

ACCESS AND RECEIPT OF INFORMATION BILL 2000

A BILL

FOR

An Act to give effect to the constitutional right of freedom of expression by ensuring access to information and to provide for incidental matters.

Enacted by the Parliament of Lesotho

Short title and commencement

1. This Act may be cited as Access and Receipt of Information Bill 2000 and shall come into operation on the date of its publication in a Gazette.

PART I

INTRODUCTORY PROVISION

Interpretation

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

“access fee” means a fee prescribed by the Minister in the Regulations for the purposes of section 30;

“application” means an application to a Court;

“commercial requester” means a requester other than a personal or non-commercial requester seeking access to a record;

“Constitution” means the Constitution of Lesotho;

“Court” means the High Court or the Magistrate Court;

“governmental body” means any department of state in the national or local sphere of government or any other functionary or institution exercising a power or performing a duty in terms of the Constitution or exercising a public power or performing a public duty under any law;

“head” means, in relation to-

(a) a governmental body, a person who is a head of a governmental body;

(b) a private body -

- (i) in the case of a natural person, the natural person;
- (ii) in the case of any other private body, the head of the private body;

“information officer” means, in relation to a governmental body, a ~~person~~ person appointed or designated as information officer of the governmental body;

“internal appeal” means an internal appeal to the head of a governmental body;

“minister” means Minister responsible for communications;

“non-commercial requester” means a requester seeking access to a record for the purpose of -

- (a) gathering news for the production of or disseminating news by a printed or electronic medium; or
- (b) research or education by a non-profit or an educational body or a member or an officer of that body;

“notice” means a notice made in writing;

“officer” means in relation to a governmental body, a person in the employ permanently or temporarily, of that governmental body;

“person” means a natural or juristic person;

“personal information” means information about an identifiable person;

“personal information bank” means a collection or compilation of personal information that is organised or capable of being retrieved by using a person’s name or an identifying number or any particular assigned to the person;

“personal requester” means a requester seeking access to a record containing information about the requester;

“private body” means a person, other than a governmental body, in possession of or controlling a personal information bank;

“public safety or environmental risk” includes the risk or potential risk to the environment or the public, including individuals in their place of work, associated with-

- (a) a product or service which is available to the public;

- (b) substance which is released into the environment or workplace or is present in food for human or animal consumption;
- (c) a form of public transport; or
- (d) an installation or manufacturing process or substance which is used in that installation or process;

“record” means recorded information regardless of form or medium, and includes -

- (x) a record which is capable of being produced by means of computer equipment; or
- (y) a part of a record, and in relation to-
 - (i) a governmental body, a record in the possession or under the control of the governmental body or any officer of the governmental body whether or not the record was created by the governmental body or was created before or after the commencement of this Act;
 - (ii) a private body, a record in the possession or under the control of the private body or any officer of the private body, and whether or not it was created by the private body and whether it was created before or after the commencement of this Act;

“request fee” means a fee prescribed by the Minister in the Regulations for the purposes of section 18;

“request for access” means a request for access to a record of a governmental body under section 9;

“request for correction” means a request for the correction of personal information in a record of a governmental body under section 50(2);

“third party” means, in relation to a request for access, any person including the government of a foreign state, an international organisation or an organ of that government or organisation other than -

- (a) the requester;
- (b) a person referred to under section 14(6); or
- (c) a governmental body;

“urgent appeal application” means an application referred to under section

69;

“urgent request application” means an application referred to under section 21;

(2) For the purposes of this Act, a board, council, committee, or other body-

- (a) established or constituted under any law; or
- (b) wholly or partly constituted by appointment made by the King, Prime Minister, Minister, governmental body, or more than one of those authorities,

to manage any activity, exercise any power, perform any duty, or advise or assist, a governmental body is regarded as being part of the governmental body.

Application of Act

3. Notwithstanding anything to the contrary in any other law, the provisions of this Act shall apply.

Designation of information officers and delegation of powers by head of governmental body

4. (1) For the purpose of this Act, a governmental body shall, subject to any other law governing the employment of personnel of the governmental body, designate a person as the information officer of the governmental body.

(2) The head of a governmental body may delegate power or duty conferred on the head by this Act to any officer of the governmental body who is-

- (a) not an information officer of the governmental body; and
- (b) more senior than the information officer.

(3) Any power or duty delegated under subsection (2) shall be exercised or performed subject to any conditions as the person who made the delegation considers necessary.

