

The Freedom of Information Act 2006

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### **The Freedom of Information Act, 2006**

An Act to provide for the setting out the practical regime of right to information for citizens of Vanuatu to secure access to information under the control of public bodies, in order to promote maximum disclosure of information in the public interest, to promote transparency and accountability in the working of every public body, to guarantee the right of everyone to access information, and to provide for effective mechanisms to secure that right.

Be it enacted by the President and Parliament as follows:

#### **PART I: PRELIMINARY**

##### **1. Short Title**

(1) This Act shall be called the *Freedom of Information Act 2006*.

##### **2. Commencement**

(1) This Act commences on the day on which it is published in the Gazette.

##### **3. Purpose**

(1) The purposes of this Act are to: -

- (a) Provide a right of access to information held by public bodies in accordance with the principles that such information should be available to the public, that necessary exceptions to the right of access should be limited and specific, and that decisions on the disclosure of such information should be reviewed independent of government; and
- (b) Provide a right of access to information held by private bodies where this is necessary for the exercise or protection of any right, subject only to limited and specific exceptions.

##### **4. Interpretation**

(1) In this Act, unless the context otherwise requires: –

- (a) “**commissioner**” means the office of the Information Commissioner, established by Part VI, or the holder of that office, as the context may require;
- (b) “**Constitution**” means the Constitution of the Republic of Vanuatu;

- (c) “**development activity**” means [*insert definition*];
- (d) “**information**” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form, and information relating to any private body which can be accessed by a public body under any other law for the time being in force;
- (e) “**information officer**” means an individual with specific responsibilities under this Act, required to be appointed by every public body pursuant to section 7(1);
- (f) “**official**” means any person employed by the relevant body, whether permanently or temporarily and whether part-time or full-time;
- (g) “**Minister**” means the minister responsible for the administration of justice;
- (h) “**private body**” includes:
- (i) any natural person who carries on or has carried on any trade, business or profession, but only in that capacity;
  - (ii) any partnership which carries on or has carried on any trade, business or profession; and
  - (iii) any former or existing juristic person,
- but excludes a public body;
- (i) “**public body**” means any authority or body established or constituted: –
- (i) by or under the Constitution;
  - (ii) by any other law made by Parliament;
  - (iii) by notification made by an appropriate government and includes any other body:
    - (A) owned, controlled or substantially financed by funds provided by Government or the State;
    - (B) carrying out a statutory or public function; or
    - (C) which the Minister by order designates as a public body;
- (j) “**publish**” means make available in a form generally accessible to members of the public and includes print, broadcast and electronic forms of dissemination;
- (k) “**personal information**” means information which relates to a living individual who can be identified from that information;
- (l) “**right to information**” means the right to information accessible under this Act which is held by or under the control of any public body and includes, but is not limited to, the right to:
- (i) inspection of work, documents, records;
  - (ii) taking notes, extracts or certified copies of documents or records;
  - (iii) taking certified samples of material; or

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

(m) “**third party**” means a person other than the person making a request for information and includes a public body; and

(n) “**working day**” means a day which is not a weekend or public holiday in the Republic of Vanuatu.

(2) When interpreting a provision of this Act, every court must adopt any reasonable interpretation of the provision that best gives effect to the right to information.

## **5. Act Binds the State**

(1) This Act binds the State.

## **PART II: MEASURES TO PROMOTE OPENNESS**

### **6. Guide to Using the Act**

(1) The Commissioner shall, as soon as practicable after the enactment of this Act and in any event no later than 12 months after enactment of this Act, compile in each official language a clear and simple guide containing practical information to facilitate the effective exercise of rights under this Act, and shall disseminate the guide widely in an accessible form.

(2) The guide shall include, but is not limited to, the following:

(a) the objects of this Act;

(b) the postal and street address, the phone and fax number and, if available, electronic mail address of the Information Officer of every public body appointed under section 7;

(c) the manner and the form in which request for access to information shall be made to an Information Officer;

(d) the assistance available from the Information Commissioner;

(e) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act including the manner of filing an appeal to the Commissioner;

(f) the provisions providing for the voluntary disclosure of categories of information;

(g) the notices regarding fees to be paid in relation to requests for access to information; and

(h) any additional regulations or circulars made or issued in relation to obtaining access to information in accordance with this Act.

