

ANTIGUA AND BARBUDA
THE FREEDOM OF INFORMATIONACT, 2004
ARRANGEMENT OF SECTIONS

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ANTIGUA AND BARBUDA

No.....of 2004

A BILL

FOR

Published in the Official Gazette

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AN ACT to promote maximum disclosure of information in the public interest, to guarantee and facilitate the right of access to information and to provide for effective mechanisms to secure that right.

ENACTED by the Parliament of Antigua and Barbuda as follows:

**PART I
PRELIMINARY**

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|------------------------------------|----|--|
| Short title
and
commencement | 1. | This Act may be cited as the Freedom of Information Act, 2004 and, shall come into operation on a date appointed by the Minister by Notice published in the Gazette. |
| Interpretation | 2. | In this Act, unless the context otherwise requires –

“Commissioner” means the Information Commissioner, appointed pursuant to Part V;

“information officer” means a person so designated pursuant to section 9 (1);

“Minister” means the Minister responsible for public information;

“official means any person employed by the relevant body, whether permanently or temporarily and whether part-time or full time;

“personal information” means information which relates to a natural living person who can be identified from that information; and |

“private body” has the meaning given to it pursuant to section 3 (2);

“public authority” has the meaning given to it pursuant to section 3 (1);

“publish” means make available in a form generally accessible to members of the public and includes print, broadcast and electronic forms of dissemination;

“record” has the meaning set out in section 4.

Interpretation
of “public
authority” and
“private” body

3. (1) For the purposes of this Act, a public authority means –
- (a) the Government;
 - (b) a Ministry of the Government and a department, division or unit, by whatever name known, of a Ministry;
 - (c) the Barbuda Council established under section 123 the Constitution and the Barbuda Local Government Act;
 - (d) a body –
 - (i) established by or under the Constitution or any other law
 - (ii) owned, controlled or substantially financed by the Government from public funds
 - (iii) carrying out a function conferred by law or by executive action, or a public function conferred by the Government, only to the extent of that function
 - (e) such other body carrying out a public function as the Minister may, by Order published in the Gazette, designate.
- (1) For purposes of this Act, a private body includes any body, excluding a public authority that:-

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of Cap. 44

- (a) carries on any trade, business or profession, but only in that capacity; or
 - (b) has legal personality.

- Records 4. (1) For purposes of this Act, a record includes any recorded information, regardless of its form, source, date of creation, or official status, whether or not it was created by the public authority or private body that holds it and whether or not it is classified.

- (2) A public authority or private body holds a record if –
 - (a) the public authority or private body holds the record, other than on behalf of another person; or
 - (b) another person holds the record, on behalf of the public authority or private body.

- Act binds the Crown 5. This Act binds the Crown.

- Construction of Act in relation to other laws, etc. 6. (1) This Act applies to the exclusion of the provisions of any other law that prohibits or restricts the disclosure of a record by a public or private body to the extent that such provision is inconsistent with this Act.

- (2) Nothing in this Act limits or otherwise restricts the disclosure of information pursuant to any other law, policy or practice.

- Non - application of Act 7. This Act does not apply to –
 - (a) a commission of inquiry or the proceedings and findings of such a Commission, established pursuant to the Commissions of Inquiries Act;
 - (b) such public authority or function of a public authority as the Minister may, by Order subject to negative resolution of the House of Representatives, determine,
 - (c) a court, or the holder of a judicial office or other office pertaining to a court in its capacity or his capacity as such; or

Cap. 91

- (d) a registry or other office of a court and the staff of such a registry or other office in their capacity as members of that staff in relation to matters pertaining to the administration of the court.

