

Right to Information Bill

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BILL
ENTITLED
RIGHT TO INFORMATION ACT, 2007

AN ACT to provide for the implementation of the constitutional right to information held by a government agency, subject to the exemptions that are necessary and consistent with the protection of the public interest in a democratic society, to foster a culture of transparency and accountability in public affairs and to provide for related matters.

ENACTED by the President and Parliament

Access to official information

Right of access to official information

1. (1) In accordance with paragraph (f) of clause (1) of article 21 of the Constitution, a person has a right of access to information or part of an information in the custody or under the control of a government agency.

(2) The exercise of the right under subsection (1) is subject to the exemptions specified in sections 5 to 18.

(3) The right may be exercised through an application made in accordance with section 20.

(4) A person does not have to give a reason for the application except where that person requests that the application be treated as urgent.

(5) Where an agency receives an application for access, part of which is exempt, the information officer 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. In addition to the requirements of article 67 of the Constitution, and subject to this Act, the Government shall make available to the people general information on their governance without application from a specific person.

Compilation and publication of manual on information of an agency

Responsibility of Minister in respect of access

3. (1) The Minister responsible for a government agency shall, within twelve months from the date of the coming into force of this Act, and every twelve months after that date, compile and publish, after consultation with the Public Services Commission and the Head of the Civil Service and in accordance with the guidelines issued by the Public Services Commission under section 4, an up-to-date official information compilation in the form of a manual, listing the government agencies that are under that Ministry.

(2) The manual shall contain

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- (a) a description of the organisational 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 the types of information that may be purchased or inspected free of charge or subject to a fee, and the deposit required or the fee, or charge payable in respect of an access to information as specified by the Attorney-General under section 51.
- (d) the name, telephone number, fax, e-mail and postal address of the information officer of the agency or a designated officer of the agency to whom a request for access may be made,
- (e) the place in the agency where information which is accessible under this Act or any other enactment, can be found or made available,
- (f) the arrangements made or procedures established by the agency that will enable members of the public to participate in the formulation of the policies of the agency, and
- (g) the arrangement made or procedures established by the agency to enable a member of the public to seek amendment of that member's personal official records with the agency.

Provision of guidelines for manual

3. (1) The Public Services Commission in consultation with the Attorney-General as the Minister who has responsibility for the effective implementation of this Act shall provide guidelines
- (a) for the preparation of the manual by the Minister under section 3; and
 - (b) for the preparation and publication of the constitutional instrument or the statutory instrument required under paragraph (c) of article 296 of the Constitution.
- (2) The Attorney-General is responsible for the implementation of this and any other enactment which relates to access to official information in the custody or control of an agency, until an information Commissioner is appointed for the purposes of this Act.

Exempt information

Information from the Office of the President and of the Vice President

5. (1) Information is exempt information
- (a) if it is for submission or has been submitted to the Office of the President or of the 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 the Vice-President.
- (2) A certificate under the hand of the Secretary to the President or the Secretary to the Vice-President that information is exempt information is

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conclusive evidence that the information is exempt subject to the operation of article 135 of the Constitution.

(3) Information which contains factual or statistical data and does not disclose information concerning a deliberation or decision of the Office of the President or of the Vice President is not exempt information.

Information relating to Cabinet

6. (1) Information is exempt information

(a) if it is prepared for submission to the Cabinet or submitted to the Cabinet for consideration,

(b) if it is an official information from the Cabinet, not published or released to the public, or

(c) if it contains matters which if disclosed would reveal information on a decision, deliberation or discussion of the Cabinet.

(2) Information which contains factual or statistical data and which does not disclose information concerning a decision, deliberation or discussion of the Cabinet is not exempt information.

(3) A certificate under the hand of the Secretary to the Cabinet or the Head of National Security that the information is exempt information is conclusive evidence that the information is exempt subject to the operation of article 135 of the Constitution.

(4) This section does not prevent the Cabinet from publishing or granting access to information that is otherwise exempt.