(3) The guide in sub-section 6(1) shall be updated on a regular basis, as necessary.

### **7. Information Officer**

(1) Every public body shall, within 3 months of the enactment of this Act, appoint an Information Officer and ensure that members of the public have easy access to relevant information concerning the Information Officer, including his or her name, function and contact details.

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

- (a) to promote within the public body the best possible practices in relation to:
    - (i) record maintenance, archiving and disposal;
    - (ii) open government; and
    - (iii) the importance of the right to information and the role of officials in facilitating that right;
  - (b) to serve as a central contact within the public body for receiving requests for information, for assisting individuals seeking to obtain information and for receiving individual complaints regarding the performance of the public body relating to information disclosure; and
  - (c) deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.
- (3) The Information Officer may seek the assistance of any other officer as he or she considers necessary for the proper discharge of his or her duties.
  - (4) Any officer whose assistance has been sought under sub-section (3) shall render all assistance to the Information Officer seeking his or her assistance and for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as an Information Officer.

## **8. Maintenance of Records**

- (1) Every public body shall maintain its records in a manner which facilitates the right to information, as provided for in this Act, and in accordance with the Code of Practice stipulated in sub-section 8(3).
- (2) Every public body shall ensure that adequate procedures are in place for the correction of personal information.
- (3) The Commissioner shall, after appropriate consultation with interested parties, issue within 12 months from the enactment of this Act, 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 [*Vanuatu National Archives*].

## **9. Training of Officials**

- (1) Every public body shall ensure the provision of appropriate training for its officials on the right to information and the effective implementation of this Act.

## **10. Duty to Publish**

- (1) Every public body shall, in the public interest, within 6 months from the enactment of this Act and thereafter annually as soon as practicable at the end of each year publish and disseminate in an accessible form, at least annually, key information including, but not limited to: –
  - (a) the particulars of its organisation, functions, duties and finances;
  - (b) a directory of its officers and employees and a brief description of the powers and duties of its officers and employees;
  - (c) the procedure followed in the decision making process, including channels of supervision and accountability;

- (d) a simple guide to its information-keeping systems;
  - (e) the rules, regulations, instructions, manuals and records [*should this be changed to 'information'*] held by it or under its control or used by its employees for discharging its functions;
  - (f) a statement of the types and forms of information and categories of documents that are held by it or under its control;
  - (g) relevant details concerning any services it provides directly to members of the public;
  - (h) the content of all decisions and/or policies it has adopted which affect the public, along with the reasons for them, any authoritative interpretations of them and any important background material;
  - (i) the particulars of any arrangement that exists for consultation with or representation by the members of the public in relation to the formulation of its policy or implementation thereof;
  - (j) the procedure to be followed in making a request for information, the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
  - (k) any direct request or complaints mechanisms available to members of the public regarding acts or a failure to act by that body, along with a summary of any requests, complaints or other direct actions by members of the public and that body's response;
  - (l) the names, designations and other particulars of the Information Officers; and
  - (m) such other information as may be prescribed.
- (2) In addition to its obligations under subsection (1), every public body shall:
- (a) publish all relevant facts while formulating important policies or announcing the decisions which affect public;
  - (b) provide reasons for its administrative or quasi-judicial decisions to affected persons; and
  - (c) before implementing any project (including any development activity), publish or communicate to the public generally, or to the persons who are likely to be affected by the project in particular, such information relating to the project as the public body considers necessary in the public interest, including the reasons for the project and any important background material.
- (3) It shall be a constant endeavour of every public body to take steps in accordance with the requirements of clause 10(1) to provide as much information *suo motu* to the public at regular intervals through various means of communications so that the public have minimum resort to the use of this Act to obtain information
- (4) For the purposes of sub-section 10(1), all information shall be disseminated widely and in such form and manner which is easily accessible to the public.
- (5) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the

Information Officer available free or at such cost of the medium or the print cost price as may be prescribed.

- (6) For the purposes of sub-sections 10(4) and 10(5), “disseminated” means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means.

#### **11. Guidance on Duty to Publish**

- (1) The Commissioner shall: –
- (a) publish a guide on minimum standards and best practices regarding the duty of public bodies to publish pursuant to section 10; and
  - (b) upon request, provide advice to a public body regarding the duty to publish.