PART II
MEASURES TO PROMOTE OPENNESS

- | | | |
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| Guide to using this Act | 8. | <ul style="list-style-type: none">(1) The Commissioner shall, as soon as practicable, compile a clear and simple guide containing practical information to facilitate the effective exercise of rights pursuant to this Act, and shall disseminate the guide widely in an accessible form.(2) The guide published under subsection (1) shall be updated on a regular basis. |
| Information officers of public authorities | 9. | <ul style="list-style-type: none">(1) Every public authority shall designate one of its officers as an information officer and ensure that members of the public have easy access to 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 provisions of this Act, have the following responsibilities -<ul style="list-style-type: none">(a) to serve as a central contact within the public authority for receiving requests for information, for assisting persons seeking to obtain information and for receiving complaints regarding the performance of the public authority relating to the provision of information pursuant to this Act.(b) to promote within the public authority the best possible practices in relation to record maintenance, archiving and disposal; and |
| Duty to publish basic information | 10. | <ul style="list-style-type: none">(1) Every public authority shall, in the public interest, publish and disseminate in an accessible form, at least annually, basic information including –<ul style="list-style-type: none">(a) a description of its structure, functions, duties and finances; |

- (b) relevant details concerning any services it provides directly to members of the public;
 - (c) any direct request or complaints mechanisms available to members of the public regarding acts or a failure to act by that body, together with a summary of any requests, complaints or other direct actions by members of the public and that body's response;
 - (d) a simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information;
 - (e) a description of the powers and duties of its senior officers, and the procedure it follows in making decisions;
 - (f) any regulations, policies, rules, guides or manuals regarding the discharge by that body of its functions;
 - (g) the content of all decision and policies it has adopted which affect the public, along with the reasons for them, any authoritative interpretations of them, and any important background material; and
 - (h) any mechanisms or procedures by which members of the public may make representations or otherwise influence the information of policy or the exercise of powers by that public authority.
- (2) The Minister may, by direction in writing, authorise the publication in a single document of any statements required to be published in pursuance of this Part by a public authority together with the statements required to be published by any other public authority for which the first – mentioned authority is responsible; and where a direction has been issued, that other public authority shall be treated as having complied with this Part.

- Guidance on duty to publish
11. The Commissioner shall –
- (a) publish a guide on minimum standards and best practices regarding the duty of public authorities to publish information pursuant to section 11; and
 - (b) upon request, provide advice to public authorities regarding the duty to publish information pursuant to section 10.
- Maintenance of records
12. (1) Every public authority shall maintain its records in a manner which facilitates the right of access to information, as provided for in this Act, and in accordance with the Code of Practice issued pursuant to subsection (3).
- (2) Every public authority shall establish and maintain adequate procedures for the correction of personal information held by it.
- (3) The Commissioner 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 Archives and Records Office established under the Archives and Records Act.
- Cap. 35
- Training of officials
13. Every public authority shall ensure the provision of appropriate training for its officials on the right to information and the effective implementation of this Act.
- Reports to Commissioner
14. The information officer of a public authority shall, in each financial year, 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, or refused;
 - (b) how often and which sections of this Act were relied upon to refuse, in part or in full, requests for information;
 - (b) appeals from refusals to communicate information;
 - (c) fees charged for requests for information; and
 - (d) its activities pursuant to sections 10,11, and 12.

PART III
RIGHT OF ACCESS TO INFORMATION

- Right of access 15. (1) Notwithstanding any law to the contrary and subject to the provisions of this Act, every person has the right to obtain, on request, access to information.
- (2) Nothing in this Act shall prevent a public authority from giving access to documents or information other than as required by this Act where it has the discretion to do so or where it is required to do so by any written law or order of a court.
- Access procedure 16. (1) A person is not entitled to obtain, in accordance with the procedure provided for in this Part, access to –
- not to apply to certain documents
- (a) a document which contains information that is open to public access, as part of a public register or other document, in accordance with another written law, where that access is subject to a fee or other charge;
- (c) a document which contains information that is available for purchase by the public in accordance with arrangements made by a public authority;
- (d) a document that is available for public inspection in a registry maintained by the Registrar or other public authority;
- (e) a document which is stored for preservation or safe custody, being a document which is a duplicate of a document of a public authority.
- (2) A person making a request for information to a public authority shall be entitled, subject only to the provisions of this Part and Part IV of this Act -
- (a) to be informed whether or not the public body holds a record containing that information or a record from which that information may be derived; and
- (b) if the public body does hold such a record, to have that information communicated to him.