(5) For the purposes of 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

7. (1) Information is exempt if it contains matters which if disclosed can 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 a 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 identity of a confidential source of information, matter or the information given by a confidential source in respect of law enforcement,

(e) to impede the prosecution of an offence,

(f) to endanger the life or physical safety of a person,

(g) to prejudice the fair trial of a person or the impartial adjudication of a case,

(h) to reveal a record of information that has been confiscated from a person by a police officer or a person authorised to effect the confiscation in accordance with an enactment,

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- (i) to interfere with the maintenance or enforcement of a lawful method or procedure for protecting the safety of the public,
 - (j) to endanger the security of a building, structure or means of transport or a system including computer and communication systems for which security is reasonably required,
 - (k) to prejudice the security of a prison or place for lawful detention,
 - (l) to facilitate the escape of a person from lawful custody, or
 - (m) to prejudice a system or procedure for witness protection or any other procedure for the protection of persons or property where the protection is required.
- (2) Information is not an exempt information
- (a) if it consists merely of a report on the success of a programme adopted by an agency to deal with a contravention or possible contravention of the law,
 - (b) if it contains a general outline of the structures of a programme adopted by an agency to deal with a contravention or possible contravention of an enactment, or
 - (c) if it consists merely of a report on a law enforcement investigation that has already been disclosed to the person who is the subject of the investigation
- (3) Information created by or in the custody of the Armed Forces or the security and intelligence agencies established under the Security and Intelligence Agencies Act 1996 (Act 526) which related to the security of the State is exempt information.

Information affecting international relations

- 8.** (1) Information is exempt information if its disclosure can reasonably be expected
- (a) to damage or prejudice the relation between the Government and the government of any other country,
 - (b) to reveal information communicated in confidence to a government agency by or on behalf of another government, or
 - (c) to reveal information communicated in confidence to an agency by an international organisation of states or a body of that organisation.
- (2) Despite subsection (1), the exempt information may be disclosed if the President gives prior approval for the disclosure.

Information that affects the defence of the country

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

Economic and any other interests

10. Information is exempt prior to official publication

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

Economic information of third parties

11. (1) Information which would reveal a trade secret, research, scientific, technical, commercial, financial or labour related information supplied in confidence whether expressly or impliedly is exempt information if the disclosure can reasonably be expected

- (a) to prejudice the competitive position or interfere with the contractual or any other negotiations of a person, a group of persons or an organisation,
- (b) to result in undue loss or gain to a person, a group, a financial institution or any other body, or
- (c) to result in similar information which is not being supplied to the agency, where it is in the public interest that similar information continue to be supplied.

(2) Information which has already been made available to the public by the appropriate person, authority or body is not exempt information under subsection (1).

Information relating to tax

12. (1) Information obtained from a tax return or gathered for the purposes of determining tax liability is exempt information.

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

Internal working information of agencies

13. (1) Information which if disclosed would reveal

- (a) an opinion, an advice, a report or a recommendation contained, prepared or recorded, or

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(b) a consultation or a deliberation held in the course of or for the purpose of making a decision in the public service or an agency of the Government and which can reasonably be expected to frustrate or inhibit the candid deliberative process of an agency or between agencies is exempt information.

(2) Information is not exempt information under sub-section (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.

Parliamentary privilege, fair trial, contempt of court

14. Information is exempt information if its disclosure can reasonably be expected

(a) to infringe or contravene a parliamentary privilege,

(b) to prejudice the fair trial of a person or the impartial adjudication of a case before a Court or a quasi-judicial body, or

(c) to constitute contempt of court or of a quasi-judicial body.

Legal profession and any other privilege under law

15. (1) Information is exempt information where it is privileged from disclosure on grounds of

(a) lawyer and client professional relationship,

(b) communication between spouses whether married under an enactment or under the common law as defined in clause (2) of article 11 of the Constitution, or

(c) the Evidence Act, 1975 (N.R.C.D. 323).

(2) Subsection (1) does not apply where the person entitled to the privilege waives the privilege.

Medical professional privilege

16. Information the disclosure of which reveals confidential communication between a doctor and a patient or any other medical professional expert, in connection with the patient's medical diagnosis or treatment is exempt information.

