

A Bill entitled

## **Freedom of Information**

### **An Act to**

(a) give effect to the broad provisions of section 20 of the Constitution which gives to every person the right and freedom to receive ideas and information without interference, including information held by public authorities, so as to enhance good governance through knowledge, transparency and accountability; and

(b) make provision for public access to public information about the operations of public authorities and, in particular, ensure that the authorizations, policies, rules and practices affecting members of the public are readily available to persons affected by those authorizations, policies, rules and practices; and

(c) facilitate the informed participation of people in the decision-making processes of public authorities; and

(d) create a general right of access to information in any form in the possession of public authorities limited only by exceptions and exemptions necessary for the protection of essential public interests in a democratic society and the private or business affairs of persons in respect of whom information is held by public authorities; and

(e) establish the Office of the Information Commissioner and specify the functions of that office. (Gazetted..., 2008) BE IT ENACTED by the Parliament of Barbados as follows:

### **PART I** ***Preliminary***

#### *Short title.*

1. This Act may be cited as the Freedom of Information Act, 2008.

#### *Commencement*

2. This Act shall come into operation on a day to be appointed by the Minister by Order published in the *Gazette* no later than twelve months from the date the Act receives assent from the Governor General.

#### *Interpretation.*

3. (1) In this Act, unless the context otherwise requires-

“applicant” means a person who has made a request;

“Atlanta Declaration” means the “Atlanta Declaration And Plan Of Action For The Advancement Of The Right Of Access To Information” signed at Atlanta, Georgia, in the United States of America on 29 February, 2008;

“Commissioner” means the Information Commissioner appointed under section 45;

“Department” means a Department of the Government of Barbados;

“enactment” means an Act or an instrument (including rules, regulations or bylaws) made under an Act;

“exempt information” means information which, by virtue of a provision of Part V, is exempt information;

“information” means information recorded in any form, or any written or printed matter, and includes, documents, records, public and private partnership contracts, grants or leases of land, letters, e-mails, written decisions, policy papers, samples, a map, diagram, plan, photograph, films or micro film, and any article or thing that has been so treated in relation to any sounds or visual images that those sounds or visual images are capable, with or without the aid of some other device, of being reproduced from the article or thing, and includes a copy of any such matter, map, plan, photograph, article or thing, but does not include library material maintained for reference purposes;

“information officer” means a senior officer of a Ministry or prescribed authority appointed pursuant to section 51;

“law” shall have the same meaning as assigned to the term “enactment”;

“Minister” or “Minister administering this Act” means the Minister of Government to whom is assigned responsibility under the Constitution for information;

“Ministry” means a Ministry of the Government listed under Schedule 1 of this Act;

“person” includes both natural and juridical persons;

“personal information” means information about an individual, including-

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex or marital or family status of the individual;

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) any identifying number, symbol or other particular assigned to the individual;

(d) the address, telephone number, finger-prints or blood type of the individual;

(e) the personal opinions or views of the individual except where they relate to another individual;

(f) correspondence sent to a public authority by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence;

(g) the views or opinions of another individual about the individual; and

(h) the individual’s name where it appears with other personal information relating to the individual where the disclosure of the name would reveal other personal information about the individual,

Provided that information relating to a Minister, officer, employee or representative of a public authority acting in his or her official capacity shall not be exempt from disclosure under this Act;

“prescribed authority” means –

- (a) a local authority; or
- (b) a public statutory corporation or body,

which is listed in Schedule 1 of this Act; or

- (c) any body corporate or any unincorporated body established for a public purpose, which may be prescribed by the Minister by Order published in the Gazette that is subsequently added to the Schedule 2 of this Act;

“principal officer” means–

- (a) in relation to a Ministry, the Permanent Secretary of that Ministry,
- (b) in relation to a Department, the Head of that Department, and
- (c) in relation to a prescribed authority, the chief executive officer, general manager or other similar officer of that authority;

“public authority” means a Ministry or prescribed authority as defined by this Act and listed under Schedule 1 or 2;

“regulations” means regulations made under this Act;

“request” means a request for access to information made in accordance with this Act;

“responsible Minister” means –

- (a) in relation to a Ministry, the Minister who has been assigned responsibility under the Constitution for that Ministry; or
- (b) in relation to a prescribed authority, the Minister who has been assigned responsibility under the Constitution for the subject-matter of that authority.

(2) References in this Act to a Ministry shall include a reference to a Department of Government following under that Ministry.

*Act binds the Crown.*

4. This Act binds the Crown.

*Construction of Act in relation to other laws, etc.*

5. (1) Within the broad objectives of section 20 of the Constitution, this Act provides that every person has the right, and is free, to receive and to disseminate information and ideas without interference. The paramount purpose of this Act is to give maximum effect to that right in respect of information held by a Ministry or prescribed authority (subject only to such exceptions as are reasonably justifiable in a democratic society or specifically prescribed by law) and to enhance good governance through knowledge, transparency and accountability.

(2) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

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

(4) Every Ministry and prescribed authority shall, within the broad objectives of section 20 of the Constitution, give effect to the principles and objectives of the Atlanta Declaration in the implementation of this Act.

## **PART II** ***Measures To Promote Openness***

### *Guide to using the Act.*

6. (1) Every public authority shall designate one of its officers of 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) Every information officer of a Ministry or prescribed authority appointed under section 51 shall, within three months of the commencement of this Act, 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 electronic form at the Ministry's or prescribed authority's website, and in a print form available with that information officer.

(3) The guide published under this section shall be reviewed and updated on an annual basis by the information officer as soon as practicable after the end of each year ending on 31 December.

(4) The information officer shall, in addition to any obligations specifically provided for in other provisions of this Act, have the following responsibilities –

(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.