(4) Any delegation under subsection (2)-

- (a) shall be in writing;
- (b) does not prohibit a person who made the delegation from exercising the delegated power or performing the delegated duty;
- (c) may, at any time, be withdrawn or amended in writing by the person who

made the delegation.

(5) Any right or privilege acquired, or any obligation or liability incurred, as a result of delegation under subsection (2) is not affected by any subsequent withdrawal or amendment of that delegation.

PART II

GUIDE AND MANUALS ABOUT FUNCTIONS OF GOVERNMENTAL BODIES

Guide

5. (1) The Ministry of Communications shall, within six months after the commencement of this Act, publish in both official languages a guide containing information, as may reasonably be required by a person who wishes to exercise any right under this Act.

(2) The guide shall, without limiting the generality of subsection (1), include a description of -

- (a) the objects of this Act;
- (b) the postal and physical addresses, phone and fax numbers and, if available, electronic mail addresses of the information officers of all governmental bodies;
- (c) the manner and form in which a request or -
 - (i) access to a record of a governmental body;
 - (ii) access to a record of a private body containing personal information; and
 - (iii) correction of personal information held by a private body and a governmental body,

under sections 9, 48,49 and 50 shall be made;

- (d) the assistance available from the information officer of a governmental body under this Act;
- (e) the manner of lodging -
 - (i) an internal appeal with the head of a governmental body; and
 - (ii) an application with a Court;
- (f) remedies available in law regarding an act or omission in respect of a right

or duty conferred under this Act, except the remedies referred to under paragraph (e);

- (g) the manual to be published by a governmental body under section 6, the information contained in the guide and how to access the manual; and
- (h) the categories of records open to the public under any other law referred to under section 28 and how to obtain access to those records.

(3) The Ministry of Communications shall, if necessary, update and publish the guide annually.

(4) The guide shall, if reasonably possible, be made available on the internet.

Manual on functions of and index of records held by governmental body

6, (1) This section does not apply to a governmental body which is a public enterprise that operates a system of financial administration separate from the national and local spheres of government.

(2) Within 12 months after the commencement of this Act or the coming into existence of a governmental body, the head of the governmental body shall publish in both official languages a manual containing-

- (a) a description of its structure and functions;
- (b) the postal and physical address, phone and fax number and, if available, electronic mail address of the information officer of the governmental body;
- (c) a description of the guide referred to under section 5 and how to access it;
- (d) sufficient details to facilitate a request for access to, and for correction of personal information in a record of the governmental body, a description of-
 - (i) the subjects on which the body holds records and the categories of records held on any subject;
 - (ii) any personal information bank held by the governmental body, including, in respect of any bank-
 - (aa) the identification of the bank and a description of the categories of persons to whom or which the bank relates;
 - (bb) a statement of the purposes for which the information in the bank was obtained or the information in the bank was

compiled; and

- (cc) a statement of the standards of retention and disposal applied to information in the bank under section 60(1) and (3);
 - (e) a description of the categories of records of the governmental body open to the public under any other law referred to under section 28 and how to access those records;
 - (f) a description of the duty of the head of the governmental body to disclose records revealing a serious public safety or environmental risk under section 8;
 - (g) a description of the services available to any member of the public from the governmental body and how to access those services;
 - (h) a description of any arrangement or provision for a person, other than a governmental body, by consultation, making representations or otherwise, to participate in or influence-
 - (i) the formulation of policy; or
 - (ii) the exercise of powers or performance of duties by a governmental body;
 - (i) a description of any remedy available in respect of an act or omission by the governmental body;
 - (j) a description of any remedy available to a member of the public or an officer who or a body which wishes to report or remedy an impropriety under section 61 and the protection for an officer of the governmental body against reprisals provided under section 63;
 - (k) such other information as may be prescribed.
- (3) A governmental body shall, if necessary, update and publish its manual annually.
- (4) A manual shall, if reasonably possible, be made available on the internet by the head of a governmental body.
- (5) If the functions of two or more governmental bodies are closely connected, the Ministry of Communications may, on request or of its own accord, determine that the two or more bodies publish one manual.
- (6) The cost of the publication shall be shared between the relevant

bodies as determined by the Ministry of Communications.

(7) The Ministry of Communications may, on request or of its own accord, by notice in the Gazette, exempt any category of governmental bodies from any provision of this section for such period as it thinks fit.

(8) All information which is not exempted under the this Act shall be included in the manual.

(9) Any information officer who fails to disclose any information in the manual which is not exempted in this Act, commits an offence.

