

# **RIGHT TO INFORMATION BILL**

## **A BILL**

## **ENTITLED**

# **RIGHT TO INFORMATION ACT 2003**

AN ACT to provide for the right of access to information held by a government agency or a private body subject to such exemptions as are necessary and consistent with protection of the public interest and the operation of a democratic society; to provide for the right of access by an individual to personal information held by a government agency or a private body which relates to that individual; to protect from disclosure, personal information held by a government agency or a private body to the extent consistent with the preservation of personal privacy; to provide for internal review of decisions of government agencies by the sector Ministers and judicial review by the High Court of decisions of Ministers and private bodies; to provide for right of appeal in relation to matters under this Act and to provide for matters related to these.

BE IT ENACTED by Parliament as follows:

### **PART I – ACCESS TO INFORMATION IN CUSTODY OR UNDER CONTROL OF GOVERNMENT AGENCIES; RESPONSIBILITY TO INFORM**

#### **Right of access to official information**

1. (1) Every person has a right of access to information or part of information in the custody or under the control of a government agency unless the information or that part of the information falls within any of the exemptions specified in Part II of this Act.

(2) A person who applies for access to information is not obliged to give a reason for the application except where the person requests that the application be treated as urgent.

(3) Where an agency receives an application for access to information, part of which is exempt, the information officer of the agency to whom the application is made, shall disclose to the applicant as much of the information as can reasonably be separated without disclosing the exempt part.

#### **Responsibility of Government to provide information on governance**

2. Subject to the provisions of this Act, it is the responsibility of the Government to make available to the people, information on their governance generally without application from any specific person.

### **PART II – EXEMPT INFORMATION**

#### **Information from President's and Vice President's Office**

3. (1) Information is exempt

- (a) if it is information prepared for submission or which has been submitted to the President or Vice-President; or
- (b) if it contains matters the disclosure of which would reveal information concerning opinion, advice, deliberation, recommendations, minutes or consultations made or given to the President or Vice President.

(2) A certificate under the hand of the Secretary to the President or the Secretary to the Vice-President respectively, that information is exempt information under subsection (1) establishes that the information is exempt subject to a ruling by the Supreme Court.

(3) Information is not exempt information under subsection (1), if the information contains factual or statistical data and does not disclose information concerning any deliberation or decision of office of the President or Vice President.

#### **Information relating to Cabinet**

4. (1) Information is exempt

- (a) if it is information prepared for submission to Cabinet or submitted to Cabinet for consideration;
- (b) if it is an official information from Cabinet, not published or released to the public; or
- (c) if it contains matters the disclosure of which would reveal information on any decision, deliberation or discussion of Cabinet.

(2) Information is not exempt under subsection (1) if the information contains factual or statistical data which does not disclose information concerning any decision, deliberation or discussion of Cabinet.

(3) A certificate under the hand of the Secretary to the Cabinet or the Head of National Security that the information is exempt information within the meaning of subsection (1) establishes that the information is exempt, subject to the ruling of the Supreme Court.

(4) Nothing in this section prevents the Cabinet from publishing or granting access to information referred to in subsection (1).

(5) In this section, a reference to the Cabinet includes a reference to a committee or sub-committee of the Cabinet.

#### **Information relating to law enforcement, public safety and national security**

5. (1) Information is exempt if it contains matters the disclosure of which could reasonably be expected,

- (a) to interfere with the prevention, detection or curtailment of a contravention or possible contravention of a law;
- (b) to prejudice the investigation of any contravention or possible contravention of a law;
- (c) to reveal investigation techniques and procedures in use or likely to be used in law enforcement;

- (d) to disclose the identify of a confidential source of information in respect of a law enforcement matter or disclose the information given by a confidential source;
  - (e) to impede any prosecution of an offence;
  - (f) to endanger the life or physical safety of any person;
  - (g) to prejudice the fair trial of any person or the impartial adjudication of any case;
  - (h) to reveal a record of information that has been confiscated from any person by a police officer or any person authorized to effect such confiscation in accordance with any enactment;
  - (i) to interfere with the maintenance or enforcement of any lawful method or procedure for protecting the safety of the public;
  - (j) to endanger the security of any building, structure or means of transport or system including computer and communication system and for which security is reasonably required;
  - (k) to prejudice the security of any prison or place for lawful detention;
  - (l) to facilitate the escape of a person from lawful custody; or
  - (m) to prejudice any system or procedure for witness protection or other procedure for protection of persons or property where such protection is required.
- (2) Information is not exempt under subsection (1), if
- (a) it consists merely of a report on the extent of success achieved in any programme adopted by an agency for dealing with any contravention or possible contravention of the law;
  - (b) it contains a general outline of the structures of a programme adopted by an agency for dealing with any contravention or possible contravention of an enactment; or
  - (c) it consists merely of a report on a law enforcement investigation that has already been disclosed to the person the subject of the investigation

and disclosure of the information would on balance be in the public interest.

(3) Information is exempt if it is information that relates to the security of the State and has been created by or is in the custody of the Armed Forces or the Security and Intelligence Agencies established under the Security and Intelligence Agencies Act 1996 (Act 526).

### **Information affecting international relations**

6. (1) Information is exempt if its disclosure could reasonably be expected to
- (a) damage or prejudice the relation between the Government and the government of any other country;

- (b) reveal information communicated in confidence to a government agency by or on behalf of any other government; or
- (c) reveal information communicated in confidence to an agency by an international organization of states or a body of such an organisation.

(2) Notwithstanding subsection (1), a disclosure of exempt information under subsection (1) may be made if the President gives prior approval for the disclosure.

#### **Information that affects the defence of the country**

7. Information is exempt if its disclosure could reasonably be expected to
- (a) damage or prejudice the defence of the Republic or of any foreign state allied to or friendly with the Republic; or
  - (b) be prejudicial to the detection, prevention or suppression of terrorism, sabotage or espionage.

#### **Economic and other interests**

8. Information is exempt prior to official publication if
- (a) it contains trade secrets or financial, commercial, scientific or technical information that belongs to the Government and the information has monetary or potential monetary value;
  - (b) disclosure of the information could reasonably be expected to damage the financial interest of Government or the ability of the Government to manage the national economy;
  - (c) disclosure of the information could reasonably be expected to create undue disturbance in the ordinary course of business or trade in the country;
  - (d) disclosure of the information could unduly benefit or be injurious to any person because it provides advance information about future economic or financial measures to be introduced by Government;
  - (e) it contains criteria, procedures, positions or instructions that relate to negotiations carried on or to be carried on by or on behalf of the Government; or
  - (f) it contains questions to be used in an examination or test for educational purposes.