## **PART III** **Publication of Certain Information**

### *Publication of information concerning functions of Ministries and prescribed authorities.*

7. (1) Every Ministry or prescribed authority shall, in the public interest, publish and disseminate in an accessible form, updated semi-annually, basic information, clearly dated including-

(a) an accurate and sufficiently detailed description of its structure, functions, duties and finances as required set out in the regulations, along with a list of officers and employees with decision-making powers;

(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 Ministry or prescribed authority, together with a summary of any requests, complaints or other direct actions by members of the public and that Ministry or prescribed authority's responses;

(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 all officers and employees with decision-making powers, along with their salaries, and the procedures followed in making decisions;

(f) any regulations; policies, rules, guides or manuals regarding the discharge by that authority of its functions;

(g) the content of all decisions and policies it has adopted which affect any persons, along with the reasons for them, any authoritative interpretations of them, and any important background material;

(h) any mechanisms, including consultative mechanisms, or procedures by which members of the public may make representations or otherwise influence the formulation of policy or the exercise of powers by that Ministry or prescribed authority; and

(i) the details of beneficiaries of any licenses or contracts awarded by the government, and other financial awards made possible by public funds.

(2) The information to be published in accordance with this section shall be published in the Gazette and on the internet at each Ministry's website and the information officer shall cause copies of all information to which this section applies to be made available for inspection by members of the public.

(3) Nothing in this section requires the publication of information that is considered exempt information in accordance with Part V of this Act.

(4) Subsection (1) applies in relation to a Ministry or prescribed authority that comes into existence after the commencement of this Act as if the references in that subsection to the commencement of this Act were references to the day on which the Ministry or prescribed authority comes into existence.

*Certain information to be available for inspection and purchase.*

8. (1) This section applies to information that is provided by the Ministry or prescribed authority for the use of, or are used by the Ministry or prescribed authority or its officers in making decisions or recommendations, under or for the purposes of an enactment or scheme administered by the Ministry or prescribed authority, with respect to rights, privileges, benefits, obligations, penalties or other detriments, to or for which persons are or may be entitled or subject, being –

(a) manuals or other sources of information containing interpretations, rules of procedure, letters of advice to persons outside the Ministry or prescribed authority, guidelines, practices, precedents, policies, records of decisions or similar information;

(b) information containing particulars of such a scheme, not being particulars contained in an enactment or published under this Act,

but not including information that is available to the public as published otherwise than by a Ministry or prescribed authority.

(2) The principal officer shall –

(a) cause copies of all information to which this section applies that are in use from time to time to be made available for inspection and for purchase by members of the public;

(b) not later than 12 months after the commencement of this Act, cause to be published in the Gazette, a statement (which may take the form of an index) specifying the information of which copies are, at the time of preparation of the statement, so available and the place or places where copies may be inspected and may be purchased; and

(c) within 12 months after the publication of the statement under paragraph (b) and thereafter at intervals of not more than 12 months, cause to be published in the Gazette, statements bringing up to date information contained in the previous statement or statements.

(3) This section does not require information of the kind referred to in subsection (1) containing exempt information to be made available in accordance with subsection (2), but, if such information is not so made available, the principal officer shall, if practicable, cause to be prepared corresponding information, altered only to the extent necessary to exclude the exempt information, and cause the information so prepared to be dealt with in accordance with subsection (2).

(4) Information from which exempt information has been excluded in accordance with subsection (3) shall indicate, to the extent practicable without exempt information being disclosed, the nature of the information excluded.

(5) Notwithstanding that information of the kind referred to in subsection (1) is exempt information, if the fact of the existence of that information can be published in accordance with subsection (2)(a)(ii) without exempt information being disclosed, the public authority shall cause that fact to be published.

(6) Subsections (2), (3), (4) and (5) apply in relation to a Ministry or prescribed authority that comes into existence after the commencement of this Act as if the references in those subsections to the commencement of this Act were references to the day on which the Ministry or prescribed authority comes into existence.

(7) If information required to be made available in accordance with this section, being information containing a rule, guideline or practice relating to a function of a Ministry or prescribed authority, was not made available and included in a statement in the Gazette, as referred to in this section, a member of the public who was not aware of that rule, guideline or practice shall not be subjected to any prejudice by reason only of the application of that rule, guideline or practice in relation to the thing done or omitted to be done by him or her if he or she could lawfully have avoided that prejudice had he or she been aware of that rule, guideline or practice.

*Statement of possession of certain information to be published.*

9. (1) This section applies, in respect of a Ministry or prescribed authority, to any information that is-

(a) a report, or statement containing the advice or recommendations, of a body or entity established within the Ministry or prescribed authority;

(b) a report, or statement containing the advice or recommendations, of a body or entity established outside the Ministry or prescribed authority by or under a written law, or by a Minister of Government or other public authority for the purpose of submitting a report or reports, providing advice or making recommendations to the Ministry or prescribed authority or to the responsible Minister of that public authority;

(c) a report, or a statement containing the advice or recommendations, of an inter-departmental Committee whose membership includes an officer of the Ministry or prescribed authority;

(d) a report, or a statement containing the advice or recommendations, of a committee established within the Ministry or prescribed authority;

(e) a report (including a report concerning the results of studies, surveys or tests) prepared for the Ministry or prescribed authority by a scientific or technical expert, whether employed within the public service or not, including a report expressing the opinion of such an expert on scientific or technical matters;

(f) a report prepared for the Ministry or prescribed authority by a consultant who was paid for preparing the report;

(g) a report prepared within the Ministry or prescribed authority and containing the results of studies, surveys or tests carried out for the purpose of assessing, or making recommendations on, the feasibility of establishing a new or proposed Government policy, programme or project;