Information in telephone directory

7. (1) The Ministry of Communications shall ensure the publication of the postal and physical address, phone and fax number and, if available, electronic mail address of the information officer of a governmental body in a telephone directory issued for general use by the public.

(2) The information referred to under subsection (1) shall be published in the first telephone directory to be issued after six months after the commencement of this Act and thereafter in any telephone directory that is issued.

Announcement of public safety or environmental risk

8. (1) If there are reasonable grounds for believing that-

- (a) a record of a governmental body reveals a serious public safety or environmental risk; and
- (b) it is in the public interest to disclose the record to the public or any person affected or with sufficient interest, the head of the governmental body shall, subject to this section, within a reasonable time, disclose the record.

(2) For the purposes of this section, “third person” means a person to whom or which the information to be disclosed relates.

(3) If the record referred to under subsection (1) contains information under section 34(1) or 36(1), the head of the governmental body shall, before disclosing the record, inform the third person of the intended disclosure by the fastest means reasonably possible unless all necessary steps to locate the third person within a reasonable period are unsuccessful.

(4) When informing a third person, the head of a governmental body shall-

- (a) state his intention to disclose a record that contains third person’s information and describe the information; and

- (b) inform the third person that the third person may, within a reasonable period after the third person is informed, make written or oral representations to the head of the governmental body why the third person information should not be disclosed.

(5) A third person who is informed of an intended disclosure may, within a reasonable period as the head of a governmental body determines, make written or oral representations to the head of the governmental body why the third person information should not be disclosed.

(6) The head of a governmental body shall-

- (a) after due regard to any representations made by a third person under subsection (4) and the grounds for disclosure under subsection (1), decide whether the third person information should be disclosed or not;
- (b) take the necessary steps to notify the third person before the decision is made; and
- (c) where a third person cannot be located, make any decision whether to disclose the third person information with due regard to the fact that the third person did not have the opportunity to make representations why the information should not be disclosed.

(7) If the head of a governmental body decides to disclose the third person information under subsection (6), the notice shall state-

- (a) the findings on questions of fact, referring to the material on which those findings were based;
- (b) the reasons for the decision to enable the third person-
 - (i) to understand the justification for the decision of the head of the governmental body; and
 - (ii) to make an informed decision about whether to lodge an application with a Court or to utilise any other remedy available in law to the third person;
- (c) that the third person may lodge an application with a Court against the decision of the head of the governmental body within 10 days after notice is given, and the procedure for lodging that application; and
- (d) that the third person information will be disclosed after the expiry of 10 days after notice is given, unless an application against the decision is lodged within 10 days or an extended period is granted under section 71(3).

**PART III
ACCESS TO RECORDS OF GOVERNMENTAL BODIES**

**CHAPTER 1
RIGHT AND MANNER OF ACCESS**

Right of access to records of governmental bodies

9. A person shall, on request, but subject to this Act, be given access to any record of a governmental body.

Criminal or civil discovery

10. No request for access to a record of a governmental body may be made under this Act for the purpose of criminal or civil discovery.

Right of discovery of record

11. Subject to the provisions of this Act, a person, whether or not the person is a requester, may publish, broadcast or disclose information contained in a record of a governmental body to which access is given.

Access to records under other law

12. Nothing in this Act, except section 54, shall prevent a governmental body from giving access to a record of the governmental body in accordance with any other law.

Language of access

13. A requester whose request for access to a record of a governmental body is granted shall, if the record exists in the language that the requester prefers, be given access in that language.

Forms of request

14. (1) A request for access shall be made in writing in any of the official languages to the information officer of a governmental body at the information officer's postal address or fax number or electronic mail address.

(2) A form for a request of access prescribed for the purposes of subsection (1) shall-

- (a) provide sufficient particulars to enable the information officer of a governmental body to identify the record requested;

- (b) indicate which applicable form of access is required under section 31(2);
- (c) state whether the requester is a personal, non-commercial or commercial requester and, in the case of a commercial requester, include the request fee;
- (d) specify a postal address or fax number and, if the request includes an urgent request application, a phone number in Lesotho of the requester;
- (e) if, in addition to a written reply, the requester wishes to be informed of the decision on the request in any other manner, state that manner; and
- (f) in the case of a request for access to a record containing personal information, state the capacity referred to under subsection (5) in which the requester is making the request and to submit-
 - (i) the requester's identity document or a certified copy of the identity document or any other reasonable proof of the requester's identity; or
 - (ii) if the requester is not person to whom or which the personal information relates, reasonable proof of the capacity in which the requester is making the request.