#### **Economic information of third parties**

9. (1) Information is exempt if disclosure of the information would reveal a trade secret or scientific, technical, commercial, financial or labour related information supplied in confidence whether expressly or impliedly and the disclosure could reasonably be expected
- (a) to prejudice the competitive position or interfere with the contractual or other negotiations of a person, group of persons or organisation;

- (b) to result in undue loss or gain to any person, group, financial institution or other body; or
- (c) to result in similar information no longer being supplied to the agency where it is in the public interest that similar information continue to be supplied.

(2) Information is not exempt under subsection (1) if the information is already available to the public.

#### **Information relating to tax**

10. (1) Information is exempt if it is obtained from a tax return or gathered for the purpose of determining tax liability.

(2) Information under subsection (1) may be disclosed if the person to whom the information relates agrees to the disclosure.

#### **Internal working information of agencies**

11. (1) Information is exempt if disclosure of the information would reveal
- (a) any opinion, advice, report or recommendation contained, prepared or recorded; or
  - (b) any consultation or deliberation held

in the course of or for the purpose of making any decision in the public service or any agency of Government if the disclosure could reasonably be expected to frustrate or inhibit the candid deliberative process of an agency or between agencies.

- (2) Information is not exempt under subsection (1)
- (a) if it merely contains material that has been publicly mentioned as forming the basis of a public policy or for formulating public policy; or
  - (b) if it contains only factual or statistical data.

#### **Information that relate to parliamentary privilege, fair trial, contempt of court**

12. Information is exempt if disclosure of the information could reasonably be expected
- (a) to infringe or contravene any parliamentary privilege;
  - (b) to prejudice the fair trial of any person or the impartial adjudication of any case before a court or a quasi-judicial body; or
  - (c) to constitute contempt of court or of any quasi-judicial body.

#### **Information subject to legal profession and other privilege under law**

13. Information is exempt if it is privileged from disclosure on any of the following grounds:
- (a) lawyer and client professional relationship;

- (b) communication between spouses whether married under the Ordinance or by custom; or
- (c) under the Evidence Decree

unless the person entitled to the privilege waives the privilege.

### **Information subject to medical professional privilege**

14. Information is exempt if disclosure of the information would reveal confidential communication between a doctor and patient or other medical professional expert, in connection with the patient's medical diagnosis or treatment.

### **Disclosure of personal matters**

15. (1) Information is exempt if disclosure of the information would involve the unreasonable disclosure of information concerning the personal affairs of any individual whether living or deceased.

(2) Disclosure is unreasonable for the purpose of subsection (1) if the disclosure would or is likely to reveal information about the individual's

- (a) physical or mental health;
  - (b) marriage or employment record;
  - (c) business or trade secrets of commercial value to the person; or
  - (d) professional, commercial or financial affairs.
- (3) Disclosure is not unreasonable for the purpose of subsection (1), if
- (a) the individual to whom the information relates gives his or her prior consent;
  - (b) the disclosure is required to promote public health or public safety;
  - (c) the disclosure is necessary in order to subject government activities to public scrutiny;
  - (d) the disclosure would not unjustifiably damage the reputation of any other person referred to in the information;
  - (e) the disclosure is made to the individual to whom the information relates;
  - (f) the disclosure would not contravene any other provision on exempt information specified in this Part;
  - (g) the disclosure could reasonably be expected not to have an adverse effect on the affairs of the person or prejudice the future supply of such information;
  - (h) the information is already available to the public;
  - (i) the individual to whom the information relates was informed or made aware prior to supplying the information that the information belongs to a

class of information that would or might be made available to the public;  
or

- (j) in the case of a deceased person, the applicant is the next of kin or represents the next of kin of the deceased.

#### **Frivolous or vexatious application**

16. The information officer of an agency may refuse an application for access if,

- (a) the application is manifestly frivolous or vexatious; or
- (b) the amount of work involved in processing the application would cause unreasonable diversion of the resources of the agency required to make the disclosure, unless the applicant pays in advance an amount determined by the agency as adequate for the processing involved.

#### **Disclosure for the protection of public interest**

17. Notwithstanding any provision of this Part, information is not exempt if the disclosure of the information would reveal evidence of

- (a) a contravention of or a failure to comply with a law; or
- (b) an imminent and serious risk to public safety, health or the environment,

and the benefits of disclosure clearly outweighs the harm or danger that could occur in the absence of disclosure.

### **PART III – COMPILATION AND PUBLICATION OF MANUAL ON INFORMATION OF AN AGENCY**

#### **Responsibility of sector Minister in respect of access**

18. (1) Every Minister responsible for a Ministry shall within 12 months from the date of the coming into force of this Act and every 12 months after that date, cause to be compiled and published after consultation with the Public Services Commission and the Head of the Civil Service and in accordance with the guidelines stated in section 19, an up-to-date official information compilation in the form of a manual, listing all government agencies that are under that Ministry.

(2) The manual shall contain the following:

- (a) a description of the organizational structure and functions of each agency including details of the responsibility of each division or branch of each agency;
- (b) a list of the various classes of information which are prepared by or are in the custody or under the control of each agency;
- (c) a list of types of information that may be purchased or inspected free of charge or subject to a fee;
- (d) the name, telephone number, fax, email and address of the information officer of the agency or a designated officer of the agency to whom a request for access could be made;

- (e) the place where any information to which access can be made by the agency under this Act or any other enactment, can be found or made available;
- (f) an arrangement or procedure in relation to the agency that enables members of the public to participate in formulation of policies of the agency; and
- (g) an arrangement or procedure that enables a member of the public to seek amendment of that member's personal official records with the agency.

#### **Provision of guidelines for manual**

19. The Minister responsible for this Act shall provide guidelines for the preparation of the manual by the sector Minister under section 18 and for the implementation of any other enactment that relates to access to official information in the custody or control of an agency.

### **PART IV – PROCEDURE FOR ACCESS**

#### **Application for access to information held by agency**

20. (1) An application for access to information held by an agency shall
- (a) be submitted in writing to the agency;
  - (b) contain sufficient description or particulars to enable the information to be identified;
  - (c) indicate the type of access required;
  - (d) if the application is made on behalf of any other person, state the capacity of the applicant to the satisfaction of the officer to whom the application is made;
  - (e) state an address in the country to which any communication or notice can be sent; and
  - (f) be accompanied with any relevant fee.

(2) Where in the case of an individual applicant, the person is unable to make the application in writing due to illiteracy or any disability, the applicant shall make the request orally and the request shall be reduced into writing by the officer to whom the application is made, who shall give a copy of the written request as recorded to the applicant.

(3) Where an application does not sufficiently describe the information required, the agency to which the application is made, shall inform the applicant of this and offer the applicant the necessary assistance to identify the document.

#### **Person to deal with application**

21. (1) An application for access to information shall be dealt with by the information officer of the agency or an officer designated by the Minister in the manual referred to in section 18 for that purpose.