(h) a report on the performance or efficiency of the Ministry or prescribed authority, or of an office, division or branch of the Ministry or prescribed authority, whether the report is of a general nature or concerns a particular policy, programme or project administered by the Minister or prescribed authority;

(i) a report containing final plans for the re-organisation of the functions of the Ministry or prescribed authority, the establishment of a new policy, programme or project to be administered by the Ministry or prescribed authority, or Cabinet;

(j) a statement prepared within the Ministry or public authority and containing policy directions for the drafting of legislation;

(k) a report of a test carried out within the Ministry or prescribed authority on a product for the purpose of purchasing equipment;

(l) an environmental impact statement prepared within the Ministry or prescribed authority; and

(m) a valuation report prepared for the Ministry or prescribed authority by a valuator whether or not the valuator is a public officer.

(2) The responsible Minister or principal officer of a Ministry or prescribed authority shall:

(a) cause to be published in the Gazette, as soon as practicable after the commencement of this Act but not later than 12 months after that commencement, in a form approved by the Minister administering this Act, a list of the information in possession of that Ministry or prescribed authority falling within the definition of subsection (1); and

(b) within 12 months after the publication of the statement under paragraph (a), that is the first statement published under that paragraph, and thereafter at intervals of not more than 12 months, cause to be published in the Gazette statements bringing up to date the information contained in the previous statement or statements published under that paragraph.

(3) A Ministry or prescribed authority that comes into existence on or after the commencement of this Act shall comply-

(a) with the provisions of subsection (2)(a) as soon as practicable after the day on which the Ministry or prescribed authority comes into existence and not later than 12 months after that day; and

(b) with the provisions of subsection (2)(b) as if the reference to "first publication" in that subsection were a reference to first publication in compliance with this subsection.

#### **PART IV** ***Access to Information***

*Right to access.*

10. Subject to this Act, every person shall have a right to obtain access in accordance with this Act to information of a Ministry or prescribed authority, other than exempt information.

*Procedure for obtaining access to certain information.*

11. Where –

(a) information is open to public access, as part of a public register or otherwise, in accordance with another enactment; or

(b) information is available for purchase by the public in accordance with arrangements made by a Ministry or prescribed authority,

the access to that information shall be obtained in accordance with that enactment or arrangement, as the case may be, and in situations under 19(b) where the information of a form ordinarily available has been exhausted, in accordance with the provisions of this Act.

*Access to information apart from this Act.*

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

*Requests for access.*

13. (1) A person who wishes to obtain access to information of a Ministry or prescribed authority shall make a request in writing to the Ministry or prescribed authority for access to the information.

(2) Subject to subsection (3), a request shall provide such information concerning the information as is reasonably necessary to enable a responsible officer of the Ministry or prescribed authority, as the case may be, to identify the information.



(3) Where a request is expressed to relate to all information, or to all information of a specified class, that contains information of a specified kind or relate to a specified subject-matter, compliance with the request may be refused if it would interfere unreasonably with the operations of the Ministry or prescribed authority, having regard to any difficulty that would exist in identifying, locating or collating information containing relevant information within the filing system of the Ministry or prescribed authority, as it relates to a substantial diversion of resources or the safety and preservation of the information.

(4) It is the duty of a Ministry or prescribed authority, where practicable, to assist a person who wishes to make a request, or has made a request that does not comply with this section or has not been directed to the appropriate Ministry or prescribed authority, to make a request in a manner that complies with this section or to direct a request to the appropriate Ministry or specified authority.

(5) Where a request in writing is made to a Ministry or prescribed authority for access to information, the Ministry or prescribed authority, as the case may be, shall not refuse to comply with the request on the ground –

(a) that the request does not comply with subsection (2); or

(b) that, in the case of a request of the kind referred to in subsection (3), compliance with the request would interfere unreasonably with the operations of the Ministry or prescribed authority, as the case may be, without first giving the applicant a reasonable opportunity of consultation with the Ministry or prescribed authority with a view to the making of a request in a form that would remove the ground for refusal.

(6) Subject to subsections (2) and (4), the requirements under this section, or any other provision of this Act for a request to be made in writing, are satisfied by a request made to the information officer either in oral or electronic form.

#### *Transfer of requests.*

14. (1) Where –

(a) a request is made to a Ministry or prescribed authority for access to information; and

(b) the information is not under the control of that Ministry or prescribed authority but is under the control of another Ministry or prescribed authority or the subject-matter of the information is more closely connected with the functions of another Ministry or prescribed authority than with those of the Ministry or prescribed authority to which the request is made,

the Ministry or prescribed authority to which the request is made shall transfer the request to the other Ministry or prescribed authority and inform the person making the request in writing accordingly within three working days of the initial receipt of the request and, if it is necessary to do so in order to enable the other Ministry or prescribed authority to deal with the request, send any information in its possession to the other Ministry or prescribed authority.

(2) Where a request is transferred to a Ministry or prescribed authority in accordance with this section, it shall be deemed to be a request made to that Ministry or prescribed authority and received at the time at which it was originally received.

#### *Requests involving use of computers, etc*

15. (1) Where –

(a) a request (including a request of the kind described in subsection 21(3) is duly made to a Ministry or prescribed authority; and

(b) it appears from the request that the desire of the applicant is for information that is not available in discrete form under the control of the Ministry or prescribed authority; and

(c) the Ministry or prescribed authority could produce the information in discrete form by –

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

(ii) the making of a transcript from a sound recording held in the Ministry or prescribed authority,

the Ministry or prescribed authority shall deal with the request as if it were a request for access to information so produced and containing that information and, for that purpose, this Act applies as if the Ministry or prescribed authority had such information in its possession.