Disclosure of personal matters

17. (1) Information the disclosure of which involves the unreasonable disclosure of information concerning the personal affairs of an individual whether living or deceased is exempt information

(2) Disclosure is unreasonable if it reveals 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 individual, or

(d) professional, commercial or financial affairs

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- (3) Disclosure is reasonable if
- (a) the individual to whom the information relates gives 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 does 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 does not contravene a provision on exempt information specified in this Act,
 - (g) the disclosure would not have an adverse effect on the affairs of the individual or prejudice the future supply of the information,
 - (h) the information has already been made available to the public by the appropriate person, authority or body,
 - (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 will 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 or is the personal representative of the deceased.

Disclosure for the protection of public interest

18. Despite a provision of this Act on exempt information, information is not exempt if the disclosure of the information reveals evidence of

- (a) a contravention of, or a failure to comply with, a law, or
- (b) an imminent and serious risk to public safety, public health or the environment,
- (c) miscarriage of justice,
- (d) abuse of authority or a neglect in the performance of an official duty,

and the benefits of disclosure clearly outweigh the harm or danger that could occur in the event of a disclosure.

Procedure for access

Application for access to information

- 19.** (1) An application for access to information held by an agency shall
- (a) be made 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) state the capacity of the applicant to the satisfaction of the officer to whom the application is made, if the application is made on behalf of another person,

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(e) state an address in the country to which a communication or notice can be sent, and

(f) be accompanied with the relevant fee.

(2) Where an applicant is unable to make the application in writing due to illiteracy or a 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 applicant does not sufficiently describe the information required, the agency to which the application is made shall so inform the applicant and offer the applicant the necessary assistance to identify the document.

Person to deal with application

20. (1) An application for access to information shall be dealt with by the information officer of the agency or an officer designated for that purpose by the Minister in the manual referred to in section 3.

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

(3) The delegation

(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

21. (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 to whom the application is made shall, within ten 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 the information in its custody, the information officer

(a) shall make the necessary enquiry to establish whether any other agency has the information, and

(b) shall transfer the application to that other agency if that agency has the information, and

(c) shall notify the applicant accordingly.

(3) A notice of transfer shall state,

(a) the date of the transfer,

(b) the reason for the transfer.

(4) An application transferred from one agency to another is a request for access to information made to the agency to which the application is transferred on the date the transfer is received.

Deferred access

- 22.** An agency may defer access to information if it is information
- (a) which requires publication under an enactment but the information is yet to be published,
 - (b) which is required to be published within ninety days from the receipt of the application or the transfer of the application, or
 - (c) which has been prepared for submission to any person or body and is yet to be submitted.

Decision on application

23. (1) Where an application for access is received by an agency, the information officer shall take a decision on the application and send a written notice to the applicant within twenty one working days from the date of receipt of the application.

- (2) The notice shall state
- (a) whether or not access to the information will be given,
 - (b) whether access to only a part of the information can be given and the reason for giving only a part,
 - (c) whether or not there has been a transfer under section 21, and
 - (d) whether or not there is deferred access under section 22.
- (3) Where the information officer decides to give access, the notice shall state
- (a) the period, which shall not be more than fourteen days, within which the access can be given,
 - (b) the form or manner in which the access will be given,
 - (c) whether access is to only a part of the information because the other part is exempt information,
 - (d) the day on which the agency expects the information to be published or submitted, in the case of a deferred access under section 22,
 - (e) a reasonable fee to be paid by the applicant, and
 - (f) the right of the applicant to lodge a complaint about the fee.
- (4) Where the agency decides to refuse access, the notice shall state,
- (a) the reason for the refusal,
 - (b) the right of the applicant to seek redress in accordance with the provisions on internal reviews and appeals under sections 38 to 46,
 - (c) the name and rank of the officer who dealt with the application, and
 - (d) the fees payable for dealing with the application.
- (5) Where an agency fails to determine an application within twenty-one working days after the application is received by the agency, the agency shall give reasons for the failure, and the applicant has the right to seek redress under sections 38 to 46.
- (6) Subsection (5) does not apply to an application which has been transferred to another agency or which the agency has refused to continue to process for failure to pay the required deposit or fee.

Information that cannot be found or is not in existence

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

(a) is in the possession of the agency but cannot be found, or

(b) does not exist,

the information officer or the designated officer shall by a statutory declaration notify the applicant that it is not possible to give access 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 is a refusal to give access to the information and the applicant may take the steps that are open to the applicant under sections 38 to 46.