#### **12. Reports to the Information Commissioner**

- (1) The Information Officer of every public body shall annually submit to the Commissioner a report on the activities of the public body 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 sections of the Act were relied upon to refuse, in full or in part, requests for information;
  - (c) the number of appeals from refusals to communicate information;
  - (d) the amount of fees charged for requests for information under this Act;
  - (e) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;
  - (f) its activities pursuant to section 10 (duty to publish);
  - (g) its activities pursuant to section 8 (maintenance of records);
  - (h) its activities pursuant to section 9 (training of officials); and
  - (i) any recommendations for reform.

### **PART III: THE RIGHT TO INFORMATION HELD BY PUBLIC AND PRIVATE BODIES**

#### **13. Freedom of Information**

- (1) Subject to the provisions of this Act, every person shall have the right to information.

#### **14. General Right of Access**

- (1) Any person making a request for information to a public body shall be entitled, subject only to the provisions of Parts IV and V of this Act: –
- (a) to be informed whether or not the public body holds that information; and
  - (b) if the public body does hold such information, to have that information communicated to him or her.
- (2) Any person making a request for information to a private body which holds information necessary for the exercise or protection of any right [*do we need to define this right with*

*reference to a Treaty or law or similar?*] shall, subject only to the relevant provisions of Parts III, IV and V of this Act, be entitled to have that information communicated to him or her.

#### **15. Legislation Prohibiting or Restricting Disclosure**

- (1) This Act applies to the exclusion of any provision of other legislation that prohibits or restricts the disclosure of information by a public or private body.
- (2) Nothing in this Act limits or otherwise restricts the disclosure of information pursuant to any other legislation, policy or practice.

### **PART IV: MAKING AND MANAGING REQUESTS**

#### **16. Request for Information**

- (1) For purposes of section 14, a person who wishes to make a request for information under this Act shall make a request in writing or through electronic means to any official of a public or private body, in English, French or Bislama accompanying such fee as may be prescribed in sufficient detail to enable an experienced official to identify, with reasonable effort, whether or not the body holds that information.
- (2) Where a request for information pursuant to section 14(1) does not comply with the provisions of sub-section 16(1) the official who receives the request shall, subject to sub-section 17(1), render such reasonable assistance, free of charge, as may be necessary to enable the request to comply with sub-section 16(1).
- (3) An individual who is unable, because of illiteracy or disability, or because of a lack of access to postal services, to make a written request for information pursuant to section 14(1) may make an oral request, if necessary, by telephonic device, and the official who receives an oral request shall, subject to sub-section 17(1), reduce it to writing, including their name and position within the body, and provide a copy thereof to the person who made the request.
- (4) An applicant making a request for information under section 14(1) shall not be required to give any reason for requesting information or any other personal details except those that may be necessary for contacting him or her.
- (5) A request for information under section 14(2) must identify the right the person making the request is seeking to exercise or protect and the reasons why the information is required to exercise or protect that right.
- (6) A public or private body may prescribe a form for requests for information, provided that such forms do not unreasonably delay requests or place an undue burden upon those making requests.
- (7) Requests which are not made on the prescribed form must still be accepted by bodies covered by this Act, as long as the request complies with sub-section (1).

#### **17. Transfer of Requests**

- (1) An official who receives a request for information may transfer that request to the Information Officer for purposes of complying with sub-sections 16(2) and/or 16(3).
- (2) Where an application is made to a public body requesting for an information which is held by another public body or the subject matter of which is more closely connected with the functions of another public body, the public body to which such application is made, shall

transfer the application or such part of it as may be appropriate to that other public body and inform the applicant immediately about such transfer.

### **18. Time Limits for Responding to Requests**

- (1) Subject to sub-section 18(3) a public or private body must respond to a request for information pursuant to section 14 as soon as is reasonably possible and in any event within 20 working days of receipt of the request.
- (2) Where a request for information relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, a response must be provided within 48 hours.
- (3) A public or private body may, by notice in writing within the initial 20 day period, extend the period in sub-section 18(1) to the extent strictly necessary, and in any case to not more than 40 working days, where the request is for a large number of records or requires a search through a large number of records, and where compliance within 20 working days would unreasonably interfere with the activities of the body.
- (4) Failure to comply with sub-section 18(1) is deemed to be a refusal of the request.