(2) For the purposes of this Act, any information requested under this Act that does not exist but can, subject to such limitations as may be prescribed by regulation, be produced from machine readable information under the control of a government institution using computer hardware and software and technical expertise normally used by the government institution, shall be deemed to be information under the control of the government institution.

(3) A Ministry or prescribed authority is not required to comply with subsection (1) if compliance would interfere unreasonably with the operations of the Ministry or prescribed authority, having regard to any difficulty that would exist in identifying, locating or collating information containing relevant information within the filing system of the Ministry or prescribed authority, as it relates to a substantial diversion of resources or the safety and preservation of the information.

#### *Access to information to be given on request*

16. (1) Where a request for access to information is duly made, and payment is made of any charge or fee that is required to be paid before access is granted as set out in the regulations, access to the information shall be given promptly in accordance with this Act.

(2) Any fee charged by a public authority shall not exceed the cost of making information available to the applicant, whereas if regulations issued prescribe a range of standard fees, such fees shall not exceed the average cost of making information available to applicants.

(3) No fee shall be charged by a Ministry or prescribed authority for the making of a request for access to information.

(4) No fee associated with the production of information shall be charged to an applicant where –

(a) the fee payable is so small as to be not worth collecting;

(b) the timeframe established for responses under the Act has been exceeded;

(c) payment of the fee would cause financial hardship to the applicant, bearing in mind the applicant's means and circumstances; or

(d) disclosure of the information requested is in the public interest.

(5) Where information already exists in paper form at the time of the making of a request, no fee shall be paid by the applicant to have access to such information, where the information exists electronically, on film, or otherwise, the applicant shall pay a fee to be prescribed by the Minister in Regulations made under this section.

*Time within which formal requests to be decided.*

17. (1) Subject to section 29, if a request to a Ministry or prescribed authority –

(a) is made in writing and is expressed to be in pursuance of this Act; and

(b) is sent by post to the Ministry or prescribed authority, or delivered to the appropriate officer of the Ministry or prescribed authority, at an address of the Ministry or prescribed authority, as the case may be, to which requests made in pursuance of this Act may be sent or delivered in accordance with this section,

the Ministry or prescribed authority shall take all reasonable steps to enable the applicant to be notified of a decision on the request as soon as practicable but in any case not later than three working days where the information already exists at the time of making the request and ten working days after the day on which the request is received by or on behalf of the Ministry or prescribed authority, where the information does not yet exist or is not readily available.

*Forms of access.*

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

(a) a reasonable opportunity to inspect the information;

(b) provision by the Ministry or prescribed authority of a copy of the information;

(c) in the case of information that is an article or thing from which sounds or visual images are capable of being reproduced, the making of arrangements for the person to hear or view those sounds or visual images;

(d) in the case of information by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, provision by the Ministry or prescribed authority of a written transcript of the words recorded or contained in the information.

(2) Subject to subsection (4), where information is made available in terms of this section to a person for inspection, viewing or hearing, that person may make copies of, or transcribe the record using his or her equipment, unless to do so –

(a) would interfere unreasonably with the operations of the Ministry or prescribed authority, having regard to any difficulty that would exist in identifying, locating or collating information containing relevant information within the filing system of the Ministry or prescribed authority; or

(b) would be detrimental to the preservation of the information or, having regard to the physical nature of the information, would not be appropriate; or

(c) would involve an infringement of copyright (other than copyright owned by the Government) subsisting in the information.

(3) Subject to subsection (4) and to section 11, where the applicant has requested access in a particular form, access shall be given in that form.

(4) If the form of access requested by the applicant –

(a) would interfere unreasonably with the operations of the Ministry or prescribed authority, having regard to any difficulty that would exist in identifying, locating or collating information containing relevant information within the filing system of the Ministry or prescribed authority; or

(b) would be detrimental to the preservation of the information or, having regard to the physical nature of the information, would not be appropriate; or

(c) would involve an infringement of copyright (other than copyright owned by the Government) subsisting in the information,

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

*Deferment of access.*

19. (1) A Ministry or prescribed authority which receives a request may defer the provision of access to the information concerned until the happening of a particular event (including the taking of some action required by law or some administrative action), or until the expiration of a specified time, where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices.

(2) Where the provision of access to information is deferred in accordance with subsection (1) the Ministry or prescribed authority shall, in informing the applicant of the reasons for the decision, indicate -

(a) as far as practicable, the period for which the deferment will operate; and

(b) shall also indicate that the applicant has the right to file a complaint with the Information Commissioner.

(3) Subject to section 39, the period for which deferment will operate under this section shall not exceed twenty working days and where access is not granted within the said period, the information offer shall be deemed to have made on the last day of that period a decision refusing to grant access to the information, and the applicant may apply for a review of the decision in accordance with Part VI of this Act.

*Deletion of exempt information*

20. (1) Where –

(a) a decision is made not to grant a request for access to information on the ground that it is or contains exempt information; and

(b) it is practicable for the Ministry or prescribed authority to grant access to a copy of the information with such exempt information deleted; and

(c) the applicant subsequently indicates that the applicant would wish to have access to such a copy with deletions,

the Ministry or prescribed authority shall grant access to such a copy of the information.

(2) Where access is granted to a copy of information in accordance with subsection (1), the applicant shall be informed that it is such a copy and also be informed of the provisions of this Act by virtue of which any matter deleted is exempt information.

*Decision to be made by authorized persons.*

21. A decision in respect of a request made to a Ministry or prescribed authority shall be made on behalf of the Ministry or prescribed authority by the information officer of the Ministry or prescribed authority acting within the scope of authority exercisable by him or her in accordance with the arrangements approved by the responsible Minister or the principal officer of the Ministry or prescribed authority.