(3) If a requester is classified as a personal, non-commercial or commercial requester or as any two of those requesters, that requester is, upon the request for access being granted, liable to pay the highest access fee in respect of the request.

(4) A person who because of illiteracy or physical disability is unable to make a request for access to a record of a governmental body under subsection (1) may make that request orally.

(5) The information officer of a governmental body shall reduce oral request to writing in an official language of the requester's choice and provide a copy of the request to the requester.

(6) A request for access to a record containing personal information may be made-

- (a) by the person to whom or which the personal information relates or that person's authorised representative;
- (b) if the person referred to under paragraph (a) is -
 - (i) under the age of 16 years, by his parent or guardian;
 - (ii) incapable of managing his own affairs, by a person appointed by the

family or the court to manage those affairs; or

(iii) deceased, by the executor of his estate.

Duty to assist requesters

15. (1) If a requester informs the information officer of a governmental body that the requester wishes to make a request for access to a record of the governmental body or another governmental body, the information officer shall render such assistance free of charge to enable the requester to comply with section 14(1).

(2) If a requester has made a request for access that does not comply with section 14(1), the information officer may not refuse the request because of non-compliance unless the information officer has-

- (a) notified the requester of an intention to refuse the request and state in the notice -
 - (i) the reasons for the refusal; and
 - (ii) that the information officer or any officer identified by the information officer would assist that requester in order to make the request in a form that would remove the ground for refusal;
- (b) given the requester a reasonable opportunity to seek assistance;
- (c) as far as reasonably possible, furnished the requester with any information that would assist the making of the request in that form; and
- (d) given the requester a reasonable opportunity to confirm the request or alter it to comply with section 14(1).

(3) When computing any period referred to under section 20(1) or 21(2) or (3), the period commencing on the date on which notice is given under subsection (2) and ending on the date on which the person confirms or alters the request for access shall be disregarded.

(4) If it is apparent on receipt of a request for access that it has to be made to another governmental body, the information officer of the governmental body shall-

- (a) render assistance as to enable the person to make the request to the information officer of that other governmental body; or
- (b) transfer the request in accordance with section 16 to the information officer of that other governmental body.

Transfer of request

16. (1) If a request for access is made to the information officer of a governmental body in respect of which-

- (a) the report is not in the possession or under the control of the governmental body but is in the possession of another governmental body;
- (b) the record's subject matter is more closely connected with the functions of another governmental body than those of the governmental body of the information officer to whom the request is made; or
- (c) the record contains commercial information referred to under section 41(2) in which any other governmental body has a greater commercial interest,

the information officer to whom the request is made shall, within 14 days after the request is received -

- (i) transfer the request to the information officer of the other governmental body or, if under paragraph (c) there are more than one other governmental bodies having commercial interest, the governmental body with the greatest commercial interest; and
- (ii) if the information officer of the governmental body to which the request is made is in possession of the record that is helpful to enable the information officer of the other governmental body to deal with the request, send a copy of the record to that information officer.

(2) If a request for access is made to the information officer of a governmental body in respect of which-

- (a) the record is not in the possession or under the control of the information officer of that governmental body and the information officer does not know which governmental body has possession or control of the record;
- (b) the record's subject matter is not closely connected with the functions of the governmental body of that information officer and the information officer does not know which governmental body the record is closely connected with; and
- (c) the record-
 - (i) was created by or for another governmental body; or
 - (ii) was not created by or for any governmental body, but was received first by another governmental body,

the information officer to whom the request is made shall, within 14 days after the request is received, transfer the request to the information officer of the governmental body by or for which the record was created or which received it first.

(3) If a request for access to be transferred includes an urgent request application, the request shall be transferred within five days after it is received.

(4) Subject to subsection (5), the information officer to whom a request for access is transferred, shall give priority to the request in relation to other requests as if it were received by the information officer on the date it was received by the information officer who transferred the request.

(5) If a request for access is transferred, any period referred to under section 20(1) or 21(2) or (3) shall be computed from the date the request is received by the information officer to whom the request is transferred.

(6) Upon the transfer of a request for access, the information officer making the transfer shall immediately notify the requester of -

- (a) the transfer and, governmental body and address to which the transfer is made;
- (b) the reasons for the transfer; and
- (c) the period within which the request is to be dealt with.

Preservation of record

17. If the information officer of a governmental body has received a request for access to a record of the governmental body, the head of the governmental body shall take reasonable steps to preserve the record, until the information officer has notified the requester of his decision under section 20 and the period for lodging-

- (a) an internal appeal with the head of the governmental body;
- (b) an application with a Court; or
- (c) an appeal against a decision of that Court.