Requests for
information

- (3) A person making a request for information to a private body which holds information necessary for the exercise or protection of any right shall, subject only to the relevant provisions of Parts II and IV of this Act, be entitled to have that information communicated to him.
17. (1) For the purposes of section 15, a request for information shall be made by the applicant in writing addressed to an official of a public authority or private body and in sufficient detail to facilitate the identification, with reasonable effort, whether or not the body holds a record containing that information.
- (2) Where a request for information does not comply with the provisions of subsection (1), the official who receives the request shall, subject to subsection (6), render such reasonable assistance, free of charge, as may be necessary to enable the request to comply with subsection (1).
- (3) A person who is unable, because of illiteracy or disability, to make a written request for information may make an oral request, and the official who receives the oral request shall, subject to subsection (6), reduce it to writing, and include his name and position within the public authority or private body, and give a copy thereof to the person who made the request.
- (4) The reason for a request for information made to a public authority is irrelevant for the purpose of deciding whether the information should be provided.
- (5) A request to a private body for information shall identify the right which 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) An official who receives a request for information may transfer that request to the relevant information officer for purposes of complying with subsection (2) or (3).
- (7) Without prejudice to the power of the Minister to make regulations, a public authority or private body may prescribe a form for requests for information, in a format that does not unreasonably delay the processing of requests or place an undue burden upon those making requests.

- (8) An official of a public authority or private body which receives a request for information shall provide the person making the request with a receipt documenting the request.
- Time limits for responding to requests 18. (1) Subject to subsections (2) and (3), an official of a public authority or private body must respond to a request for information as soon as practicable and in any event within twenty working days of receipt of the request if the request has been approved and the applicant has paid the fees required to be paid under section 20.
- (2) Where a request for information relates to information which reasonably appears to be necessary to safeguard the life or liberty of a person, the official shall provide a response within 48 hours.
- (3) The official of a public authority or private body may, by notice in writing within the initial period of twenty days extend the period in subsection (1) to the extent strictly necessary, and in any case to not more than forty 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 twenty working days would unreasonably interfere with the operations of the public authority or private body.
- (4) Failure to comply with the time-limits prescribed or permitted under this section is deemed to be a refusal of the request.
- Notice of response 19. (1) The response pursuant to section 18 to a request for information shall be made in writing and state –
- (a) the applicable fee, if any, pursuant to section 20, in relation to any part of the request which is granted, and the form in which the information will be communicated;
- (b) adequate reasons for the refusal in relation to any part of the request which is not granted subject only to Part IV;
- (c) in relation to any refusal to indicate whether or not the public body holds a record containing the relevant information, the fact of such refusal and adequate reasons for it; and

- (d) the right of appeal to the Commissioner or to a judicial review available to the applicant.
- (2) The response pursuant to section 16 to a request for information shall be made 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
 - (b) in relation to any part of the request which is not granted, adequate reasons for the refusal.
 - (3) In relation to a request or any part of a request that is granted, communication of the information must take place forthwith, subject only to section 20.
- Fees
- 20. (1) The communication of information pursuant to a request by a public or private body may, subject to subsections (2) and (3), 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 requests for personal information, and requests in the public interest.
 - (3) The Minister may, after consultation with the Commissioner, make Regulations providing -
 - (a) for the fees to be paid;
 - (b) for the manner in which fees are to be calculated;
 - (c) that no fee is to be charged in cases specified in the Regulations; and
 - (d) for any other matter relating to fees.
 - (4) A public body shall not require payment of a fee pursuant to subsection (1) where the cost of collecting that fee would exceed the amount of the fee.
- Means of communicating
- 21. (1) Where a request indicates a preference as to the form of communication of information provided in subsection (2), a

information

public or private body communicating information pursuant to a request for information shall, subject, to subsection, (3), do so in accordance with the preference indicating by the applicant.

(2) An applicant may, in a request for information, indicate the following preferences as to the form of communication of information -

(a) a true copy of the record in permanent or other form;

(b) an opportunity to inspect the record, where necessary using equipment normally available to the public authority or private body;

(c) an opportunity to copy the record, using equipment other than the equipment of the public authority or private body.