*Reasons and other particulars of decisions to be given be given.*

22. (1) Where, in relation to a request for access to a information of a Ministry or prescribed authority, a decision is made under this Part that the applicant is not entitled to access to information in accordance with the request or that provision of access to the information be deferred, the Ministry or prescribed authority shall cause the applicant to be given notice in writing of the decision, and the notice shall –

(a) state the findings on any material questions of fact, referring to the material on which those findings are based, and the reasons for the decision;

(b) where the decision relates to information of any Ministry or prescribed authority, state the name and designation of the person giving the decision; and

(c) inform the applicant of his or her right to apply for judicial review of the decision.

(2) A Ministry or prescribed authority is not required to include in a notice under subsection (1) any information that is of such a nature that its inclusion in the said notice would cause it to include exempt information.

## **PART V** ***Exempt Information***

*Information affecting national security, defence, and international relations.*

23. (1) Access to information may be denied if disclosure of the information under this Act would be contrary to the public interest for the reason that the disclosure would cause serious harm to the security, defence or international relations of Barbados.

*Cabinet information, etc.*

24. (1) Access to cabinet papers including records of deliberations of the Ministers, Secretaries and other officers may be denied if disclosure is likely:

(a) cause serious harm to the effective formulation or development of government policy;  
or

(b) seriously frustrate the success of a policy, by premature disclosure of that policy; and

(c) be contrary to the public interest.

Provided that the decisions of the Cabinet, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this Act may not be disclosed:

(2) This section shall also apply information relating the operations of Parliament, a Commission of Inquiry, and the Office of the Governor-General as described in subsection (1).

*Information affecting enforcement and administration of the law.*

25. Access to information may be denied if its disclosure under this Act would, or would be reasonably likely to –

(a) cause serious harm to, or seriously frustrate, the investigation of a breach or possible breach of the law or the enforcement or proper administration of the law in a particular instance;

(b) cause serious harm to, or seriously frustrate, the fair trial of a person or the impartial adjudication of a particular case;

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

(d) cause serious harm to, or seriously frustrate, intelligence gathering operations; or

(e) disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law, the disclosure of which would, or would be reasonably likely to, seriously harm or frustrate the effectiveness of those methods or procedures; or

(f) endanger the lives or physical safety of persons (including prosecution witnesses) engaged in or in connection with law enforcement.

*Certain information concerning operations of Ministries, etc.*

26. Access to information may be denied if its disclosure under this Act would be contrary to the public interest by reason that the disclosure would have a substantial adverse effect on the staff management interests of the Government or a prescribed authority or would otherwise be contrary to the public interest by reason that the disclosure would have a substantial adverse effect on the efficient and economical conduct of the affairs of a Ministry or prescribed authority.

*Information affecting personal privacy.*

27. (1) Access to information may be denied if it contains personal information and its disclosure under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person).

(2) The provisions of subsection (1) do not have effect in relation to a request by a person for access to information by reason only of the inclusion of information relating to that person.

*Information relating to trade secrets, etc.*

28. (1) Access to information may be denied if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning a business, commercial or financial undertaking, and –

(a) the information relates to trade secrets or to other confidential business matter the disclosure of which under this Act would be reasonably likely to expose the person or undertaking unreasonably to disadvantage; or

(b) the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of the Government or a prescribed authority to obtain similar information in the future.

(2) The provisions of subsection (1) do not have effect in relation to a request by a person for access to information by reason only of the inclusion of information concerning that person in respect of his or her business or professional affairs or of information concerning a business, commercial or financial undertaking of which that person, or a person on whose behalf that person made the request, is the proprietor.

#### *Notice to Third Parties*

29. (1) If a Ministry or prescribed authority intends to disclose information requested under this Act that contains, or that the information officer has reason to believe might contain, personal information described in section 27, trade secrets of a third party or information described in paragraph 28(1)(a) that was supplied by a third party, or information the disclosure of which the information officer can reasonably foresee might effect a result described in paragraph 28(1)(b) in respect of a third party, the information officer shall make every reasonable effort to give the third party written notice of the request and of the information officer's intention to disclose within ten working days after the request is received.

(2) A notice given under subsection (1) shall include

(a) a statement that the information officer giving the notice intends to release information or a part thereof that might contain material or information described in subsection (1);

(b) a description of the contents of the information or part thereof that, as the case may be, belong to, were supplied by or relate to the third party to whom the notice is given; and

(c) a statement that the third party may, within ten days after the notice is given, make representations to the Ministry or prescribed authority that has control of the information as to why the information or part thereof should not be disclosed.

(3) Where a notice is given by an information officer under subsection (1) to a third party in respect of information or a part thereof,

(a) the third party shall, within ten working days after the notice is given, be given the opportunity to make representations to the information officer as to why the information or the part thereof should not be disclosed; and

(b) the information officer shall, within fifteen working days after the notice is given, if the third party has been given an opportunity to make representations under paragraph (a), make a decision as to whether or not to disclose the information or the part thereof and give written notice of the decision to the third party.

(4) Where, pursuant to paragraph (3)(b), the information officer decides to disclose information requested under this Act or a part thereof, the information officer shall make every reasonable effort to give a notice to the third party that shall include—

(a) a statement that the third party to whom the notice is given is entitled to request a review of the decision under section 37 within ten working days after the notice is given; and

(b) a statement that the person who requested access to the information will be given access thereto or to the part thereof unless, within ten working days after the notice is given, a review of the decision is requested under section 37.

(5) Any third party to whom a notice is required to be given under subsections (1) or (4) in respect of an intended disclosure may waive the requirement, and where the third party has consented to the disclosure the third party shall be deemed to have waived the requirement.