Payment of request fee

18. (1) A commercial requester shall, when making his request for access, pay the prescribed request fee.

(2) If -

- (a) there are reasonable grounds for believing that a requester is a commercial

requester; and

- (b) that requester has not paid the prescribed request fee, the information officer of the governmental body shall, by notice, require the requester to pay that fee.

(3) If the information is held by private body, the request fee shall be prescribed by the private body.

(4) If the prescribed request fee is payable in respect of a request for access, the decision on the request under section 20 may be deferred until the fee is paid.

Payment of deposit

19. (1) If-

- (a) a search for a record of a governmental body in respect of which a request for access by non-commercial requester is made; and
- (b) the preparation of the record for disclosure, including any arrangements under section 31(2)(a) and (b)(i) and (ii)(aa),

requires more than the prescribed time for non-commercial or commercial requesters, the information officer shall, by notice, require the requester to pay one third of the prescribed access fee as a deposit and the balance is to be paid when the request is granted.

(2) No deposit is payable in respect of a request for access by-

- (a) a personal requester; or
- (b) a member of Parliament, a member of local authority or a chief in connection with official duties.

(3) The notice referred to under subsection (1) shall state the amount of the deposit.

(4) If a deposit is payable in respect of a request for access, the decision on the request under section 20 may be deferred until the deposit is paid.

(5) If a deposit is paid in respect of a request for access which is refused, the information officer shall refund the deposit to the requester.

Decision on request and notice

20. (1) The information officer to whom a request for access is made or transferred shall, subject to sections 21 and 22 and Chapter 3 of this Part, within 30 days after the request is received or transferred -

- (a) decide whether to grant the request; and

- (b) notify the requester of the decision and, if the requester has indicated that he wishes to be informed of the decision in any other manner referred to under section 14 (2) (e), inform him in that manner if it is reasonably possible.

(2) If the request for access is granted, the notice under subsection (1)(b) shall state-

- (a) the access fee, if any, to be paid upon granting of access; and
- (b) the form in which access is given.

(3) If the request for access is refused, the notice under subsection (1)(b) shall state-

- (a) the findings on questions of fact referring to the material on which those findings were based;
- (b) the reasons for the refusal to enable the requester -
 - (i) to understand the justification for the refusal; and
 - (ii) to make an informed decision about whether to lodge an internal appeal with the head of the governmental body or to utilise any other remedy available in law to the requester; and
- (c) that the requester may lodge an internal appeal with the head of the government body against the refusal of the request, and the procedure, including the period for lodging the internal appeal.

Urgent request

21. (1) A requester who wishes to obtain access to a record of a governmental body urgently shall indicate the urgency and give reasons for that urgency.

(2) If a request for access is an urgent request application, the information officer shall, subject to Chapter 3 of this Part, within five days after the request for access is received or transferred, decide on the request and give notice of the decision in accordance with section 20 (1), unless there are reasonable grounds for believing that-

- (a) the requester will suffer any prejudice if the request is decided upon within the applicable period referred to under section 20 (1);or
- (b) it is impracticable to decide on the request within five days after the request is received or transferred.

(3) A requester shall pay an urgent request fee.

(4) If the information officer refuses an urgent request application on the grounds referred to under subsection (2) (a) or (b), within five days after the request for access is received or transferred, notify the requester of the refusal.

(5) The notice referred to under subsection (3) shall state-

- (a) the findings on questions of fact referring to the material on which those findings were based;
- (b) the reasons for the refusal to enable the requester -
 - (i) to understand the justification for the refusal; and
 - (ii) to make an informed decision about whether to lodge an internal appeal with the head of the governmental body or an application with a Court or to utilise any other remedy available in law to the requester; and
- (c) that the requester may lodge an internal appeal with the head of the governmental body or an application with a Court against the refusal of that urgent request application, and the procedure, including the periods for lodging the internal appeal and the application with Court.

(6) If the notice under subsection (2) or (3) of a decision is not given by fax, the requester shall be informed of the decision by phone or through a designated agent.

Extension of period to deal with request

22. (1) For the purposes of this section, “original period” means a period of thirty days referred to under section 20 (1).