(d) a transcript of the record in print, sound or visual form;

(e) a transcript of the content of a record, 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 record 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 operations of the public authority or private body; or

(b) adversely affect the preservation of the record.

(4) Where a record exists in more than one language, communication of the record shall, from among those languages, be given in accordance with the language preference of the person making the request.

If a record is not held

22.

(1) Where an official who receives a request for information believes, on reasonable grounds, that the request relates to

information that is not contained in any record 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 subsection (1), he shall confirm whether or not the public body holds a record containing the information and, if it does not, shall, he knows of another public body which holds the relevant record, as soon as practicable -
 - (a) transfer the request to that public body and inform the applicant of such transfer; or
 - (b) indicate to the applicant which public body holds the relevant record;

whichever would be likely to ensure more expeditious access to the information.

- (3) Where a request is transferred pursuant to subsection (2) (a), the time limit for responding to requests under section 18 shall begin to run from the date of the transfer.
- (2) A private body which receives a request for information that is not contained in any record held by the private body shall notify the person making the request that it does not hold the information.

Vexatious,
repetitive or
unreasonable
requests

- 23. (1) A public authority or private body is not required to comply with a request for information which is vexatious or unreasonable or where it has recently complied with a substantially similar request from the same person.
- (2) A public authority or private body is not required to comply with a request for information where to do so would unreasonably affect its financial or other resources.

PART IV EXCEPTIONS TO GENERAL RIGHT OF ACCESS

Public interest
to override all
other considerations

- 24. Notwithstanding any provision in this Part, a public authority may not refuse to indicate whether or not it holds a record, or refuse to communicate information, unless the harm that would result from the refusal outweighs the public interest in the disclosure of the that information.

- Severability of information 25. If a request for information relates to a record containing information which, subject to this Part, falls within the scope of an exception specified in this Part, any information in the record 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 person making the request.
- Personal information 26. (1) A public authority or private body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would involve the unreasonable disclosure of personal information about a third party who is a natural person.
- (2) Subsection (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 third party is or was an official of a public body and the information relates to his function in that capacity.
- Legal privilege 27. A public authority or private body may refuse to indicate whether or not it holds a record, 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.
- Commercial and confidential information 28. A public authority or private 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 part; or
 - (c) the information was obtained in confidence from another State or an international organization, and to communicate it would, or would be likely to, seriously prejudice relations between Antigua and Barbuda and that State or international organization.
- Health and safety 29. A public authority or private body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, endanger the life, health or safety of any person.
- Law enforcement 30. A public authority or private body may refuse to indicate whether or not it holds a record, or refuse to communicate information, where to do so would, or would be likely to, cause serious prejudice to –
- (a) the prevention or detection of crime;
 - (b) the apprehension or prosecution of offenders;
 - (c) the administration of justice;
 - (d) the assessment or collection of any tax or duty;
 - (e) the operation of immigration controls; or
 - (f) the assessment by a public body of whether civil or criminal proceedings, or regulatory action pursuant to any enactment, would be justified.
- Defence and security 31. A public authority or private body may refuse to indicate whether or not it holds a record, 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 Antigua and Barbuda.
- Public economic interests 32. (1) A public authority or private body may refuse to indicate whether or not it holds a record, 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 Antigua and Barbuda.

(2) A public authority or private body may refuse to indicate whether or not it holds a record, 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 the public authority or another public authority.

(3) Subsections (1) or (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.

Policy making 33.
and operations
of public authorities

(1) A public authority or private body may refuse to indicate whether or not it holds a record, 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;
- (c) significantly undermine the deliberative process in a public authority by inhibiting the free and frank provision of advice or exchange of views; or
- (d) significantly undermine the effectiveness of a testing or auditing procedure used by a public body.