### **19. Notice of Response**

- (1) A public or private body which receives a request for information shall provide the person making the request within 5 working days of receipt of a request, a receipt documenting the:
  - (a) nature of the request,
  - (b) date on which the request was lodged; and
  - (c) officer responsible for handling the request.
- (2) The response under section 18 to a request for information pursuant to section 14(1) must be by notice in writing and state: –
  - (a) In relation to any part of the request which is granted, the applicable fee, if any, pursuant to section 20, and the form in which the information will be communicated and, if appropriate, details of when and where the information can be accessed;
  - (b) In relation to any part of the request which relates to information that is not held by the public body, the fact that the body does not hold the information and, if the request has been transferred to another public body under section 17, the fact of such transfer.
  - (c) in relation to any part of the request which is not granted, the fact of such refusal, the exemption(s) on which the refusal is based and the reasons why the exemption(s) applies;
  - (d) in relation to any refusal to indicate whether or not the public body holds the relevant information, the fact of such refusal, the exemption(s) on which the refusal is based and the reasons why the exemption applies; and
  - (e) any right of appeal the person who made the request may have including the fact that the person who made the request may complain to the Commissioner if he or she believes that the body has failed to comply with its obligations under this Act, details of the procedure for appealing and relevant time limits.

- (3) In relation to any part of a request that is granted, communication of the information must take place within 20 days of receipt of the request, subject only to section 20(1).

## **20. Fees**

- (1) The communication of information pursuant to a request under section 14 by a public or private body may, subject to sub-sections 20(2) and 20(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.
- (2) Payment of a fee shall not be required for the communication of information pursuant to a request that is in the public interest, or a request for personal information relating to the person making the request, a natural third party of whom the requester is a guardian, or a deceased third party of whom the requester is the next of kin or of whose will the requestor is the executor.
- (3) No such fee shall be charged from persons who are below the poverty line as determined by Government.
- (4) Fees may be reduced or waived [*by who?*] where the imposition of fees would cause financial hardship or where it is in the public interest to do so.
- (5) Where a decision is taken to provide the information on payment of a fee representing the cost of providing the information, the Information Officer shall send an intimation to the person making the request stating:
- (a) details of the fees together with the calculations to arrive at that fee; and
  - (b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided.
- (6) The person making the request for information shall be provided the information free of charge where a public body fails to comply with the time limits in section 18.
- (7) Where fees are paid and access to information is not subsequently granted within 7 days, the whole amount of the fees are to be refunded.
- (8) The Minister may, after consultation with the Commissioner, make regulations providing: –
- (a) for the manner in which fees are to be calculated;
  - (b) that no fee is to be charged in prescribed cases; and
  - (c) that any fee cannot exceed a certain maximum.
- (9) A public body shall not require payment of a fee under sub-section 20(1) where the cost of collecting that fee would exceed the amount of the fee.
- (10) Except as provided in subsection (1), no fees shall be charged in relation to requests for information under this Act.
- (11) Any fees imposed by this section should accord with the principle that any fees imposed should not undermine the objectives of this Act.

## **21. Means of Communicating Information**

- (1) Where a request indicates a preference as to the form of communication of information contained in sub-section 21(2), a public or private body communicating information pursuant to a request for information under section 14 shall, subject to sub-section 21(3), do so in accordance with that preference.
- (2) A request may indicate the following preferences as to the form of communication of information: –
  - (a) a true copy of the information in permanent or other form;
  - (b) an opportunity to inspect the information, where necessary using equipment normally available to the body;
  - (c) an opportunity to copy the information, using his or her own equipment;
  - (d) a written transcript of the words contained in a sound or visual form;
  - (e) a transcript of the content of the information, in print, sound or visual form, where such transcript is capable of being produced using equipment normally available to the body; or
  - (f) a transcript of the information from shorthand or other codified form.
- (3) A public or private body shall not be required to communicate information in the form indicated by the person making the request where to do so would: –
  - (a) unreasonably interfere with the effective operation of the body; or
  - (b) be detrimental to the preservation of the information.
- (4) Where information is requested in a language that it is not held in, a translation shall be provided free of charge if the translation is determined to be in the public interest.
- (5) Where access to information or a part thereof is to be given under this Act and the person to whom access is to be given requests that access be given in a particular official language, a copy of the information or part thereof shall be given to the person in that language
  - (a) forthwith, if the information or part thereof already exists under the control of a government institution in that language; or
  - (b) within a reasonable period of time, if the head of the government institution that has control of the information considers it to be in the public interest to cause a translation to be prepared.
- (6) Where access to information or part thereof is required to be provided under this Act and the person to whom access is to be provided to is sensorily disabled, the relevant Information Officer shall provide reasonable assistance to enable access to the information including providing such assistance as may be appropriate for inspection.