(2) The information officer of the agency or the designated officer may delegate the function conferred on him or her under subsection (1).

(3) A delegation under subsection (2)

(a) shall be in writing; and

(b) does not prevent the person who made the delegation from performing the function as provided under subsection (1).

### **Transfer of application**

22. (1) Where an agency is unable to deal with an application because the information requested

(a) is not in the custody or control of the agency, but to the knowledge of the agency, it is held by another agency; or

(b) is in the custody of the agency but it is more closely related to the functions of another agency,

the information officer of the agency to whom the application is made shall as soon as practicable and in any event within 10 working days of the receipt of the application, transfer the application to the other agency and give written notice of the transfer to the applicant.

(2) Where an application for access is made and the agency to which the application is made does not have in its custody the information, the information officer of the agency shall make the necessary enquiry to establish whether another agency has custody of the information and shall upon establishing that, transfer the application to that other agency and notify the applicant accordingly.

(3) A notice of transfer under subsection (1) or (2) shall state,

(a) the date of the transfer,

(b) the agency to which the transfer has been made; and

(c) the reason for the transfer.

(4) An application transferred from one agency to another shall be taken to have been received by the agency to which the application is transferred on the date the transfer is received.

### **Deferred access**

23. An agency may defer access to information if it is information

(a) that is required under any enactment to be published but is yet to be published;

(b) that is to be published within 90 days from the receipt of the application or the transfer of the application; or

(c) that has been prepared for submission to any person or body and is yet to be submitted.

## **Decision on application**

24. (1) Where an application for access is received by an agency, the information officer of the agency shall determine the application and cause a written notice to be given to the applicant within 30 working days from the date of receipt of the application.

(2) The notice shall state,

- (a) whether or not access will be given to the information;
- (b) whether access can be given to only a part of the information and the reason for this;
- (c) where there has been a transfer under section 22, that fact; and
- (d) where there is deferred access under section 23, that fact.

(3) Where access is to be given, the notice shall state,

- (a) how soon the access can be given;
- (b) the form or manner in which access will be given;
- (c) whether access is to only a part of the information because the other part is exempt information;
- (d) in the case of a deferred access under section 23, the day on which the agency expects the information to be published or submitted;
- (e) fees payable, if any; and
- (f) the right of the applicant to lodge a complaint about any fee.

(4) Where the agency decides to refuse access under subsection (1), the notice shall state,

- (a) the reason for the refusal;
- (b) the right of the applicant to seek redress in accordance with Part VI;
- (c) the name and rank of the officer who dealt with the application; and
- (d) any fee payable for dealing with the application.

(5) An agency that fails to determine an application within 30 working days after the application is received by the agency shall, for the purposes of this Act, be taken to have determined the application by refusing access to the document.

(6) Subsection (5) does not apply to an application that has been transferred to another agency or which the agency has refused to continue to process for failure to pay a required deposit or any fee.

## **Information that cannot be found or not in existence**

25. (1) Where all reasonable and practical steps have been taken to find information requested and there are reasonable grounds to believe that the information

- (a) is in the possession of the agency but cannot be found; or
- (b) does not exist,

the information officer of the agency shall by affidavit notify the applicant that it is not possible to give access to the information for the stated reason.

(2) The notice shall state the steps taken to find the document or to determine its existence.

(3) A notice under this section shall be taken to be a decision to refuse access to the information and the applicant may take such steps as are open to the applicant under Part VI.

(4) In the event of the information being found after the notice, the applicant shall be notified and given access, unless the information is exempt or is inaccessible under any provision of this Act.

### **Agencies may require advance deposit**

26. (1) Where, in the opinion of an agency, the costs to the agency for dealing with an application are likely to exceed the amount of the application fee, the agency may request the applicant to pay advance deposit determined by the agency.

(2) A deposit requested by an agency under subsection (1) shall not be such that the sum of the application fee, the advance deposit and any further advance deposit paid in respect of the application exceeds the amount which in the opinion of the agency is necessary to cover the costs of dealing with the application.

(3) A request for an advance deposit shall be accompanied with a notice that sets out the basis on which the amount of the deposit has been calculated.

(4) The amount of an advance deposit requested by an agency in respect of an application shall be paid to the agency within such period of time as the agency may specify in the request.

(5) An agency may refuse to give access to information if any fee or advance deposit payable is not paid within a period notified to the applicant and shall in the event of any excess payment refund any part payment to the applicant.

### **Extension of time to deal with an application**

27. (1) The information officer to whom an application is made may extend the time provided for dealing with the application for a further period that is reasonably necessary but in any event not exceeding 30 days from the end of the date within which the application should be dealt with if

- (a) the application is for a large quantity of information or necessitates a search through a large number of documents and compliance with the original period would unreasonably interfere with the operations of the agency;
- (b) consultations with a person outside the agency are required and cannot reasonably be complied with within the time limit; or
- (c) the applicant agrees to the extension of time.

(2) Where an information officer extends the time under subsection (1), the information officer shall as soon as reasonably possible, but in any event within 30 days of the receipt of the application, notify the applicant in writing, stating,

- (a) the period of the extension;
- (b) the reason for the extension; and
- (c) the right of the applicant to lodge an application for a review under Part VI within the prescribed period.

### **Right of agency to refuse process for failure to pay deposit**

28. (1) An agency may refuse to continue to process an application if the agency has by notice demanded payment of an advance deposit in relation to the application, and payment of the deposit has not been made within the period of time specified in the notice.

(2) If an agency refuses to continue to process an application under subsection (1), the agency shall refund to the applicant the part of the advance deposit paid in respect of the application which exceeds the costs incurred by the agency in processing the application, and it may retain the remainder of the deposit.

(3) An agency that refuses to continue to process an application under this section shall immediately notify that fact in writing to the applicant.

(4) A refusal to continue to process an application under this section shall be taken to be a determination and is subject to review and appeals under Part VI.

### **Refusal of access**

29. (1) An agency may refuse access to information if

- (a) the information is exempt;
- (b) the work involved in processing the application for access to the information would, if carried out, substantially and unreasonably divert the agency's resources away from their use by the agency in the exercise of the agency's functions;
- (c) the information is contained in a document that is available for inspection at that or some other agency, whether as part of a public register or otherwise or whether or not inspection of the document is subject to a fee or charge;
- (d) the information is contained in a document that is available from, or available for inspection at that agency, free of charge, in accordance with that agency's policies and practices;
- (e) the information is usually available for purchase; or
- (f) the information forms part of library material.

(2) An agency shall not refuse to give access to information by virtue of subsection (1)(b) without first assisting the applicant to amend the application so that the work involved in

processing it would, if carried out, no longer substantially and unreasonably divert the agency's resources away from their use by the agency in the exercise of its functions.