(6) The information officer may extend the time limit set out in this section in respect of a request under this Act where the time limit set out in section 17 is extended under 39 in respect of the same request, but any extension under this subsection shall be for a period no longer than the period of the extension under section 39.

*Information affecting legal proceedings or subject to legal professional privilege.*

30. (1) Access to information may be denied if its disclosure under this Act would be reasonably likely to have a substantial adverse effect on the interests of the Government or of a prescribed authority in, or in relation to, pending or likely legal proceedings.

(2) Access to information may be denied if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

(3) Information of the kind referred to in section 8(1) is not exempt information by virtue of subsection (2) of this section by reason only of the inclusion of information that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 8(1).

*Information affecting national economy.*

31. Access to information may be denied if its disclosure under this Act would be contrary to the public interest by reason that it would be reasonably likely to have a substantial adverse effect on the national economy.

*Information the disclosure of which would be contempt of Parliament or contempt of court.*

32. Access to information may be denied if public disclosure of the information would, apart from this Act and any immunity of the Crown —

(a) be in contempt of court;

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

(c) infringe the privileges of Parliament.

*Crown privileges in judicial proceedings not affected.*



33. Nothing in this Act shall affect any rule of law which authorises the withholding of any information by the Crown in or in relation to a judicial proceeding on the ground that the publication or disclosure of the information would be injurious to the public interest.

*Duty of authorities to act in good faith.*

34. (1) In considering whether or not to claim exemption under this Part, the information officer or principal officer of a Ministry or prescribed authority, as the case may be, shall act in good faith and use his or her best endeavours to achieve the object of this Act to afford to members of the public maximum access to information consistent with the public interest.

(2) The Information Commissioner may order the return of any expenditures of the applicant or a third party associated with the application process under this Act, or incurred by either party during the appeals process under this Act, where evidence of "bad faith" on the part of a decision maker is found.

*Public Interest Override*

35. Notwithstanding any of the exemptions specified in the Act or any other law in force, a Ministry or prescribed authority shall allow access to information if public interest in disclosure of the information outweighs the harm to the public authority.

*Declassification of Exempt Information*

36. Notwithstanding any of the exemptions to disclosure described under this Act, a public authority shall provide access to any information relating to any occurrence, event or matter which has taken place, occurred or happened ten years before the date on which any request is made.

**PART VI**  
***Review of Decisions***

*Internal review.*

37. (1) Where a decision has been made, in relation to a request to a Ministry or prescribed authority, otherwise than by the responsible Minister or principal officer (not being a decision on a review under this section), the applicant may, within twenty working days after the day on which notice of the decision was given to the applicant in accordance with section 22, apply to the responsible Minister or principal officer concerned for a review of the decision in accordance with this section.

(2) The information officer who has refused to give access to information requested under this Act or a part thereof shall forthwith, on being given notice of any application made under this section, give written notice of the application to any third party that the information officer has notified under section 29 in respect of the request or would have notified under that section if the information officer had intended to disclose the information or part thereof.

(3) Where an application for a review of a decision is made to the responsible Minister or the principal officer in accordance with subsection (1), he or she shall forthwith arrange for himself or herself or a person (not being the information officer who made the decision) authorized by him or her to conduct such reviews to review the decision and to make a fresh decision on the original application within ten working days.

(4) Where the principle officer or Minister concerned decides to disclose information requested under this Act or a part thereof, the principle officer or Minister shall give written notice of the decision to,

(a) the person who requested access to the information; and

(b) any third party that the principle officer or Minister has notified under section 29 in respect of the request or would have notified under that section if the principle officer or Minister had at the time of the request intended to disclose the information or part thereof.

(5) A notice given under subsection (4) shall include –

(a) a statement that any third party referred to in paragraph (4)(b) is entitled to request a review of the decision under section 38 within ten working days after the notice is given; and

(b) a statement that the person who requested access to the information will be given access thereto unless, within ten working days after the notice is given, a review of the decision is requested under section 38.

(6) Where a decision is made under this section that the applicant is not entitled to access to the information in accordance with the request the Minister or principal officer concerned shall provide reasons to the applicant in accordance with section 22.

*Applications to Information Commissioner.*

38. (1) Application may be made to the Information Commissioner for review of a decision refusing to grant access to information in accordance with a request made under Part IV or deferring the provision of access to information under section 19 of Part IV.

(2) A person is not entitled to apply to the Information Commissioner for a review of a decision unless –

(a) he or she has already made an application under section 37 in relation to the decision; and

(b) he or she has been informed of the result of the review or a period of ten working days has elapsed since the day on which he or she made that application.

(3) Any third party to whom the information officer is required under subsection 37(4) to give a notice of a decision to disclose information or a part thereof under this Act may, within ten working days after the notice is given, apply to the Information Commissioner for a review of the matter, and the Information Commissioner shall notify the person who requested the information of the application for a review under this section.

(4) Any person who has been given notice of an application for a review this section may appear as a party to the review and may make representations to the Information Commissioner.

(5) In proceedings under this Part, the Information Commissioner has power, in addition to any other power, to deny the application for review, to review any decision that has been made by a Ministry or prescribed authority in respect of the request and to decide any matter in relation to the request that, under this Act, could have been or could be decided by a Ministry or prescribed authority, and to accept written or oral submissions from a party to the review, and any decision

of the Information Commissioner under this section has the same effect as a decision of the Ministry or prescribed authority.

(6) The powers of the Information Commissioner under this section extend to matters relating to fees and charges payable under this Act in relation to a request.

(7) Where a decision is made under this section that the applicant is not entitled to access to the information in accordance with the request the Information Commissioner shall provide reasons to the applicant in accordance with section 22.