(4) Where the information is found after the notice, the information officer shall so notify the applicant and give access, unless the information is exempt or is inaccessible under a provision of this Act.

Payment of advance deposit

25. (1) Where 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 a reasonable advance deposit determined by the agency.

(2) A deposit requested by an agency under subsection (1) is not part of the application fee, and a further advance deposit paid in respect of the application is in excess of the amount which 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 advance deposit requested by an agency in respect of an application shall be paid to the agency within the period of time specified by the agency in the request.

(5) An agency may refuse to give access to information if a fee or advance deposit payable is not paid within the period notified to the applicant.

(6) An agency shall refund an excess payment of a fee or deposit to the applicant.

Extension of time to deal with an application

26. (1) An information officer may extend the time provided for dealing with the application for a further period 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 time limit 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) The period of extension shall not exceed twenty-one working days from the date when a decision on the application should have been made.

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(3) An information officer on extending the time, shall within thirty 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 application to lodge an application for a review under sections 38 to 46 within the prescribed period.

Refusal to process for failure to pay deposit

27. (1) An agency may refuse to continue to process an application where the agency has by notice demanded payment of an advance deposit in relation to the application, and the applicant has not paid the deposit within the period of time specified in the notice.

(2) Where an agency refuses to continue to process an application when the applicant has paid part of the advance deposit, the agency shall refund to the applicant the part of the advance deposit paid which exceeds the costs incurred by the agency in processing the application.

(3) An agency which refuses to continue to process an application shall immediately notify the applicant in writing of the refusal.

(4) A refusal to continue to process an application under this section is subject to review and appeal under sections 38 to 46.

Refusal of access

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

- (a) the application is manifestly frivolous or vexatious,
- (b) the information is an exempt information,
- (c) the work involved in processing the application will, if carried out, substantially and unreasonably divert resources away from their use by the agency in the performance of the agency's functions,
- (d) the information is contained in a document which is available for inspection at that or any 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,
- (e) the information is contained in a document which is available from, or available for inspection at, that agency, free of charge, in accordance with that agency's policies and practices,
- (f) the information is usually available for purchase, or
- (g) the information forms part of library material.

(2) An agency shall not refuse to give access by virtue of subsection (1)(c) without first assisting the applicant to amend the application so that the work involved in processing it will not, if carried out, substantially and unreasonably divert the agency's resources away from their use by the agency in the performance of its functions.

Manner of access

29. (1) Access to information may be given to an applicant

- (a) by giving the applicant

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- (i) a reasonable opportunity to inspect the document containing the information, and
 - (ii) a copy of the document containing the information,
- (b) by making arrangements for the applicant to hear the sounds or view the visual images, 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 another device,
- (c) by giving the applicant a written transcript of the words recorded in the document, 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,
- (d) by giving the applicant a written transcript of the words contained in the document, in the case of information contained in a document in which words are contained in the form of shorthand writing or in coded form,
- (e) by giving the applicant the written form, 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, or
- (f) in any other form including computer printouts, diskette, compact disk rom and downloading.
- (2) Where an applicant has requested that access be given in a particular form, access to the information shall be given in that form.
- (3) Subsection (2) does not apply where giving access in the form requested,
- (a) will unreasonably divert the agency's resources away from their use by the agency in the performance of its functions,
 - (b) will be detrimental to the preservation of the information or having regard to the nature of the document containing the information, will otherwise not be appropriate, or
 - (c) will involve an infringement of a copyright subsisting in a matter contained in the information.
- (4) Where access cannot be given in the form specified by the applicant but can be given in some other form, access shall be given in that other form.
- (5) Where an applicant has requested that access be given in a particular form and access in that form is refused but given in another form, the applicant shall not pay a charge in respect of the giving of access which is greater than the charge that the applicant would have paid had access been given in the form requested.
- (6) This section does not prevent an agency from giving access to information in a form agreed on between the agency and the person who requested the access.

Amendment of personal records in custody of an agency

Amendment of personal records

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

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

Application for amendment of information

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

- (a) shall be in writing,
- (b) shall specify that it is made under this Act,
- (c) shall contain particulars which will enable the agency's records, to which the applicant has been given access, to be identified, and
- (d) shall 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 relevant information which the applicant considers necessary to complete the agency's records or bring them up to date.