### **Manner of access**

30. (1) Access to information may be given to an applicant,
- (a) by giving the applicant a reasonable opportunity to inspect the document containing the information;
  - (b) by giving the applicant a copy of the document containing the information;
  - (c) in the case of information contained in a document from which sounds or visual images are capable of being reproduced, whether or not with the aid of some other device, by making arrangements for the applicant to hear or view those sounds or visual images;
  - (d) in the case of information contained in a document in which words are recorded in a manner in which they are capable of being reproduced in the form of sound, by giving the applicant a written transcript of the words recorded in the document;
  - (e) in the case of information contained in a document in which words are contained in the form of shorthand writing or in coded form, by giving the applicant a written transcript of the words contained in the document;
  - (f) in the case of information contained in a document in which words are recorded in a manner in which they are capable of being reproduced in a written form, by giving the applicant the written form; or
  - (g) in any other form including computer printouts, diskette, CD rom and downloading.
- (2) If an applicant has requested that access to information be given in a particular form, access to the information shall be given in that form, except that where the giving of access in the form requested,
- (a) would unreasonably divert the agency's resources away from their use by the agency in the exercise of its functions;
  - (b) would be detrimental to the preservation of the information or having regard to the nature of the document containing the information, would otherwise not be appropriate; or
  - (c) would involve an infringement of copyright subsisting in matter contained in the information,
- access in that form may be refused but shall be given in another form.

(3) If an applicant has requested that access to information be given in a particular form and access in that form is refused but given in another form, the applicant shall not be required to pay a charge in respect of the giving of access that is greater than the charge that the applicant would have been required to pay had access been given in the form requested.

(4) This section does not prevent an agency from giving access to information in any other form agreed on between the agency and the person to whom access is to be given.

## **PART V – RIGHT TO APPLY FOR AMENDMENT OF PERSONAL RECORDS IN CUSTODY OF AN AGENCY**

### **Amendment of personal records**

31. (1) A person given access to information contained in an agency's records may apply for the amendment of the information if

- (a) the information is personal records on the individual; and
- (b) in the person's opinion, the information is incorrect, misleading, incomplete or out of date.

### **Method of application for amendment of information contained in agency records**

32. (1) An application for the amendment of information contained in an agency's records shall

- (a) be in writing;
- (b) specify that it is made under this Act;
- (c) contain particulars reasonably necessary to enable the agency's records, to which the applicant has been given access, to be identified; and
- (d) specify the area in which the applicant claims the information contained in the records is incorrect, misleading, incomplete or out of date.

(2) Where the applicant claims that the information contained in the records is incomplete or out of date, the application shall be accompanied with the information which the applicant considers necessary to complete the agency's records or bring them up to date.

(3) An application under subsection (1) shall indicate an address in the country to which notices under this Act should be sent and the application shall be submitted at the office of the agency.

### **Dealing with an application to amend records**

33. The provisions under sections 21 and 24 on person to deal with applications and the 30 working day period for dealing with an application respectively shall apply to section 31 with such modifications as may be necessary.

### **Incomplete applications**

34. An agency shall not refuse to accept an application to amend personal records merely because the application does not contain sufficient particulars to enable the agency's records that contain the information to which the applicant has been given access to be identified, without first taking such steps as are reasonably practicable to assist the applicant to provide the particulars.

### **Determination of applications**

35. (1) An agency shall determine an application under this Part,

- (a) by amending its records in accordance with the application; or
- (b) by refusing to amend its records.

(2) An agency that fails to determine an application within 30 working days after the application is received by the agency shall, for the purposes of this Act, be taken to have determined the application by refusing to amend its records in accordance with the application.

### **Refusal to amend records**

36. An agency may refuse to amend its records in accordance with an application,
- (a) if it is satisfied that its records are complete, correct, up to date or not misleading in any material respect; or
  - (b) if it is satisfied that the application contains matter that is incorrect or misleading in a material respect.

### **Notice of determination**

37. Section 24 that requires notice of a decision to be given by the information officer of an agency to an applicant within 30 days shall apply to this Part with the necessary modifications.

### **Notations to be added to records**

38. (1) If an agency refuses to amend its records, the applicant may, by notice in writing lodged at an office of the agency, require the agency to add to those records a notation

- (a) specifying the aspects in which the applicant claims the records to be incomplete, incorrect, out of date or misleading; and
- (b) if the applicant claims the records to be incomplete or out of date setting out the information the applicant claims is necessary to complete the records or to bring them up to date.

(2) The agency shall comply with the requirements of the notice lodged under this section and shall cause written notice of the notation to be given to the applicant.

(3) If an agency discloses to any other person any information contained in the part of its records to which a notice under this section relates, the agency

- (a) shall also give to that person, when the information is disclosed, a statement
  - (i) stating that the person to whom the records relates claims that the information in the record is incomplete, incorrect, out of date or misleading; and
  - (ii) setting out particulars of the notation added to its records under this section, and
- (b) may include in the statement the reason for the agency's refusal to amend its records in accordance with the notation.

## **PART VI – INTERNAL REVIEWS AND APPEALS**

### **Internal review by the sector Minister**

39. (1) Except as otherwise provided in this Act, a person aggrieved by a decision of the information officer of an agency under this Act may submit an application for review of the decision by the Minister with responsibility for the agency.

(2) An application for review under subsection (1) shall be addressed to the Minister and be submitted within 21 days of the receipt of the notification of the decision sought to be reviewed.

(3) An application for review shall be in writing and shall be accompanied with such fee as may be prescribed.

### **Action by sector Minister**

40. (1) On the receipt of an application for review, the sector Minister shall

(a) inform the information officer of the agency who dealt with the original application and any other person affected by the review; and

(b) call for and examine any document of relevance to the review.

(2) The Minister may by notice require the applicant and any other person affected by the review to make any submission either in person or in writing to the Minister for the purpose of the review.

(3) A review by the Minister under section 39 shall be conducted in private.

(4) The Minister shall not in the course of reviewing the decision of an agency, disclose to the applicant or any person other than the information officer of the agency, any information the disclosure of which is prohibited under this Act.

### **Decision of sector Minister on review**

41. (1) The sector Minister shall within 30 days of receipt of an application for a review, notify the applicant of the Minister's decision on the application for review, unless there is delay or other default on the part of the applicant.

(2) The notice under subsection (1) shall state

(a) the reason for the decision and the provision of this Act relied upon; and

(b) where the review is dismissed, that the applicant may file an application for a judicial review of the decision of the Minister with the High Court or the Supreme as is applicable.

(3) Where the Minister fails to notify the applicant of his or her decision on the review within the 30 days specified in subsection (1), the Minister shall be taken to have determined the review against the applicant.