(2) Subject to section 21, the information officer to whom a request for access is made or transferred may extend the period of thirty days referred to under section 20 (1) for a further period of not more than thirty days, if -

- (a) the request is for a large number of records or requires a search through a large number of records and compliance with original periods would unreasonably interfere with the activities of the governmental body;
- (b) the request requires a search for records in or collection from an office of the governmental body not situated in the same district or town as the office of the information officer and the search or collection cannot reasonably be completed within the original period;

- (c) consultation among divisions of governmental body or with another governmental body is necessary to decide upon the request and that cannot reasonably be completed within the original period.

(3) If a period is extended under subsection (2), the information officer shall, within 30 days after the request is received or transferred, notify the requester of that extension.

(4) The notice referred to under subsection (3) shall state-

- (a) the period of the extension;
- (b) the reasons for the extension to enable the requester-
 - (i) to understand the justification for the extension; and
 - (ii) to make an informed decision about whether to lodge an internal appeal with the head of the governmental body or to utilise any other remedy available in law to the requester; and
- (c) that the requester may lodge an internal appeal with the head of the governmental body against the extension and procedure, including the period for lodging the internal appeal.

Deemed refusal of request

23. (1) If an information officer fails to give his decision on a request for access within the period referred to under section 20(1), the information officer is deemed to have refused the request.

(2) The requester may, if dissatisfied with the deemed refusal of the request under subsection (1), lodge an internal appeal with the head of the governmental body or an application with a Court.

Frivolous or vexatious requests

24. (1) The information officer of a governmental body may refuse a request for access to a record of the governmental body if the request is manifestly frivolous or vexatious.

(2) The requester may, if dissatisfied with the decision of the information officer under subsection (1), lodge and internal appeal with the head of the governmental body or an application with a Court.

Records that cannot be found or do not exist

25. (1) The information officer of a governmental body may refuse a request

for access to a record of the governmental body if -

(a) thorough search to find the record was conducted, but the record was not found; or

(b) there are reasonable grounds for believing that the record does not exist.

(2) If an information officer refuses a request for access to a record under subsection (1), the information officer shall, by the notice referred to under section

20(1)(b), give a full account of the steps taken to find the record or determine whether the record exists.

Published records and records to be published

26. (1) Subject to this section, the information officer of a governmental body may refuse a request for access to a record of the governmental body if-

(a) the record is to be published within 60 days after receipt or transfer of the request or any further period as is reasonably necessary for printing and translating the record for the purpose of publishing it;

(b) the record can be copied at a library to which the public has access at a fee less than the access fee under this Act;

(c) the record is available for sale by the public in accordance with the arrangements made by or on behalf of a governmental body at a fee less than the access fee under this Act;

(d) the publication of the record is required by law, within 90 days after receipt or transfer of the request; or

(e) the record is prepared for submission to Parliament unless a period of 90 days after the preparation has expired and the record is submitted.

(2) The information officer shall, in the notice referred to under section 20(1)(b), in a case of a refusal of a request for access under -

(a) subsection (1)(a) or (d), state the date on which the record is to be published;

(b) subsection (1)(b) and, if such record is ordinarily available to the governmental body, identify the title and publisher of the record and the library nearest to the requester;

(c) subsection (1)(c) and, if such record is ordinarily available to the governmental body, identify the title and publisher of the record and state where it can be purchased; or

(d) subsection (1)(e), state the date on which the record is to be submitted to Parliament.

(3) If an information officer is considering to refuse a request for access to a record under subsection (1)(a)(d) or (e), the information officer shall notify the requester -

- (a) of such consideration; and
- (b) that the requester may, within 30 days after the notice is given, make representations to the information officer why the record is required before publication or submission to Parliament.

(4) If notice is given to a requester under subsection (3), the information officer shall, after due consideration of any representations made in response to the notice, grant the request, unless there are reasonable grounds for believing that the requester will suffer no substantial prejudice if access to the record is deferred until the record is published or submitted to Parliament.

(5) If the record in respect of which a request for access is refused under subsection (1)(a) is not published within 60 days after receipt or transfer of the request or any further period as is reasonably necessary for printing and translating the record for the purpose of publishing it, the requester shall be given access to the record.

Records open to public

27. (1) The information officer of a governmental body may refuse a request for access to a record of the governmental body if the record is open to public access in accordance with any other law.

(2) The Minister may determine the manner in which access may be obtained if the fee payable for access under any other law is more than the request fee and access fee payable under this Act.