## **22. If a Record is Not Held**

- (1) Where an official who receives a request pursuant to section 14(1) believes that that request relates to information that is not held by the public body, the official may transfer the request to the Information Officer for purposes of compliance with this section.
- (2) Where an Information Officer receives a request pursuant to sub-section 22(1) he or she shall confirm whether or not the public body does hold the information and, if it does not, shall, if

he or she knows of another public body which does hold the relevant information, as soon as practicable, transfer the request to that public body and inform the person making the request of such transfer.

- (3) For the avoidance of doubt, where a request is transferred pursuant to sub-section 22(2) the time limit for responding to requests under section 18 runs from the date of the initial receipt of the request by the first body.
- (4) A private body which receives a request pursuant to section 14(2) relating to information that is not contained in any record held by the private body shall notify the requester that it does not hold the information.

### **23. Frivolous, Vexatious, Repetitive or Unreasonable Requests**

- (1) A public or private body is not required to comply with a request for information which is frivolous or vexatious.
- (2) A public or private body is not required to comply with a request for information where to do so would unreasonably divert its resources.

## **PART V: EXCEPTIONS**

### **24. Public Interest Override**

- (1) Notwithstanding anything in the *Official Secrets Act* nor any of the exemptions permissible in accordance with this Part, a public body may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm to the protected interest outweighs the public interest in disclosure.

### **25. Information Already Publicly Available**

- (1) Notwithstanding any provision in this Part, a body may not refuse to communicate information where the information is already publicly available.

### **26. Severability**

- (1) If a request for information relates to information which, subject to this Part, falls within the scope of an exception, any information which is not subject to an exception shall, to the extent it may reasonably be severed from the rest of the information, be communicated to the requester.

### **27. Personal Information**

- (1) Notwithstanding anything contained in this Act, a body may refuse to indicate whether or not it holds the information, or refuse to communicate information, where to do so would involve the unreasonable disclosure of personal information about a natural third party.
- (2) Sub-section 27(1) does not apply if: –
  - (a) the third party has effectively consented to the disclosure of the information;
  - (b) the person making the request is the guardian of the third party, or the next of kin or the executor of the will of a deceased third party;
  - (c) the third party has been deceased for more than 20 years; or

- (d) the individual is or was an official of a public body and the information relates to his or her function as a public official.

### **28. Legal Privilege**

- (1) A body may refuse to indicate whether or not it holds information, or refuse to communicate information, where the information is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it.

### **29. Commercial and Confidential Information**

- (1) A body may refuse to communicate information if: –
  - (a) the information was obtained from a third party and to communicate it would constitute an actionable breach of confidence;
  - (b) the information 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; or
    - (iii) the information was obtained in confidence from another State or international organisation, and to communicate it would, or would be likely to, seriously prejudice relations with that State or international organisation.
- (2) Where an Information Officer intends to disclose any information, or part thereof on a request made pursuant to this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Information Officer shall, within 5 days from receipt of the request, give written notice to such third party of the request and of the fact that the Information Officer intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about the disclosure of information.
- (3) Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in the disclosure outweighs in importance any possible harm or injury to the interests of that third party.

### **30. Health and safety**

- (1) A body may refuse to indicate whether or not it holds information, or refuse to communicate information, where to do so would, or would be likely to, endanger the life, health or safety of any individual.

### **31. Law enforcement**

- (1) A body may refuse to indicate whether or not it holds information, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to: –
  - (i) the prevention or detection of crime;
  - (ii) the apprehension or prosecution of offenders;
  - (iii) the administration of justice;

- (iv) the assessment or collection of any tax or duty;
- (v) the operation of immigration controls; or
- (vi) the assessment by a public body of whether civil or criminal proceedings, or regulatory action pursuant to any enactment, would be justified.

### **32. Defence and Security**

- (1) A body may refuse to indicate whether or not it holds information, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the defence or national security of the Republic of Vanuatu.