(4) Where the Minister determines a review in favour of the applicant and it is to the effect that access to information should be given to the applicant, the information officer of the agency shall promptly or as soon as practicable and in any event not more than 48 hours after the Minister's decision has been communicated to the applicant, give access to the relevant information.



(5) The sector Minister may delegate the power of review under this Part to any officer of a rank higher than the information officer.

### **Application to the High Court for Judicial review**

42. (1) Except as provided in section 43 in respect of exempt documents, a person dissatisfied with a decision of a sector Minister in a review may file an application for a judicial review of the decision of the Minister at the High Court.

(2) An application for judicial review shall not be dealt with by the High Court unless the right to apply for a review under section 39 has been exhausted.

(3) A person aggrieved by a determination of the High Court under subsection (1) may further appeal to the Court of Appeal and has a right of further appeal to the Supreme Court.

### **Application to Supreme Court for judicial review in respect of access to exempt information**

43. (1) Where an applicant is refused access to information by an agency because the information is exempt, and upon application to the Minister for review of the decision of the agency, the sector Minister confirms the decision of the agency, the applicant may apply to the Supreme Court for a judicial review of the decision of the sector Minister.

(2) The application for judicial review shall be lodged within 30 days of receipt of the notification of the decision of the sector Minister.

(3) A person refused access to information held by the Office of the President or Vice-President or the Cabinet under sections 3(2) or 4(3) may apply to the Supreme Court for a review.

### **Power of the Supreme Court**

44. (1) Subject to the Constitution, the Supreme Court has power in respect of any application for judicial review under section 43,

- (a) to require to be produced before it for examination and scrutiny, any relevant information under the control of the agency;
- (b) to enter and inspect any premises occupied by the agency concerned in the appeal;
- (c) to require to see original documents; and
- (d) to summon and examine on oath any person who the Supreme Court considers may have information relevant to the appeal.

(2) The proceedings of the Supreme Court shall be held in private and the Supreme Court may prohibit the publication of information relating to the proceedings.

(3) The Supreme Court shall not in the course of a review disclose to any party other than the representative of the agency and the Attorney General any information the disclosure of which is prohibited under this Act.

### **Ruling of the Supreme Court**

45. (1) The Supreme Court after hearing the application and all presentations made before it, may make any order that it considers just.

(2) Where the Supreme Court orders that access should be given to any information, the Court shall specify the period within which access should be given.

#### **Right to a lawyer or other expert**

46. A person who applies for access to information, the information officer of the agency concerned and any other person affected by any proceedings under this Act whether before a Minister or a court is entitled to be represented by a lawyer or any other expert.

### **PART VII – ACCESS TO INFORMATION HELD BY PRIVATE BODIES**

#### **Definition of private body**

47. For the purposes of this Part “private body” means

- (a) a natural person who carries on any trade or any business or profession and who is registered under any enactment governing the operation of a profession, trade or the registration of a business body;
- (b) a partnership which carries or has carried on any trade, business or profession and is registered under the Incorporated Private Partnerships Act, 1962 (Act 152);
- (c) a body of persons registered under the Trustees (Incorporation) Act, 1962 (Act 106); and
- (d) any body corporate other than a public body.

#### **Right of access to information held by a private body**

48. (1) A person may request access to information held by a private body.

(2) A person who requests access to information held by a private body shall be given access if

- (a) the information is required for the
  - (i) the exercise or protection of a fundamental human right or freedom;
  - (ii) preservation of public safety; or
  - (iii) protection of public interest;
- (b) the person complies with the procedural requirements in this Act relating to a request for access to that information; and
- (c) the information is not exempt or protected information under this Act.

(3) A request under subsection (2) includes a request for access to personal information about the person making the request or the person on whose behalf the request is made.

### **Manual of particulars of a private body**

49. (1) On the coming into existence of a private body after this Act has come into force, or for existing private bodies, within 12 months after the coming into force of this Act, the head of a private body shall compile a manual containing

- (a) the postal, residential phone and fax address and electronic mail address, if any, of the information officer of that body to whom application for access to information may be made;
- (b) a notice of the categories of information which are available without a person having to request for access in terms of this Act;
- (c) a description of information held by that body which is available in accordance with any other enactment;
- (d) a description of the subject on which that body holds the information and the categories of information held on each subject;
- (e) a detailed description of the process by which access to information held by that body may be obtained; and
- (f) any other information that may be prescribed.

(2) The head of a private body shall cause the manual referred to in subsection (1)

- (a) to be updated once in every 2 years; and
- (b) to be made available to the public at a convenient and easily accessible place.

### **Voluntary disclosure and automatic availability of certain information**

50. (1) The head of a private body may periodically submit to the Minister responsible for the implementation of this Act a description of

- (a) the categories of information of the private body that are available without a person having to request for access under this Act, including categories available
  - (i) for inspection in terms of any enactment other than this Act;
  - (ii) for purchase or copying;
  - (iii) free of charge; and
- (b) how to obtain access to such information.

(2) The Minister may cause to be published in the Gazette

- (a) a description submitted under this section; and
- (b) an update of a description submitted under this section.

### **Form of request for information held by a private body**

51. (1) A request for access to information held by a private body shall be made in writing in a form specified by the private body to the private body at its address.

(2) The specified form for request of access shall, require the person making the request,

- (a) to provide sufficient particulars to enable the information officer of the private body to identify the information to which access is requested and the person making the request;
- (b) to indicate the manner of access required;
- (c) to state that person's postal address or fax number in the country;
- (d) to indicate the right which that person is seeking to exercise or protect and state the reasons why the information is necessary for the exercise or protection of the right;
- (e) if the person wishes to be informed in any other manner, in addition to a written response, state that other manner; and
- (f) if the request is made on behalf of some other person, give proof of the capacity to make the request.

(3) Where an individual applicant is unable to make a request in writing and makes the request orally, the information officer of the private body shall cause the request to be reduced into writing and a copy of the written request to be given to the applicant.

### **Fees**

52. (1) A person who makes a request under section 51 shall pay to the information officer of the private body or to a person authorised by that information officer a fee determined by the head of the private body as processing fee before the request is processed.

(2) The fee in subsection (1) shall be reasonable and shall not in any case exceed the commercial cost of producing the documents containing the requested information including the cost of man-hours and materials spent in obtaining the documents.

(3) The information officer of a private body shall publish and display at a conspicuous place on its premises, the determined processing fees for various types of requests, based on the time and amount of work demanded by the request.

(4) A person making a request who is dissatisfied with a determined fee may apply to the High Court for review of the fee.

(5) The Minister may by legislative instrument make Regulation to

- (a) exempt any person or category of persons from paying any fee referred to in this section;
- (b) prescribe that a fee determined under this section must not exceed a specified maximum amount;
- (c) prescribe the manner in which fees may be calculated; and

- (d) prescribe for any matter in relation to fees.