*Time for application for review.*

39. (1) Where –

(a) a request has been made to a Ministry or prescribed authority in accordance with section 17; and

(b) a period of ten working days has elapsed since the day on which the request was received by or on behalf of the Ministry or prescribed authority; and

(c) notice of a decision on the request has not been received by the applicant,

the principal officer shall, for the purpose of enabling an application to be made to the Information Commissioner under section 38, be deemed to have made on the last day of that period, a decision refusing to grant access to the information, and the applicant may apply to the Information Commissioner to grant access to the information in question within fifteen working days of the expiry of the said period of ten working days.

(2) Where –

(a) an application for review of a decision has been made in accordance with section 37; and

(b) the application for review is refused or the applicant has not been informed of the result of the review within ten working days after the day on which he or she made that application,

the applicant or third party, as the case may be, may apply to the Information Commissioner for review of the decision relating to access to the information, within twenty working days of the date on which he or she is notified of the decision refusing the review or within fifteen days after the expiry of the period of ten working days mentioned in paragraph (2)(b) above.

(3) Before dealing further with an application made by virtue of this section, the Information Commissioner may, on the application of the Ministry or prescribed authority concerned, allow further time to the Ministry or prescribed authority to deal with the request, and notice of the extension of time shall be provided to the applicant or third party as the case may be.

(4) Notwithstanding the period of limitation mentioned in this section, the Information Commissioner may, in his or her discretion, grant further time to the applicant or third party, as the case may be, if the Information Commissioner is of the opinion that there has been no unreasonable delay in making the application.

*Burden of proof.*

40. In proceedings under this Part, the Ministry or prescribed authority to which or to whom the request was made has the onus of establishing that a decision given in respect of the request was justified or that the Information Commissioner should give a decision adverse to the applicant or third party as the case may be.

*Powers of Information Commissioner to make orders.*

41. (1) In proceedings under this Part, the Information Commissioner shall make such order as he or she thinks necessary having regard to the nature of the proceedings and, in particular, to the necessity of avoiding the disclosure to the applicant of exempt information.

*Production of exempt information.*

42. (1) Where there are proceedings before the Information Commissioner under this Act in relation to information that is claimed to be exempt information, and the Information Commissioner is not satisfied, by evidence on affidavit or otherwise, that the information is exempt information, he or she may require the information to be produced for inspection by him or her only and if, upon the inspection, he or she is satisfied that the information is exempt information, he or she shall return the information to the person by whom it was produced without permitting any other person to have access to the information or disclosing the contents of the information to any other person.

(2) The Information Commissioner may require the production, for inspection by him or her only, of exempt information for the purposes of determining whether it is practicable for a Ministry or prescribed authority to grant access to a copy of the information with such deletions as to make the copy not exempt information and, where exempt information is produced by reason of such a requirement, he or she shall return the information to the person by whom it was produced without permitting any other person to have access to the information, or disclosing the contents of the information to any other person.

*Powers of Information Commissioner in relation to witnesses, etc.*

43. (1) For the purposes of performing his or her functions under this Act, the Information Commissioner shall have the same powers as a Magistrate in respect of the attendance and examination of witnesses.

(2) The Information Commissioner has, in relation to the carrying out of the investigation of any complaint under this Act, power—

(a) to summon and enforce the appearance of persons before the Information Commissioner and compel them to give oral or written evidence on oath and to produce such documents and things as the Commissioner deems requisite to the full investigation and consideration of the complaint, in the same manner and to the same extent as a superior court of record;

(b) to administer oaths;

(c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the Information Commissioner sees fit, whether or not the evidence or information is or would be admissible in a court of law;

(d) to enter any premises occupied by any government institution on satisfying any security requirements of the institution relating to the premises;

(e) to converse in private with any person in any premises entered pursuant to paragraph (d) and otherwise carry out therein such inquiries within the authority of the Information Commissioner under this Act as the Commissioner sees fit; and

(f) to examine or obtain copies of or extracts from books or other records found in any premises entered pursuant to paragraph (d) containing any matter relevant to the investigation.

*Appeal against Information Commissioner's decision.*

44. Any party dissatisfied with a decision of the Information Officer under this Act may appeal to the Supreme Court.

## **PART VII**

### ***Information Commissioner And Employees, Etc.***

*Appointment of Information Commissioner*

45. (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 or her appointment.

(2) The Commissioners 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, and shall:

(a) be publicly regarded as a person who can make impartial judgments;

(b) have a demonstrated commitment to open government and a sufficient knowledge of the workings of Government;

(c) have a demonstrated interests/knowledge of one or more of law, governance, medicine, science, technology, journalism, and management; and

(d) be otherwise competent and capable of performing the duties of his or her office.

(3) A person shall not be qualified to hold office as Commissioner if that person-

(a) is a member of the House of Assembly or a member of the Senate;

(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 or her 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.

(4) The Commissioner shall hold office for a term of five years and may be re-appointed for a further term of three years, but shall not hold office for more than two consecutive terms.

(5) Subject to subsections (6) and (7), the Commissioner may be removed from office by the Governor-General for inability to exercise the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, on the recommendation of the Prime Minister and with the approval of both Houses of Parliament signified by resolution.

(6) If the Prime Minister advises the Governor General that the question of removing the Information Commissioner from office for misbehaviour ought to be investigated, then -

(a) the Governor General shall appoint a tribunal which shall consist of a Chairman and not less than two other members selected by the Governor General in accordance with the advice of the Prime Minister from among person who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court;

(b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor General and advise the Governor General whether he or she should request that the question of the removal of that Judge should be referred by Her Majesty to the Judicial Committee; and

(c) if the tribunal so advises, the Governor General shall request that the question should be referred accordingly.