Mandatory disclosure in public interest

(3) (1) Notwithstanding any other provision of this Act, but subject to Chapter 3 of this Part, the information officer of a governmental body shall grant a request for access to a record under section 34(1), 35(2), 36(1), 38(a) and (c), 39(1)(c)(ii), (iii) or (vi) or (d) or 40 if-

- (a) disclosure of the record reveals evidence of -
 - (i) abuse of authority, illegality or neglect in the exercise of a power or performance of a duty of an official of a governmental body;
 - (ii) injustice to a person, including a deceased person;
 - (iii) danger to the environment, health or safety of a person or the public; or

- (iv) unauthorised use of the funds or other assets of a governmental body; and
- (b) giving due weight to the importance of open, accountable and participatory administration, the public interest in the disclosure of the record outweighs the need for non-disclosure.

(2) Notwithstanding any other provision of this Act, but subject to Chapter 3 of this Part, the information officer of a governmental body shall grant a request for access to a record under section 37(1) or (3), 38(b), 39(1)(a),(b),(c)(i),(iv) or (v), 41(1) or (2) or 42(1), if giving due weight to the importance of open, accountable and participatory administration, the public interest in the disclosure of the record outweighs the need for non-disclosure.

Severability

29. Notwithstanding any other provision of this Act, if a request for access to a record of a governmental body containing information which is required under section 34 or 36, or permitted under section 24, 35, 37, 38, 39, 41 or 43 to be refused, is made, any part of the record which can reasonably be severed from such information may be disclosed.

Access fees

30. (1) A requester whose request for access to a record of a governmental body is granted shall be given access to the record upon payment of the access fee.

(2) If the information is maintained by a private body, the access fee shall be determined by the private body.

(3) A personal requester shall pay access fee for reproduction of the record only.

(4) A commercial requester shall pay an access fee for reproduction, search and preparation of the record.

(5) A non-commercial requester shall pay an access fee for reproduction, search and preparation, and for any time reasonably required in excess of the prescribed hours to search for and prepare the record for disclosure.

(6) A member of Parliament, a member of a local authority or chief who makes a request for access in connection with his official duties does not have to pay access fee in respect of the request.

Access and forms of access

31. (1) If a requester is given notice under section 20(1) that his request for access is granted, the requester shall, subject to subsections (3),(9) and (10) -

- (a) if an access fee is payable, upon payment of that fee; or
- (b) if no access fee is payable, immediately,

be given access in the applicable forms referred to under subsection (2), and in the language referred to under section 13 as the requester indicated in the request.

(2) The forms of access to a record may be granted in the following manner-

- (a) if a record is in written or printed form, by supplying a copy of the record or making arrangements for the inspection of the record;
- (b) if the record is not in written or printed form-
 - (i) in the case of a record from which visual images or printed transcriptions of those images are capable of being reproduced by means of equipment which is ordinarily available to the governmental body, by making arrangements to view those images or be supplied with copies or transcriptions of them;
 - (ii) in the case of a record in which words or information is recorded in a manner that is capable of being reproduced in the form of sound by equipment which is ordinarily available to the governmental body-
 - (aa) by making arrangements to hear those sounds or by providing a copy of sounds by using an appropriate media at the expense of the requester; or
 - (bb) if the governmental body is capable of producing a written or printed transcription of those sounds by the use of equipment which is ordinarily available to it, by supplying such a transcription;
 - (iii) in a case of a record which is held on computer or in electronic or machine-readable form, and which the governmental body is capable of producing a printed copy of -
 - (aa) the record or a part of it; or
 - (bb) information derived from the record by using computer equipment and expertise ordinarily available to the governmental body,
by supplying such a copy;
 - (iv) in the case of a record available or capable of being made available in

computer readable form, by supplying such a copy;

(v) in any other case, by supplying a copy of the record.

(3) If a requester has requested access in a particular form, access shall, subject to section 29, be given in that form, unless access in that particular form-

- (a) interferes unreasonably with the effective administration of the governmental body;
- (b) is detrimental to the preservation of the record; or
- (a) amounts to an infringement of copyright not owned by the state or the governmental body.

(4) If a requester has requested access in a particular form and for the reason referred to under subsection (3) access in that form is refused but given in another form, access fee charged may not exceed the access fee for the requested particular form.

(5) If a requester with a visual or auditory disability is prevented by that disability from reading, viewing or listening to the record in the form in which it is held by the governmental body, the information officer of the governmental body shall, if that requester so requests, take reasonable steps to make the record available in a form in which it is capable of being read, viewed or heard by the requester.

(6) If a record is made available in accordance with subsection (5), the requester may not pay an access fee which is more than the access fee required to be paid but for the disability.