**Information that cannot be found or does not exist**

53. (1) The information officer of a private body shall by a statutory declaration give notice to a person who requests for access to information that it is not possible to give access to the information if,

- (a) after all reasonable steps have been taken to find the information, the information cannot be found; or
- (b) there are reasonable grounds to believe that the information does not exist.

(2) A full account of the steps taken to find the information or to determine whether the information exists shall be given by the information officer of the private body in the statutory declaration made under subsection (1).

(3) If after the notice is given under subsection (1), the information is found, the person who requested for access to the information shall be given access unless access is refused on the grounds stated in section 60,61, 62, 63, 64, 65 or 66.

**Decision on request and notice on the decision**

54. (1) The information officer of a private body to whom a request for access is made shall as soon as is reasonably possible and in any event not later than 30 days after the receipt of the request or after the receipt of the particulars required under section 51(2),

- (a) decide in accordance with this Act, whether or not to grant the request; and
- (b) give notice to the person making the request of the decision and where that person has asked to be informed of the decision in a specified manner, inform the person of the decision in that manner.

(2) If the request for access is granted, the information officer of the private body shall state in the notice given under subsection (1)

- (a) the access fee (if any) to be paid upon access;
- (b) the form in which access will be given; and
- (c) that the person making the request may apply to the High Court for judicial review of the access fee to be paid or the access granted.

(3) If the request for access is refused, the information officer of the private body shall in the notice issued under subsection (1), state

- (a) the reasons for the refusal, including any legal grounds relied on; but the reasons shall not contain any reference to the content of the information to which access is requested; and
- (b) that the person making the request may apply to the High Court for judicial review of the refusal.

### **Extension of period for making a decision**

55. (1) The information officer of a private body may extend the period for making a decision on a request for a further period not exceeding 30 days if

- (a) the request is for a large quantity of information or requires searching through a large number of documents and compliance with the time specified in section 54(1) for making decision would unreasonably interfere with the activities of the private body;
- (b) the request requires a search for information from an office of the private body not situated in the same town as the office of the information officer and cannot reasonably be completed within the time specified for a decision; or
- (c) consultation among divisions of the private body or with another private body is necessary or desirable to decide upon the request and this cannot reasonably be completed within the time specified for a decision.

(2) Where a period is extended under subsection (1), the information officer of the private body shall, as soon as is reasonably practicable and in any event within 30 days after the request is received, give notice to the person making the request of the extension stating the reason for the extension, including any legal grounds relied on.

(3) The information officer of a private body shall in a notice given under subsection (2) state that the person making the request may apply to the High Court for judicial review of the extension.

### **Refusal of request, when to be assumed**

56. The information officer of a private body who without having given notice of an extension under section 55 to the person making the request, fails to give notice of a decision as required under section 54(1)(b) shall be considered to have refused the request for access.

### **Severability**

57. (1) If a request for access to information held by a private body relates in part to information which may or must be refused in terms of any provisions of section 60 to 66 of this Act, that part of the information which

- (a) is not affected by sections 60 to 66; and
- (b) can reasonably be severed from the other parts

shall be disclosed.

(2) If access to

- (a) a part of the information for which a request for access has been made is granted; and
- (b) the other part of the information is refused,

the provisions of section 54 relating to a decision and notice on decision shall apply as is appropriate.

### **Form of access**

58. Where access is granted to information held by a private body, the information officer of that private body shall, as soon as is reasonably practicable, after giving notice under section 54 and subject to section 55 give access

- (a) in the form that the person making the request reasonably requires; or
- (b) in a form that the information officer reasonably determines, if the person making the request has not specified the form of access.

### **Access to information that relates to health**

59. (1) Where the information officer of a private body who decides to grant a request for access to information, which relates to the physical or mental health or well-being

- (a) of the person making the request; or
- (b) of the person on whose behalf the request is made,

is of the opinion that the disclosure of the information to the person making the request or to the person on whose behalf the request is made, might cause serious harm to that person's physical or mental health, or well-being, the information officer may before giving access, consult a health practitioner nominated, subject to subsection (2), by the person making the request or on whose behalf the request is made.

- (2) If the person making the request or on whose behalf the request is made is
  - (a) under the age of 18 years, a person who has parental responsibility for the person making the request or on whose behalf the request is made; or
  - (b) incapable of managing his or her affairs, a person appointed by the court to manage those affairs

shall make the nomination of a health practitioner under subsection (1).

(3) If a health practitioner consulted under subsection (1) is of the opinion that the disclosure of the information to the person making the request or on whose behalf the request is made, is likely to cause harm to that person's physical or mental health or well-being, the information officer may only give access to the information if

- (a) the person making the request or on whose behalf the request is made proves to the satisfaction of the information officer that adequate provision or arrangement for counselling as are reasonably practicable has been made before, during or after the disclosure of the information to limit, alleviate or avoid the harm; and
- (b) the information officer has already given access to the information to the person responsible for the counselling under paragraph (a).

### **Protection of privacy of third party**

60. (1) Subject to subsection (2) the information officer of a private body shall refuse a request for access to information held by the body, if the disclosure of the information would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.

(2) The information officer of a private body shall not refuse a request for access to information under subsection (1) if the information

- (a) is about an individual who has consented in writing to its disclosure;
- (b) is already publicly available;
- (c) was given to the private body by the individual to whom it relates and the individual was informed by or on behalf of the private body, before it was given, that the information belongs to a class of information that would or might be made available to the public;
- (d) relates to the physical or mental health or well-being of an individual who is
  - (i) under the age of 18 years; or
  - (ii) incapable of understanding the nature of the requestand who is under the care of the person making the request, and giving access to the information would be in the best interest of that individual;
- (e) relates to an individual who is deceased and the person making the request is
  - (i) the individual's next of kin; or
  - (ii) making the request with the written consent of the individual's next of kin; or
- (f) relates to an individual who is or was an official of the private body and relates to the position or functions of that individual, including
  - (i) the fact that the individual is or was an official of that private body;
  - (ii) the title, work address, work phone number, and other similar particulars of that individual;
  - (iii) the classification, salary scale or remuneration and responsibilities of the position held or services performed by that individual; and
  - (iv) the name of that individual on a record prepared by that individual in the course of employment.

### **Protection of commercial information of third party**



61. (1) Subject to subsection (2), the information officer of a private body shall refuse a request for access to information held by that body if the information

- (a) contains trade secrets of a third party;
- (b) contains financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or
- (c) was supplied in confidence by a third party and the disclosure of that information could reasonably be expected
  - (i) to put that third party at a disadvantage in contractual or other negotiations; or
  - (ii) to prejudice that third party in commercial competition.