### **33. Public Economic Interests**

- (1) A body may refuse to indicate whether or not it holds information, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the ability of the government to manage the economy of the Republic of Vanuatu.
- (2) A body may refuse to indicate whether or not it holds information, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to the legitimate commercial or financial interests of a public body.
- (3) Sub-sections 33 or 33(2) do not apply insofar as the request relates to the results of any product or environmental testing, and the information concerned reveals a serious public safety or environmental risk.

### **34. Policy Making and Operations of Public Bodies**

- (1) A body may refuse to indicate whether or not it holds information, or refuse to communicate information, where to do so would, or would be likely to: –
  - (a) cause serious prejudice to the effective formulation or development of government policy;
  - (b) seriously frustrate the success of a policy, by premature disclosure of that policy; or
  - (c) significantly undermine the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views.
- (2) Subsection 34 does not apply to facts, analyses of facts, technical data or statistical information.

### **35. Time Limits**

- (1) The provisions of sections 29- 34 apply only inasmuch as the harm they envisage would, or would be likely to, occur at or after the time at which the request is considered.
- (2) Sections 29(1)(b)(iii), 31, 32, 33, and 34 do not apply to a record which is more than 10 years old.

## **PART VI: THE INFORMATION COMMISSIONER**

### **36. Appointment of the Information Commissioner**

- (1) The Commissioner shall be appointed by the President after nomination by a two-thirds majority vote of Parliament, and after a process in accordance with the following principles: –
  - (a) participation by the public in the nomination process;

- (b) transparency and openness; and
  - (c) the publication of a shortlist of candidates.
- (2) No-one may be appointed Commissioner if he or she: –
- (a) holds an official office in, or is connected with a political party, or holds an elected or appointed position in central or local government; or
  - (b) holds any other office of profit or carrying on any business or pursuing any profession;
  - (c) has been convicted, after due process in accordance with internationally accepted legal principles, of a violent crime and/or a crime of dishonesty or theft, for which he or she has not been pardoned; or
  - (d) is an undischarged bankrupt.
- (3) The Commissioner shall hold office for a term of four years, and may be re-appointed to serve a maximum of two terms, but may be removed by the President upon a recommendation passed by a two-thirds majority vote of Parliament.
- (4) The Commissioner shall be a person of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.
- (5) A person shall cease to be Commissioner if circumstances arise that, if he or she were not Commissioner, would disqualify him or her for appointment as such.

### **37. Independence and Powers**

- (1) The Commissioner shall enjoy operational and administrative autonomy from any other person or entity, including the government and any of its agencies, except as specifically provided for by law and shall be completely independent of the interference or direction of any other person or authority, other than the Courts.
- (2) The Commissioner shall have all powers, direct or incidental, as are necessary to undertake his or her functions as provided for in this Act, including full legal personality, and the power to acquire, hold and dispose of property.

### **38. Staff**

- (1) The Commissioner may appoint such officers and employees as are necessary to enable him or her to perform his or her duties and functions.

### **39. General Activities**

- (1) In addition to any other powers and responsibilities provided for in this Act, the Commissioner may: –
- (a) monitor and report on the compliance by public bodies with their obligations under this Act;
  - (b) make recommendations for reform both of a general nature and directed at specific public bodies;

- (c) make recommendations for the development, improvement, modernisation, reform or amendment of this Act or other legislation or common law having a bearing on access to information held by public and private bodies, respectively;
- (d) co-operate with or undertake training activities for public officials on the right to information and the effective implementation of this Act;
- (e) refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences under this Act; and
- (f) publicise the requirements of this Act and the rights of individuals under it and conduct educational programs to advance the understanding of the public, in particular of disadvantaged communities.