(2) A public authority or private body may refuse to indicate whether or not it holds a record, or refuse to communicate information, which is –

- (a) the official record of any deliberation or decision of Cabinet;
- (b) a document that has been prepared by a Minister of Government or on his behalf or by a public authority for the purpose of submission for consideration by Cabinet or a document which has been considered by the Cabinet and which is related to issues that are or have been before Cabinet;
- (c) a document prepared for the purpose of briefing a Minister of Government in relation to issues to be considered by Cabinet;

- (d) a document that is a copy or draft of, or contains extracts from, a document referred to in paragraph (a), (b) or (c); or
 - (e) a document the disclosure of which would involve the disclosure of any deliberation or decision of Cabinet, other than a document by which a decision of Cabinet was officially published.
- (3) Subsections (1) and (2) do not apply to facts, analyses of facts, technical or scientific data or statistical information unless the disclosure would involve the disclosure of any deliberation or decision of Cabinet.
- Time limits 34. (1) The provisions of sections 27 to 32 apply only to the extent that the harm they seek to protect against would, or would be likely to, occur at or after the time at which the request is considered.
- (2) Sections 28 (c), 30, 31, and 32 do not apply to a record which is more than thirty years old.

PART V
INFORMATION COMMISSIONER AND EMPLOYEES, ETC.

- Appointment of Information Commissioner 35. (1) The Governor-General, acting on the recommendation of the Prime Minister and with the approval of both Houses of Parliament signified by resolution, shall appoint an Information Commissioner for the purposes of this Act, on such terms and conditions as may be specified in the instrument of his appointment.
- (2) A person shall not be qualified to hold office as Commissioner if that person -
- (a) is a member of the House of Representatives or a Senator;
 - (b) holds or is acting in a public office;
 - (c) is an undischarged bankrupt, having been declared bankrupt under any law;

- (d) has, within the period of ten years immediately preceding his appointment, been convicted of theft, fraud or other such offence involving dishonesty; or
 - (e) holds office in, or is an employee of, a political party.
- (3) The Commissioner shall hold office for a term of [five] years and may be re-appointed for a further term of five years, but shall not hold office for more than two consecutive terms.
 - (4) The Commissioner may be removed from office by the Governor-General, for misconduct, on the recommendation of the Prime Minister and with the approval of both Houses of Parliament signified by resolution.
- Appointment of staff 36. There shall be appointed, with the concurrence of the Commissioner and in accordance with the laws governing appointments to the public service, officers and employees to assist the Commissioner in the performance of the functions of the Commissioner.
- Functions of Commissioner 37. In addition to any other functions under this Act, the functions of the Commissioner shall be –
- (a) to monitor and report on the compliance by public bodies with their obligations under this Act;
 - (b) to make recommendations for reforms of a general or specific nature to facilitate compliance with this Act;
 - (c) to undertake or promote the training of officials of public bodies and other persons on the right to information and the effective implementation of this Act;
 - (d) to refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences under this Act; and
 - (e) to publicize the requirements of this Act and the rights and obligations under the Act.
- Independence of Commissioner and employees of Commissioner's Office. 38. (1) In the exercise of his functions under this Act, the Commissioner shall not be subject to the direction or control of any other person or authority.

- (2) All officers and employees of the Office of the Commissioner and any other persons authorised to perform any functions under this Act shall be under the control and direction of the Commissioner and shall perform their functions without fear, favour or prejudice; and no person or authority shall interfere with or exert undue influence on them in the exercise of their powers or in the performance of their professional functions.
- Annual reports 39. (1) The Commissioner shall, within three months after the end of each financial year, prepare and submit to the Minister a report on the operations of the Office of the Commissioner during the preceding financial year and such other information as the Minister may direct in writing.
- (2) The Minister shall cause a copy of each annual report submitted pursuant to subsection (1) to be laid before the House of Representatives as soon as practicable after he has received the report.
- Exemption from personal liability 40. (1) The Commissioner, any officer or employee of his Office or any other person acting on behalf of or under the direction of the Commissioner shall not be personally liable in criminal or civil proceedings for any act done in good faith pursuant to this Act.
- (2) For the purposes of proceedings for defamation, any information provided, whether orally or in writing, pursuant to an investigation by or on behalf of the Commissioner under this Act shall be treated as privileged information unless it is shown that that information was not provided in good faith.