(2) The information officer of a private body shall not refuse a request for access to information held by the body under subsection (1) if the information relates to

- (a) a third party who has consented in terms of section 69 or otherwise in writing to its disclosure to the person who is making the request; or
- (b) the results of any product or environmental testing or other investigation supplied or carried out by or on behalf of a third party and its disclosure would reveal a serious public safety or environmental risk.

(3) For the purpose of subsection (2), the results of any product or environmental testing or other investigation do not include results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation.

#### **Protection of certain confidential information relating to a third party**

62. The information officer of a private body shall refuse a request for access to information held by that body, if disclosure of the information would constitute a breach of a duty of confidentiality owed to a third party in terms of an agreement or under any law.

#### **Protection of safety of individuals and protection of property**

63. The information officer of a private body

- (a) shall refuse a request for access to information held by that body if the disclosure of the information could reasonably be expected to endanger the life or physical safety of any individual; or
- (b) may refuse a request for access to information held by that body if the disclosure of that information would be likely to prejudice or impair
  - (i) the security of a building, a structure or system, including but not limited to a computer or communication system, a means of transport or any other property; or
  - (ii) methods, systems, plans or procedures for the protection of an individual in accordance with a witness protection measure; the

safety of the public or any part of the public; or the security of property mentioned in subparagraph (i).

### **Protection of information privileged from production in legal proceedings**

64. Unless a person entitled to the privilege has waived the privilege, the information officer of a private body shall refuse a request for access to information held by that body if the information is privileged from production in legal proceedings.

### **Commercial information of private body**

65. (1) Subject to subsection (2), the information officer of a private body may refuse a request for access to information held by that body if the information relates to

- (a) a trade secret of the private body;
- (b) financial, commercial, scientific or technical information, other than trade secrets, of that private body and the disclosure of the information is likely to cause harm to the commercial or financial interests of that body;
- (c) a matter the disclosure of which could reasonably be expected to
  - (i) put the private body at a disadvantage in a contractual or other negotiation; or
  - (ii) prejudice the body in commercial competition; or
- (d) a computer program owned by that private body and does not contain material in respect of which access is required under this Act.

(2) Access to information may not be refused under subsection (1), if the information is about any product or environmental testing or other investigation supplied by, carried out by or held on behalf of the private body and its disclosure would reveal a public safety or environmental risk.

(3) For the purpose of subsection (2), the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation.

### **Protection of research information of third party and research information of private body**

66. The information officer of a private body

- (a) shall refuse a request for access to information held by that private body if the information relates to research being carried out or to be carried out by or on behalf of a third party and the disclosure of the information is likely to expose
  - (i) the third party;
  - (ii) a person that is or will be carrying out the research on behalf of the third party; or
  - (iii) the subject matter of the researchto serious disadvantage; and

- (b) may refuse a request for access to information held by that private body, if the information relates to research being carried out or to be carried out by or on behalf of that private body and the disclosure of the information is likely to expose
  - (i) the private body;
  - (ii) a person that is or will be carrying out the research on behalf of that private body; or
  - (iii) the subject matter of the researchto serious disadvantage.

### **Disclosure in public interest**

67. Notwithstanding any other provision in this Part on the protection of information from access, the information officer of a private body shall grant a request for access to information held by that private body if

- (a) the disclosure of the information would provide evidence of
  - (i) a substantial contravention of or failure to comply with an enactment; or
  - (ii) imminent and serious public safety or environmental risk; and
- (b) the public interest in the disclosure of the record clearly outweighs the benefits from non-disclosure.

### **Notice to third parties**

68. (1) The information officer of a private body to whom a request for information protected from disclosure relating to a third party under section 60, 61, 62 or 66 is made, shall take reasonable steps to inform the third party to whom or which the information relates of the request

- (a) as soon as reasonably practicable, and in any event within 14 days after the receipt of the request; and
  - (b) by the fastest means available.
- (2) The information officer, in informing a third party under subsection (1), shall
- (a) state that a request for access to protected information relating to the third party under section 60, 61, 62 or 66 is being considered by him or her and describe the information;
  - (b) state the name of the person making the request;
  - (c) state the provisions of the relevant section of this Act that protects the information;
  - (d) where the information officer is of the opinion that in spite of the protection, the information must be disclosed under section 67, state

which provisions of section 67 requires the disclosure and the reasons for arriving at that conclusion; and

- (e) state that the third party may within 14 days after being informed
  - (i) make a reasoned written or oral representation to the information officer requesting the information officer to refuse access; or
  - (ii) give written consent for the disclosure of the information to the person making the request.

(3) Where a third party is informed orally of a request for access under subsection (1), the information officer shall give a written notice stating the matters specified under subsection (2) to the third party.

### **Representation and consent by third parties**

69. (1) A third party that receives information about a request for access to protected information relating to that third party may within 14 days after being informed

- (a) make a reasoned written or oral representation to the information officer, requesting him or her to refuse access; or
- (b) give written consent for the disclosure of the information to the person making the request.

### **Decision on access after representation by third party**

70. (1) The information officer of a private body shall, as soon as reasonably practicable and in any event within 30 days after every third party is informed as provided for under section 68,

- (a) decide after considering any representation made by a third party whether to grant the request for access; and
- (b) give notice to any third party who has been informed of the request or has made representations, of the decision.

(2) If after reasonable steps have been taken to inform a third party under section 68, the third party does not receive the information of the request, a decision whether to grant the request shall take into consideration the fact that the third party did not have opportunity to make representations.

- (3) If the request is granted, the notice under subsection (1)(b) shall
  - (a) give adequate reasons for granting the request including the provisions of this Act relied on;
  - (b) state that the third party may file in the High Court an application for judicial review of the decision of the information officer within 28 days after the notice has been given; and
  - (c) state that the person making the request will be given access to the information after the expiration of the period specified in paragraph (b), if the third party fails to file an application for review within the time specified in paragraph (b).

(4) If the information officer of the private body decides, under subsection (1), to grant the request for access, access shall be given to the person making the request after the expiration of 28 days after notice has been given under subsection (1)(b) unless an application for judicial review is filed in the High Court within that period.

#### **Delegation by information officer of private body**

71. An information officer of a private body may in writing delegate a power or duty vested in him or her to another officer of the private body subject to such conditions as may be specified in the delegation.

### **PART VIII – GENERAL AND MISCELLANEOUS PROVISIONS**

#### **Burden of proof**

72. In any proceedings for a review of a decision of any person who has authority to grant or refuse access to information under this Act, the burden of proof that the decision is justified lies on that person.

#### **Appointment of information officers**

73. For the purposes of this Act there shall be designated by every agency and a private body an officer known as an information officer to perform the functions assigned to information officers under this Act.