(7) The Prime Minister may advise the Governor General that the question of removing the Information Commissioner from office ought to be investigated where the Information Commissioner—

(a) is adjudged insolvent; or

(b) has been convicted of an offence which, in the opinion of the Prime Minister, involves dishonesty; or

(c) engages, during his or her term of office, in any paid employment outside the duties of his or her office; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his or her functions as the Information Commissioner.

(8) Where the Commissioner has been removed from office by the Governor-General in accordance with subsection (5) the Governor-General may appoint an interim Commissioner to fill the vacancy on the recommendation of the Prime Minister, and with the approval of both Houses of Parliament signified by resolution, until such time as a new Commissioner is appointed.

#### *Appointment of Staff.*

46. 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.*

47. In addition to any other functions under this Act, the functions of the Commissioner shall be-

(a) to monitor and report to Parliament on the compliance by Ministries and prescribed authorities with their obligations;

- (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 Ministries and prescribed authorities 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;
- (e) to publicize the requirements of this Act and the rights and obligations under the Act;
- (f) to conduct sessions that will educate the public on the use of the Act; and
- (g) to develop best practices for record-keeping, archiving, disposal and declassification of records in a published form that is made widely available.

*Independence of Commissioner and employees of Commissioner's Office.*

48. (1) In the exercise of his or her functions under this Act, the Commissioner shall not be subject to the direction or control of any person or authority, and shall have autonomy in determining the budget for the Commissioner's Office in accordance with the regulations.

(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.*

49. (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 both Houses of Parliament as soon as practicable after he or she has received the report.

*Exemption from personal liability.*

50. (1) The Commissioner, any officer or employee of his or her 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.

*Information officers of Ministries and prescribed authorities.*

51. (1) Every Ministry and prescribed 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, functions and contact details.

(2) The information officer shall, in addition to any obligations of a Ministry or prescribed authority specifically provided for in other provisions of this Act or any other law, have the following responsibilities-

(a) to serve as a central contact within the Ministry or prescribed 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.

(3) The Information Commissioner shall be responsible for the training of information officers in each year to better enable them to discharge their duties under this Act.

## **PART VIII** ***Miscellaneous***

### *Protection against actions for defamation or breach of confidence.*

52. (1) Where access has been given to information and

(a) the access was required by this Act to be given; or

(b) the access was authorized by a Minister, or by an officer having authority, in accordance with section 21 or 37, to make decisions in respect of requests, in the bona fide belief that the access was required by this Act to be given,

no action for defamation or breach of confidence lies by reason of the authorizing or giving of the access, against the Government or a prescribed authority or against the Minister or officer who authorised the access or any person who gave the access.

### *Protection in respect of offences.*

53. Where access has been given to a information and –

(a) the access was required by this Act to be given; or

(b) the access was authorised by a Minister or by an officer having authority, in accordance with section 21 or 37, to make decisions in respect of requests, in the bona fide belief that the access was required by this Act to be given,

neither the person authorising the access nor any person concerned in the giving of the access is in contravention of this Act by reason only of the authorising or giving of the access.

### *Reports to Parliament*

54. (1) The Minister administering this Act shall, as soon as practicable after the end of each year ending on 31st December, prepare a report on the operation of this Act during that year and cause a copy of the report to be laid before each House of Parliament.

(2) Each Ministry or prescribed authority shall furnish to the Information Commissioner and to the Minister administering this Act such information as he or she requires for the purposes of the preparation of reports under this Act and shall comply with any prescribed requirements



concerning the furnishing of that information and the keeping of information for the purposes of this section.

55. (1) Where a Ministry or prescribed authority fails or refuses without reasonable excuse to comply with the provisions of sections 7, 8 and 9, the Minister or principle officer concerned is in contravention of this Act and shall be individually liable on summary conviction to a fine of twenty thousand dollars.

(2) Where a Ministry or prescribed authority fails or refuses without reasonable excuse to comply with the provisions of section 13(4) or (5) or section 14, the information officer of that Ministry or prescribed authority is in contravention of this Act and shall be liable on summary conviction to a fine of three thousand dollars.

(3) Where a Ministry or prescribed authority fails or refuses to comply with section 17 or section 18, the Permanent Secretary and the information officer of that Ministry or prescribed authority each is in contravention of this Act and shall be liable on summary conviction to a fine of five thousand dollars.

(4) Where a Ministry or prescribed authority fails or refuses to comply with any other provision of this Act for which no specific penalty is provided, the person in the Ministry or prescribed authority responsible for the failure is in contravention of this Act and shall be liable on summary conviction to a fine of not less than three thousand dollars and not more than twenty thousand dollars.

(5) Where any fine imposed under this section exceeds one quarter of the monthly salary of the individual against whom the fine is imposed the fine shall be reduced to one quarter of the monthly salary of that individual.

(6) The power to issue fines under this Act shall rest with the Information Commissioner and the Supreme Court.

*Regulations.*

56. (1) The Minister may make regulations not inconsistent with this Act prescribing all matters that by this Act are required or permitted to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular, making provision for or in relation to –

(a) charges or fees for access to information (including the provision of copies or transcripts) in accordance with this Act, including requiring deposits on account of such charges or fees; and

(b) the officers who may give decisions on behalf of a Ministry or prescribed authority.

(2) The Information Commissioner may, with the approval of the Minister, make regulations for the better carrying out of his or her functions under this Act, and, in particular, in relation to the procedure to be followed for conducting reviews of the decisions refusing access to information.

(3) All regulations made under this Act shall be laid before Parliament within two months after the making thereof and shall be subject to negative resolution.