PART VI ENFORCEMENT BY COMMISSIONER

- Complaints to Commissioner 41. A person who has made a request for information may apply in writing to the Commissioner for a decision that a public authority or private body has failed to comply with an obligation under Part III, including the following:
- (a) refusing to indicate whether or not it holds a record, or to communicate information, contrary to section 13;
- (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; or
 - (f) failing to communicate information in the form requested, contrary to section 21.
- Decision on complaints 42.
- (1) The Commissioner shall, subject to subsection (2), decide an application made pursuant to section 41 as soon as is reasonably possible, and in any case within 30 days, after giving both the complainant and the relevant public authority or private body an opportunity to provide their views in writing.
 - (2) The Commissioner may summarily reject applications -
 - (a) which are frivolous, vexatious or unreasonable; or
 - (b) if the applicant has failed to seek or use any other remedies established by the relevant public or private body which are available to him.
 - (3) In an application pursuant to section 41, the burden of proof shall be on the public or private body to show that it acted in accordance with its obligations under Part II.
 - (4) In a decision pursuant to subsection (1), the Commissioner may -
 - (a) dismiss the application;
 - (b) require the public body or private body to take such steps as may be necessary to bring it into compliance with its obligations pursuant to Part II;
 - (c) require the public body to compensate the complainant for any loss or other detriment suffered; or
 - (d) in the case of willful failure to comply with an obligation pursuant to Part II, impose a fine on the public body.

- (3) The Commissioner shall provide a copy of the decision to the complainant and the public authority or private body together with information regarding the right of the parties to a review of the Commissioner’s decision.
- Direct implementation of decision 43. (1) Where Commissioner decides that a public authority has failed to comply with an obligation pursuant to Part II, the Commissioner may require the public authority to take such steps as may be necessary to bring it into compliance with its obligations under Part II, including the following –
- (a) appointing an information officer;
 - (b) publishing the relevant information and categories of information;
 - (c) making relevant changes to its practices in relation to the keeping, management and destruction of records, and the transfer of records to the Archives and Records Office;
 - (d) enhancing the provision of training on the right to information for its officials;
 - (e) providing the Commissioner with an annual report, in compliance with section 14;
 - (f) in cases of unreasonable or willful failure to comply with an obligation under Part III, paying a fine.
- (2) The Commissioner shall serve notice of the decision, to the public authority together with information regarding the right of the public authority to a review of the Commissioner’s decision.
- Commissioner’s powers to investigate 44. (1) In coming to a decision pursuant to section 42 or 43, the Commissioner shall have the power to conduct an investigation, including the issuing of orders requiring the production of evidence and compelling witnesses to testify.
- (2) The Commissioner may, during an investigation pursuant to subsection (1), examine any record to which this Act applies, and no such record may be withheld from the Commissioner on any grounds.

- Review of Commissioner's decisions and orders 45. (1) The complainant, or the relevant public authority or private body, may, within 28 days, apply to the High Court for a review of a decision of the Commissioner pursuant to section 42 or 43, or an order pursuant to section 44 (1).
- (2) In any review of a decision pursuant to section 39, the burden of proof shall be on the public body or private body to show that it acted in accordance with its obligations under Part II.
- Commissioner's decisions and orders binding 46. On the expiry of the period of 28 days referred to in section 43 or such longer period as the Commissioner may, pursuant to a decision or order under section 42 or 43 determine, the decision of the Commissioner's shall become binding and the failure of a public authority to carry out the decision or order shall be treated by the Court as a contempt of court.

PART VII BONA FIDE DISCLOSURE OF WRONG-DOING

- Whistle-blowers 47. A person may disclose information to the Commissioner or to any other authority on the wrong-doing by a public authority concerning –
- (a) a serious threat to the health or safety of an individual or a serious threat to the public or the environment;
 - (b) the commission of a criminal offence;
 - (c) failure to comply with a legal obligation;
 - (d) a miscarriage of justice;
 - (e) corruption, dishonesty or serious maladministration,
 - (f) abuse of authority or neglect in the performance of official duty;
 - (g) injustice to an individual;
 - (h) unauthorised use of public funds,

and that person disclosing the information shall not be liable in any legal proceedings or to any sanction relating to his employment regardless of any breach of a legal or other obligation for disclosing such information if the information was disclosed in good faith and in the reasonable belief that the it was substantially true.

