:

- (a) delay in disclosing information to a requester
- (b) arbitrary or capricious denial of information by a Public Information Officer, or Public Authority on appeal, to a requester
- (c) rejection by a Public Information Officer, or a Public Authority on appeal, of a request for information on the substantive ground specified in Section 13 of this Act; and
- (d) determinations by a Public Information Officer, or a Public Authority on appeal, regarding the severability of information under Section 16 or the interventions of third parties under Section 15 of this Act.

Penalties to be imposed on Public Information Officers and Public Authorities

18. (1) Where under the preceding Sections, an appeal has been preferred by a requester to the Freedom of Information Commission or the Court of Appeal and it has been found that there has been arbitrary or capricious denial of information by a Public Information Officer, or by a Public Authority on appeal, to a requester under this Act, the Freedom of Information Commission or the Court of Appeal, as the case may be, shall subject such Public Information Officer or Public Authority to public censure and may recommend disciplinary against such Public Information Officer.
- (2) Further to Sub-section (1), the Court of Appeal shall have the power to impose such punishment and censure on the officer or authority concerned as the Court deems fit including an order to the relevant Public Authority to subject such officer to disciplinary action as may be specified in such order and/or the imposition of a fine not exceeding Rs 20,000/=.
19. (1) Every Public Information Officer appointed under this Act or an aggrieved person shall have the power to appeal to the Freedom of Information Commission on the ground that there has been a non-compliance of the duty of an officer of a Public Authority to comply with a request to render assistance by a Public Information Officer under this Act.
- (2) The Freedom of Information Commission shall on receipt of a complaint under Sub-section (1), hold an inquiry, and if the case so requires, make an order compelling an officer of a Public Authority to comply with a request by a Public Information Officer to render assistance.
- (3) Where under the preceding sub-sections, an officer of the said Public Authority persists in refusing to render assistance to a Public Information Officer, the Commission upon complaint thereof by such Public Information Officer or an aggrieved person, shall subject such officer to public censure and recommend disciplinary action against such officer as may be specified in such order of the Commission.

Measures to Promote Openness

20. The Human Rights Commission of Sri Lanka shall:

- (1) As soon as practicable, compile in Sinhala, Tamil and English a clear and simple guide containing practical information to facilitate the effective exercise of rights under this Act, and shall disseminate the guide as widely as possible in an accessible form.
- (2) The guide in Sub-section (1) shall be updated on a regular basis, as necessary.

21. The Human Rights Commission of Sri Lanka shall:

- (1) Publish a guide on minimum standards and best practices regarding the duty of public bodies to publish pursuant to Section 4; and
- (2) Upon request, provide advice to a public authority regarding the duty to publish.

22. The Human Rights Commission of Sri Lanka shall, after appropriate consultation with interested parties, issue and from time to time update a Code of Practice relating to the keeping, management and disposal of records, as well as the transfer of records to the Public Archives.

Whistleblowers

23. (1) No one may be subject to any legal, administrative or employment related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or that which would disclose a serious threat to health, **public safety** or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.

(2) For the purposes of Sub-section (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public authority.

24. No one shall be subject to civil or criminal action, or any employment detriment, for anything done in good faith in the exercise, performance or purported performance of any power or duty in terms of this Act, as long as they acted reasonably and in good faith.

Interpretation

25. In this Act, unless the context otherwise requires, “information” includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, video tape, machine readable record, computer records and other documentary material, regardless of physical form or characteristics and any copy thereof

26. For the purposes of this Act, a “Public Authority” includes any body

- a) established by or under the Constitution
- b) which forms part of any level or branch of Government
- c) owned, controlled or substantially financed by funds provided by Government or the State
- d) established by statute or carrying out a statutory and/or public function

provided that the bodies indicated in paragraph (e) are Public Authorities only to the extent of their statutory or public functions.