#### **40. Commissioner's Reports**

- (1) The Commissioner shall, within three months after the termination of each financial year, lay before Parliament an annual report on compliance by public bodies with this Act, the activities of his or her office and audited accounts of the office during that financial year.
- (2) A report under this section shall include in respect of the year to which the report relates, the following:
  - (a) The number of requests made to each public body;
  - (b) The number of decisions that an applicant was not entitled to access to information pursuant to a request, the provisions of this Act under which these decisions were made and the number of times each provision was invoked;
  - (c) The number of applications for judicial review of decisions under this Act and the outcome of those applications;
  - (d) The number of complaints made to the Commissioner with respect to the operation of this Act and the nature of those complaints;
  - (e) The number of notices served upon each public authority under section [ ] and the number of decisions by the public body which were adverse to the person's claim;
  - (f) Particulars of any disciplinary action taken against any officer in respect of the administration of this Act;
  - (g) The amount of fees collected by each public body under this Act
  - (h) Particulars of any reading room or other facility provided by each public body for use by applicants or members of the public, and the publications, documents or other information regularly on display in that reading room or other facility; and
  - (i) Any other facts which indicate an effort by public bodies to administer and implement the spirit and intention of this Act.
- (3) The Commissioner may from time to time lay before Parliament such other reports as he or she deems appropriate.

#### **41. Protection of the Commissioner**

- (1) No criminal or civil proceedings lie against the Commissioner, or against any person acting on behalf of or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise of any power or duty under this Act.
- (2) For the purposes of the law of libel or slander, 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.

#### **42. Removal of the Commissioner**

- (1) Subject to the provisions of sub-section (3) the Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Commissioner ought on such ground be removed.
- (2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference
- (3) Notwithstanding anything contained in sub-section (1), the President may by order remove from officer the Commissioner:
  - (a) is adjudged an insolvent; or
  - (b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or
  - (c) engages during his term of office in any paid employment outside the duties of his office; or
  - (d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or
  - (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Commissioner.
- (4) If the Commissioner in any way concerned or interested in any contract or agreement made by or on behalf of the Government of Vanuatu or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he or she shall, for the purposes of sub-section (1) be deemed to be guilty of misbehaviour.

#### **43. Resignation of Commissioner**

- (1) The Commissioner may at any time, by writing under his or her hand addressed to the President, resign from his office.

### **PART VII: ENFORCEMENT BY THE COMMISSIONER**

#### **44. Complaint to the Commissioner**

- (1) The Commissioner is an independent appeal body. The Commissioner has the power to decide whether this Act has been complied with and also to compel compliance in accordance with this Part.

- (2) A person who has made a request for information may apply to the Commissioner for a decision that a public or private body has failed to comply with an obligation under Part III, including by: –
- (a) refusing to indicate whether or not it holds information, or to communicate information, contrary to section 14;
  - (b) failing to respond to a request for information within the time limits established in section 18;
  - (c) failing to provide a notice in writing of its response to a request for information, in accordance with section 19;
  - (d) failing to communicate information forthwith, contrary to section 19(3);
  - (e) charging an excessive fee, contrary to section 20;
  - (f) failing to communicate information in the form requested, contrary to section 21;
  - (g) believing that he or she has been given incomplete, misleading or false information under this Act;
  - (h) has been unable to submit a request to an Information Officer either by reason that no such officer has been appointed under this Act, or because the Information Officer has refused to accept his or her application for information or appeal under this Act; or
  - (i) in respect of any other matter relating to requesting or obtaining access to information under this Act.

#### **45. Investigation of Complaint**

- (1) Where the Commissioner is satisfied that there are reasonable grounds to investigate a matter relating to requesting or obtaining access to information under this Act, the Commissioner may initiate a complaint in respect thereof.

#### **46. Complaint Decision**

- (1) The Commissioner shall, subject to sub-section 46(3), decide an application under section 44 as soon as is reasonably possible, and in any case within 30 days, after giving both the complainant and the relevant public or private body an opportunity to provide their views in writing.
- (2) Failure to comply with sub-section (1) is deemed to be [*what?*]
- (3) The Commissioner may summarily reject applications: –
- (a) which are frivolous, vexatious or clearly unwarranted; or
  - (b) where the applicant has failed to use any effective and timely internal appeals mechanisms provided by the relevant public or private body.
- (4) In any application under section 44, the burden of proof shall be on the public or private body to show that it acted in accordance with its obligations under Part III.
- (5) In his or her decision pursuant to sub-section 46(1), the Commissioner may: –
- (a) reject the application;

- (b) require the public or private body to take such steps as may be necessary to bring it into compliance with its obligations under Part III;
  - (c) require the public body to compensate the complainant for any loss or other detriment suffered; and/or
  - (d) in cases of unreasonable failures to comply with an obligation under Part III, impose a fine on the public body or, if appropriate, on the individual responsible.
- (6) There is no upper limit on the fines that the Commissioner may impose under sub-section (5)(d).
- (7) The Commissioner shall serve notice of his or her decision, including any rights of appeal, on both the complainant and the public or private body.