**PART VIII
MISCELLANEOUS**

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|-------------|-----|---|
| Offences | 48. | (1) A person shall not wilfully –

(a) obstruct access to any record contrary to Part III of this Act;

(b) obstruct the performance by a public authority of a duty pursuant to Part III of this Act;

(c) interfere with the work of the Commissioner; or

(d) destroy records without lawful authority.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a period not exceeding two years or to both. |
| Regulations | 49. | (1) The Minister may, after consultation with the Commissioner, make Regulations for the purpose of giving effect to the provisions of this Act.

(2) Regulations made pursuant to this section shall be subject to negative resolution of the House of Representatives. |
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Passed by the House of Representatives
this day of , 2004.

D. Giselle Isaac-Arrindell
Speaker

Yvonne Henry
Clerk to the House of Representatives

Passed by the Senate
this day of , 2004.

Dr. Edmond Mansoor
President

Yvonne Henry
Clerk to the Senate

EXPLANATORY MEMORANDUM

The purpose of this Bill is to give effect to the provisions of the Constitution conferring the right to receive and disseminate information which is also guaranteed under the International Covenant on Civil and Political Rights. The Bill is intended to facilitate the right of the public to have access to information held by public authorities in order to further the public interest by promoting informed discussion of public affairs and greater accountability of public authorities.

The Bill also provides for a limited access to information held by private bodies where this is necessary for the exercise or protection of a right.

Part I of the Bill contains provisions for the interpretation and construction of various expressions used in the Bill and also for rendering the provisions of the proposed law binding on the Government.

A “public authority” is broadly defined so as to include not only the Government but also other bodies owned, controlled or financed from public funds or carrying out public functions.

The Bill seeks to confer predominance on this law over any other law in order to ensure unimpeded access to information.

The Bill would exempt judicial and semi-judicial bodies from the provisions of the proposed law in order to maintain their independence and effectiveness.

Part II of the Bill sets out provisions requiring the Information Commissioner appointed under the Act to publish a simple guide containing practical information to facilitate the exercise of rights and also requiring public authorities to publish basic information relating to their respective functions and operations.

Each public authority is required to designate one of its staff as an information officer who would serve as a contact for the purpose of receiving and processing requests for information.

The purpose of these provisions is to ensure that public authorities place as much information as possible within the public domain in order to promote transparency.

Part III of the Bill, in *Clause 15*, would provide every one with an enforceable right of access to information held by public authorities upon the submission of a request.

This right is subject only to the reasonably necessary exceptions provided for in Part IV of the Bill. This Part also sets out the procedure for access to information, the time limits within which information must be provided and the means by which the information is to be communicated to the person who makes a request for information. Information may be provided upon the payment of a reasonable fee not exceeding the actual cost of searching for, preparing and communicating it.

Part IV of the Bill provides for exceptions to the general right of access to information, subject to the overriding consideration of the public interest in the disclosure or non-disclosure of the information requested for or the damaging effects envisaged in a disclosure. These exceptions relate to, inter alia, personal privacy, legal privilege (such as between lawyer and client), commercial confidential information, health, safety, defence and security, law enforcement and policy-making.

Part V of the Bill provides for the institutional framework required to operate the legal regime that would be created by the proposed law. An independent Information Commissioner, appointed by the Governor-General with the approval of both Houses of Parliament, will be responsible for the oversight and enforcement of the Act.

Under *Part VI* of the Bill, the Commissioner would have powers to hear and determine complaints arising from failure to comply with obligations imposed by the Act.

Part VII of the Bill seeks to afford protection to persons who, in good faith, disclose information on wrong-doing.

Part VIII of the Bill sets out various offences and would also allow the Minister responsible for the administration of the proposed law to make Regulations for giving effect to the Act.

Done this.....day of.....2004.

**Justin L. Simon, Q.C.
Attorney-General and
Minister of Justice
and Legal Affairs.**