(3) An application shall indicate an address in the country to which a notice 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

32. The provisions of sections 20 and 23 which deal with applications and the twenty one working days period for dealing with an application shall apply to section 30 with the necessary modifications.

Incomplete applications

33. An agency shall not refuse to accept an application to amend a personal record on the ground that the application does not contain sufficient particulars to enable the agency's records which contain the information to which the applicant has been given access to be identified, without first taking steps that are reasonably practicable to assist the applicant to provide the relevant particulars.

Action on application to amend record

34. (1) An agency shall, in respect of an application to amend a personal record,

- (a) amend its records in accordance with the application, or
- (b) refuse to amend its records.

(2) Where an agency fails to take a decision on an application within twenty-one working days after the application is received by the agency to amend its records in accordance with the application, the agency shall give reasons for the failure and the applicant has the right to seek redress under sections 38 to 46.

Refusal to amend records

35. An agency may refuse to amend its records in accordance with an application if it is satisfied that

- (a) its records are complete, correct, up to date or not misleading in a material particular, or
- (b) the application contains matter that is incorrect or misleading in a material particular.

Notice of decision

36. Section 23 (which requires notice of a decision to be given by the information officer of an agency to an applicant within twenty one working days) applies to the application for amendment of a personal record with the necessary modifications.

Notations to be added to records

37. (1) Where 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 particulars in respect of which the applicant claims the records are incomplete, incorrect, out of date or misleading, and
- (b) setting out the information the applicant claims is necessary to complete the records or to bring them up to date if the applicant claims the records are incomplete or out of date.

(2) The agency shall comply with the requirements of the notice lodged under subsection (1) and shall give a written notice of the notation to the applicant.

(3) Where an agency discloses to another person an information contained in the part of its records to which a notice relates, the agency

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

Internal reviews and appeals

Internal review by the Minister

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

- (2) An application for review
 - (a) shall be in writing,

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- (b) shall be accompanied with the prescribed fee,
- (c) shall be addressed to the Minister, and
- (d) shall be submitted within twenty-one working days after the receipt of the notification of the decision sought to be reviewed.

Action by the Minister

- 39.** (1) On the receipt of an application for review, the Minister shall
- (a) inform the information officer who dealt with the original application and any other person affected by the review, and
 - (b) call for and examine any other document of relevance to the review.
- (2) The Minister may by notice in writing require the applicant and any other person affected by the review to make a submission in person or in writing to the Minister in furtherance of the review.
- (3) The Minister shall conduct the review in *camera*.
- (4) The Minister shall not, in the course of reviewing the decision of an agency, disclose to the applicant or a person other than the information officer, any information that is exempt under this Act.

Decision of Minister on review

- 40.** (1) The Minister shall notify the applicant of the Minister's decision on the application within twenty-one working days of receipt of the application for a review, if there is no delay or other default on the part of the applicant.
- (2) The notice shall state
- (a) the reason for the decision and the provision of this Act relied on, and
 - (b) where the review is dismissed, that the applicant may file an application for a judicial review by an Appeals Commissioner of the decision of the Minister or with the Supreme Court as is applicable.
- (3) Where the Minister fails to notify the applicant of a decision on the review within the twenty one working days the Minister shall give reasons for the failure, and the applicant may seek redress with the Appeals Commissioner or in the Supreme Court.
- (4) Where the Minister decides a review in favour of the applicant for access to information, the information officer shall promptly within forty-eight hours after the Minister's decision has been communicated to the applicant, give access to the relevant information.

Delegation of power by Minister

- 41.** The Minister may in writing delegate the power conferred under sections 38 to 40 to an officer of a rank higher than that of the information officer.

Application for judicial review

- 42.** (1) For the purposes of reviewing a decision of the Minister in a review, the Chief Justice, in consultation with the Judicial Council, shall appoint, as an Appeals Commissioner, a person who is qualified to be appointed a Justice of the Court of Appeal.

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(2) Unless otherwise provided in this Act, a person dissatisfied with a decision of the Minister in a review may file an application for judicial review, by the Appeals Commissioner, of the decision of the Minister.

(3) A person refused access to information held by the Office of the President or the Office of the Vice-President or the Cabinet Office under sections 5 (2) or 6 (3) may apply to the Appeals Commissioner for a review.