#### **47. Direct Implementation of Decision**

- (1) The Commissioner may, of his or her own motion, after giving a public body an opportunity to provide their views in writing, decide that a public body has failed to comply with an obligation under Part II.
- (2) In his or her decision pursuant to sub-section 47(1), the Commissioner may require the public body to take such steps as may be necessary to bring it into compliance with its obligations under Part II, including by: –
- (a) appointing an Information Officer;
  - (b) publishing certain information and/or categories of information;
  - (c) making certain changes to its practices in relation to the keeping, management and destruction of records, and/or the transfer of records to the [*Vanuatu National Archives*];
  - (d) enhancing the provision of training on the right to information for its officials;
  - (e) providing him or her with an annual report, in compliance with section 12; and/or
  - (f) in cases of unreasonable failures to comply with an obligation under Part II, paying a fine by the public body or responsible official.
- (3) The Commissioner shall serve notice of his or her decision, including any rights of appeal, on the public body.

#### **48. Commissioner's Powers to Investigate**

- (1) In coming to a decision pursuant to section 45(1) or 47, the Commissioner shall have the power to conduct a full investigation, including by:
- (a) issuing orders requiring the production of evidence and compelling witnesses to testify;
  - (b) summoning an enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
  - (c) requiring the discovery and inspection of documents;
  - (d) receiving evidence on affidavit;
  - (e) requisitioning any public record or copies thereof from any court or office;
  - (f) issuing summons for examination of witnesses or documents; and

- (g) any other matter which may be prescribed.
- (2) The Commissioner may, during an investigation pursuant to sub-section 48(1), examine any record to which this Act applies, and no such record may be withheld from the Commissioner on any grounds.

#### **49. Appeal from Commissioner's Decisions and Orders**

- (1) The complainant, or the relevant public or private body, may, within 45 days, appeal to the court for a full review of a decision of the Commissioner pursuant to section 45(1) or 47, or an order pursuant to section 48(1).
- (2) The Supreme Court of Vanuatu shall have jurisdiction to determine any appeal pursuant to sub-section (1).
- (3) In any appeal from a decision pursuant to section 45(1), the burden of proof shall be on the public or private body to show that it acted in accordance with its obligations under Part III.

#### **50. Binding Nature of Commissioner's Decisions and Orders**

- (1) Upon expiry of the 45-day period for appeals pursuant to section 49, the Commissioner may certify in writing to the court any failure to comply with a decision pursuant to section 45(1) or 47, or an order pursuant to section 48(1), and the court shall consider such failure under the rules relating to contempt of court.

### **PART VIII: WHISTLEBLOWERS**

#### **51. Whistleblowers**

- (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, 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 purposes of sub-section 51(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 or private body.

### **PART IX: CRIMINAL AND CIVIL RESPONSIBILITY**

#### **52. Good Faith Disclosures**

- (1) No one shall be subjected 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.
- (2) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the *Official Secrets Act* and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

#### **53. Criminal Offences**

- (1) It is a criminal offence to wilfully: –
  - (a) obstruct access to any record contrary to Part III of this Act;

- (b) obstruct the performance by a public body of a duty under Part III of this Act;
  - (c) interfere with the work of the Commissioner; or
  - (d) destroy records without lawful authority.
- (2) Anyone who commits an offence under sub-section 53(1) shall be liable on summary conviction to a fine not exceeding [*insert appropriate amount*] and/or to imprisonment for a period not exceeding two years.

## **PART X: MISCELLANEOUS PROVISIONS**

### **54. Regulations**

- (1) The Minister may, by notice in the Gazette, and after consultation with the Commissioner, make regulations regarding: –
- (a) additional forms of communication of information under section 21(2);
  - (b) training of officials under section 9;
  - (c) reports to the Commissioner under section 12;
  - (d) any notice required by this Act; or
  - (e) any administrative or procedural matter necessary to give effect to this Act.
- (2) Any regulation under sub-section 54(1) must, before publication in the *Gazette*, be laid before Parliament.

### **55. Amendments**

- (1) On the commencement of this Act, section [ ] of the *Official Secrets Act* ceases to apply to information which must be made available under Part [ ] of this Act.