#### **Protection in respect of actions for defamation or breach of confidence**

74. (1) Where access to information is given under this Act, and the person by whom the decision to give access believes in good faith, when making the decision, that this Act permits or requires the decision to be made, no action for defamation or breach of confidence lies against the Republic, an agency, any information officer, a Minister or a member of staff of an agency because of the making of the decision or the giving of access.

(2) Neither the giving of access to information under this Act nor the making of a decision to give access shall be taken to constitute, for the purposes of the law relating to defamation or breach of confidence, an authorization or approval of the publication of the information by the person to whom access is given.

#### **Protection in respect of certain criminal actions**

75. Where access to information is given under this Act, and the person by whom the decision to give access is made, believes in good faith, when making the decision that this Act permits or requires the decision to be made, neither the person by whom the decision is made nor any other person concerned in giving access to the information commits an offence merely because of the decision to give access.

#### **Fees and charges of agency**

76. (1) There shall be paid for access to information of an agency under this Act such fee or charge as the Attorney General may by guidelines specify to the agencies.

(2) The fees and charges shall specify the amount payable for

- (a) a search for every hour of manual search required in excess of 2 hours to locate information;
- (b) computer access and other costs incurred in locating, retrieving, processing and photo copying information;
- (c) the cost of preparing the information for disclosure; and
- (d) any postage costs.

#### **Waiver of fee on basis of financial hardship**

77. An information officer of an agency or a private body may waive a fee or charge for giving access to information where in the opinion of the information officer, the applicant will suffer financial hardship if required to pay the fee or charge.

#### **Fees and charges not to form part of Consolidated Fund**

78. Fees and charges received by agencies under this Act shall not form a part of the Consolidated Fund and shall be kept by the agencies in an identified account to be used to defray the costs incurred by the agencies in the performance of their functions under this Act.

#### **Responsibility of Attorney General and Minister for Justice for this Act**

79. (1) The Attorney General and Minister for Justice has ministerial responsibility for the full and effective implementation of this Act and may for that purpose issue written guidelines to agencies, ministries and private bodies.

- (2) The Attorney General may
  - (a) conduct public education programmes and provide information for the implementation of this Act;
  - (b) cause research to be conducted into matters affecting the purposes of this Act; and
  - (c) receive representations from the public in respect of the operation of this Act.

#### **Attorney General party to proceedings**

80. The Attorney General shall under this Act, be taken to be a party to any proceedings for the review of a decision of an agency before a Court.

#### **Annual reports by agencies**

81. (1) Each agency shall within 3 months after the 31<sup>st</sup> of December each year, submit a written report on the activities of the agency under this Act during the preceding year to the Attorney General.

- (2) A report submitted under subsection (1) shall include the following:
  - (a) the number of applications for access during the reporting period;

- (b) the number approved and the number rejected together with the reasons for the rejection;
- (c) the number of reviews requested; the number granted and the number dismissed together with reasons; and
- (d) the number of applications to the High Court and the Supreme Court for judicial review and the results of the reviews.

(3) The Attorney-General may in writing request for such other information, as the Attorney-General considers necessary for the purpose of submitting a comprehensive report to Parliament under section 81.

### **Report by the Attorney-General to Parliament**

82. (1) The Attorney-General shall by the 30<sup>th</sup> of June of each year lay before Parliament an annual report on the activities of all the agencies in respect of the preceding year based on the annual reports of the agencies referred to in section 80.

(2) The report of the Attorney-General may contain such comments as the Attorney-General considers necessary including an assessment of the extent to which agencies and private bodies are complying with this Act.

### **Limitation of period for exempt information**

83. (1) Information classified as exempt information under Part II ceases to be an exempt information on the expiry of 20 years calculated from the end of the calendar year in which the information came into existence.

(2) On the expiry of the period specified under subsection (1), any person may seek access to the information and the agency, which has custody of the information shall give access in accordance with the procedure for access under this Act.

### **Information held by the national archives, museums and libraries**

84. This Act does not apply to information held by the national archives, libraries and museums to which the public have access.

### **Application of Act to existing and future information**

85. (1) This Act applies to information regardless of whether it came into existence before or after the coming into force of this Act.

(2) This Act applies to information held by an independent contractor engaged by an agency as such contractor and the information shall for the purposes of this Act be taken to be information held by the agency.

### **Offence of disclosure of exempt information**

86. A person who willfully discloses exempt information, the disclosure of which is prohibited under this Act commits an offence and is liable on summary conviction to imprisonment for a term of not less than 12 months.

### **Other offences**

87. A person who

- (a) seeks or gains access to personal record of any other person under false pretences;
- (b) willfully makes a false statement to mislead or gain access to information; or
- (c) with intent to deny right of access to information,
  - (i) destroys, damages or alters a document;
  - (ii) conceals a document; or
  - (iii) makes a false entry in a document,

commits an offence and is liable on summary conviction to a fine of not less than 250 penalty units or imprisonment for a term of not less than 12 months or to both.

### **Extension of time**

88. Unless extension of time is provided for, where in this Act provision is made for taking any step, any action or making any determination within a specified time, the time may be extended for a further period not exceeding 14 working days if

- (a) there is the need for the extension to locate and retrieve the requested information; or
- (b) it is necessary to consult any other person for the purpose.

### **Regulations**

89. The Attorney General and Minister for Justice may by legislative instrument make Regulations

- (a) for further procedures for access to information under this Act; and
- (b) to provide for such matters as are necessary to give full effect to this Act.

### **Interpretation**

90. In this Act unless the context otherwise requires,

“agency” means a government agency;

“exempt information” means information that falls within any of the exemptions specified in Part II of this Act;

“government agency” means a Ministry, government department, District Assembly or any local authority, any statutory or other body corporate or unincorporated, any public office funded in whole or in part from public funds or in which the Government has any interest, fund or otherwise;

“information” means recorded matter/material,

- (a) regardless of form or medium;



- (b) in the possession or under the control or custody of an agency or a private body; and
- (c) whether or not it was created or made by the agency or private body ;

“information officer” means an officer so designated for the purposes of this Act;

“international organisation” means any organisation of States or Government of States or any organ of such an organization;

“private body” means a body as defined in section 47;

“protected information” means information which relates to a private body and which is protected from disclosure under Part VII of this Act;

“state secret” means information considered confidential by the Government which has not been officially disclosed or published to the general public and which it would be prejudicial to the security of the State or injurious to the public interest to disclose;

“trade secret” means a secret formula technique, process, programme, device or product known and used to the advantage by only one manufacturer and the disclosure of which would cause significant economic loss to the owner or manufacturer.

#### **Modification to existing enactments**

91. Where an enactment in existence immediately before the coming into force of this Act, provides for the disclosure of information upon authority, the disclosure of the information shall be subject to this Act.