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

(5) A person aggrieved by a determination of the Appeals Commissioner may appeal to the Supreme Court.

(6) An application for a judicial review under this section shall be heard *in camera*.

(7) In respect of the review by the Appeals Commissioner, the Rules of the Court of Appeal shall apply with the modifications that are necessary made by the Rules Committee.

Application to Supreme Court for judicial review

43. (1) Where an applicant is refused access to information by an agency because the disclosure of the information will be prejudicial to the security of the State or will be injurious to the public interest, the applicant may apply to the Supreme Court for a judicial review of the decision.

(2) The application for judicial review shall be lodged within twenty one working days of receipt of the notification of the decision.

Powers of the Supreme Court

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

(a) require the relevant information under the control of the agency to be produced before it for examination and scrutiny,

(b) enter and inspect premises occupied by the agency concerned in the appeal,

(c) require to see original documents, and

(d) summon and examine on oath a person who the Supreme Court considers may have information relevant to the appeal.

(2) The proceedings of the Supreme Court shall be held *in camera* 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 a party other than the representative of the agency and the Attorney-General information which is exempt from disclosure under this Act.

Ruling of the Supreme Court

45. (1) The Supreme Court, after hearing the application and presentations made before it, may make an appropriate order.

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(2) Where the Supreme Court orders that access should be given to an 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 a person affected by any proceedings under this Act whether before a Minister or a Court is entitled to be represented by a lawyer or an expert.

General and miscellaneous provisions

Burden of proof

47. In proceedings for the review of a decision of a 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

48. For the purposes of this Act, an agency shall designate an officer known as an information officer to perform the function assigned to an information officer under this Act.

Protection in respect of actions for defamation or breach of confidence

49. (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, an action for defamation or breach of confidence does not lie against the Republic, an agency, an information officer, a Minister or a member of staff of an agency in respect of the making of the decision or the giving of access.

(2) The giving of access to information under this Act or the making of a decision to give access does not constitute, for the purpose of the law relating to defamation or breach of confidence, an authorisation or approval of the publication of the information by the person to whom access is given.

Protection in respect of certain criminal actions

50. Where access to information is given in good faith under this Act, the person by whom the decision is made or a person concerned in giving access to the information has not committed an offence in respect of the decision to give access.

Fees and charges of agency

51. (1) An applicant seeking an access to information under this Act shall pay the fee or charge specified by the Attorney-General in written guidelines issued to the agencies.

(2) The guidelines shall specify the amount payable for

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

(3) For the purposes of subsection (1), an agency shall not charge fees for the location of information which requires not more than two hours of manual search.

Waiver of fee on basis of financial hardship

52. An information officer of an agency may waive a fee or charge for giving access to information where the information officer considers that the applicant will suffer financial hardship if required to pay the fee or charge.

Fees and charges not part of the Consolidated Fund

53. Fees and charges received by an agency under this Act do not form a part of the Consolidated Fund and shall be kept by the agency in an identified account to be used to defray the expenses incurred by the agency in the performance of its functions under this Act.

Responsibility of Attorney-General

54. (1) The Attorney-General has ministerial responsibility for the effective implementation of this Act, and may for that purpose issue written guidelines to agencies and ministries.

(2) Subsection (1) is in addition to paragraph (c) of article 296 of the Constitution.

(3) The Attorney-General may

- (a) conduct public education programmes and provide information for the implementation of this Act,
- (b) initiate 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

55. The Attorney-General shall, under this Act, be a party to proceedings before the Appeal Commissioner or the Supreme Court for the review of a decision of an agency.

Annual reports by agencies

56. (1) An agency shall, within three months after the 31st 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) The report shall include

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- (a) the number of applications for access during the reporting period;
- (b) the number of applications 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 application to the High Court, the Court of Appeal and the Supreme Court for judicial review and the results of the reviews.

(3) The Attorney-General may in writing request for any other information which the Attorney-General considers necessary for the purposes of submitting a comprehensive report to Parliament under section 57.

Report by the Attorney-General to Parliament

57. (1) The Attorney-General shall by the 30th of June of each year lay before Parliament an annual report on the activities of the agencies in respect of the preceding year based on the annual reports of the agencies referred to in section 56.

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

Limitation of period for exempt information

58. (1) Information classified as exempt information under section 5 to 18 ceases to be exempt information on the expiry of twenty years calculated from the end of the calendar year in which the information came into existence.

(2) On the expiry of the period specified in subsection (1), a 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

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

Application of Act to existing and future information

60. (1) This Act applies to information which came into existence before, or comes into existence after, the commencement of this Act.

(2) This Act applies to information held by an independent contractor engaged by an agency as a contractor and that information, for the purposes of this Act, is information held by the agency.

Offence of disclosure of exempt information

61. A person who wilfully discloses information which is exempt from disclosure under this Act commits an offence and is liable on summary conviction to a fine not less than two hundred and fifty penalty units or to a term of

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imprisonment of not less than twelve months or to both the fine and the imprisonment or to a non-custodial sentence as determined by the Court.

Other offences

62. (1) A failure or neglect by an information officer or other public officer to perform a function authorised by this Act where the occasion arises to perform that function constitutes a gross misconduct.

(2) A person who

(a) seeks or gains access to the personal record of another person under false pretences,

(b) wilfully makes a false statement

(i) to mislead any other person in order to gain access, or

(ii) to gain access to information, or

(c) with intent to deny right of access to information,

(i) destroys, damages, alters or conceals a document, or

(ii) makes a false entry in a document,

commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units or to a term of imprisonment of not less than twelve months or to both the fine and the imprisonment or to a non-custodial sentence as determines by the Court.

Extension of time

63. Unless extension of time is provided for, where in this Act provision is made for taking a step, for the doing of an act or making a decision within a specified time, the time may be extended for a further period not exceeding fourteen working days if

(a) the extension is needed to locate and retrieve the requested information, or

(b) the extension is necessary to enable consultation to be held with another person on the requested information.

Application to the private sector

64. (1) The Attorney-General may, by legislative instrument, extend the application of this Act to the private sector.

(2) The legislative instrument made under subsection (1) shall specify

(a) the provision of the Act which shall apply to the private sector,

(b) the type of information to which access should be given

(c) the exemptions which shall apply to the private sector as they apply in the public sector, and

(d) the court procedures that may be enforced to make available the requisite information.

Regulations

65. The Attorney-General may, by legislative instrument, make Regulations

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- (a) making it obligatory for government agencies and private organizations to maintain their records in good and accessible condition in order to facilitate access to information;
- (b) for further procedures for access to information under this Act,
- (c) making it obligatory for the institutions of chieftaincy to maintain records in good and accessible conditions, within the limits imposed by article 270 of the Constitution, in order to facilitate access to information, and
- (d) to provide for matters that are necessary to give full effect to this Act.

Interpretation

- 66.** In this Act, unless the context otherwise requires,
- “access” means right of access to information;
 - “agency” means a government agency;
 - “Court” means a court of competent jurisdiction;
 - “designated officer” means an officer so designated for the purposes of this Act;
 - “exempt information” means information which falls within any of the exemptions specified in sections 5 to 18;
 - “function” includes powers and duties;
 - “government agency” includes a Ministry, government department, District Assembly or a local authority, a statutory or any other body corporate or unincorporated, or a public office, funded in whole or in part from public funds or in which the Government has an interest, or holds shares;
 - “information” includes recorded matter or material,
 - (a) regardless of form or medium,
 - (b) in the possession or under the control or custody of an agency, and
 - (c) whether or not it was created or made by an agency;
 - “information officer” includes the information officer of the agency to whom an application is made and a designated officer;
 - “international organisation” includes an organisation of States or Government of States or an organ of that organisation;
 - “right of access” means the right of access to information;
 - “Rules Committee” means the Rules Committee established by article 157 of the Constitution
 - “state secret” includes information considered confidential by the Government which if disclosed would be prejudicial to the security of the State or injurious to the public interest;
 - “trade secret” means a secret formula or technique, process, programme, device or product known and used to the advantage of only one manufacturer and the disclosure of which would cause significant economic loss to the owner or manufacturer.

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Modification to existing enactments

67. Where an enactment in existence immediately before the coming into force of this Act, provides for the disclosure of information by a person or an authority, the disclosure of the information is subject to this Act.