(7) If a record is made available under this section to a requester for inspection, viewing or hearing, the requester may make copies of or transcribe the record using the requester's equipment, unless copying or transcribing-

- (a) interferes unreasonably with the effective administration of the governmental body;
- (b) is detrimental to the preservation of the record; or
- (c) amounts to an infringement of copyright not owned by the state or the governmental body.

(8) A copy of the record requested under this section shall be sent by post.

(9) If an internal appeal with the head of a governmental body or an application with a Court is lodged against the granting of a request for access to a record, access to the record may be given when the appeal succeeds.

(10) If a request for access to a record is granted, but a request for correction in respect of the record is pending, access to the record or part of the record may be given when the decision on the request for correction is finally determined.

Reports to Minister

32. (1) The head of a governmental body shall, not later than 31st March, submit to the Ministry of Communications a report for the previous year stating, in relation to the governmental body-

- (a) a number of requests for access received;
- (b) a number of requests for access granted in full;
- (c) a number of requests for access granted under section 28;
- (d) a number of requests for access refused partially and in full;
- (e) a number of requests for correction and a number of cases in which the correction was made;
- (f) a number of cases in which the periods stipulated under sections 20(1) and 50(7), were extended under section 22(1) and section 50(6), respectively;
- (g) a number of urgent request applications and urgent appeal applications lodged and a number of cases in which those applications were granted;
- (h) a number of internal appeal lodged with the head of the governmental body and a number of cases in which, as a result of an internal appeal, access was given to a record or part of the record or a correction of inaccurate information was made;
- (i) a number of internal appeals which were lodged on the ground that-
 - (i) a request for access was refused under section 23; and
 - (ii) a request for correction was refused under section 50(8);
- (j) a number of applications which were lodged with a Court on the ground that an internal appeal was dismissed under section 68(7); and
- (k) any other matter the head of the governmental body considers necessary to report.

(2) The Principal Secretary of the Ministry of Communications shall

compile the reports submitted under subsection (1) and submit a report to the Minister of Communications.

(3) The Minister shall present the report submitted under subsection (2) before Parliament.

CHAPTER 2 GROUNDS FOR REFUSAL OF ACCESS TO RECORDS

Mandatory and discretionary grounds for refusal

33. The information officer of a governmental body-

- (a) shall refuse a request for access to a record under section 34(1) or 36(1), unless the provisions of section 28(1) apply;
- (b) may refuse a request for access to a record under -
 - (i) section 35(2), 38(a), 39(1)(c)(ii), (iii) or (vi) or (d) or 40, unless the provisions of section 28(1) apply;
 - (ii) section 37(1) or (3), 39(1)(a), (b) or (c)(i), (iv) or (v), 41(1) or (2) or 42(1), unless the provisions of section 28(2) apply;
 - (iii) section 24, 25(1), 26(1) or 27.

Mandatory protection of privacy

34. (1) Subject to subsection (2), the information officer of a governmental body shall refuse a request for access to a record of the governmental body, if its disclosure invades the privacy of an identifiable person, including a person who died within 20 years before the request is received, other than a requester or other person referred to under section 14 (6).

(2) Subsection (1) does not apply to a record that consists of information-

- (a) already publicly available;
- (b) about a person that has, under section 44(b), consented to its disclosure to the requester;
- (c) about a person's physical or mental health or well-being who is -
 - (i) under the age of 18 years;
 - (ii) under the care of the requester and incapable of understanding the nature of the request,

and if giving access is in the person's best interests;

- (d) about a person who is deceased and the requester is requesting with the written consent of the person's next of kin;
 - (e) about a person who is or was an officer of a governmental body and the information relates to the position or duties of the person.
- (3) For the purposes of this section, "person's next of kin" means-
- (a) a spouse;
 - (b) a parent, child, brother or sister of a person; or
 - (c) if -
 - (i) there is no next of kin referred to under paragraphs (a) and (b); or
 - (ii) the requester took all reasonable steps to locate such next of kin, but was unsuccessful,

a person who is related to the person in the second degree of affinity or consanguinity.

Health of requester

35. (1) For the purposes of this section "health practitioner" means a person who carries on and is registered under the law to carry on an occupation which involves the provisions of care or treatment for the physical or mental health or for the well-being of persons.

(2) The information officer of a governmental body may refuse a request for access to a record of the governmental body about the requester's physical or mental health or well-being, which was provided by a health practitioner in his capacity as such if-

- (a) the disclosure of the record to the requester is likely to cause serious harm to the requester's physical or mental health or well-being, and
- (b) the information officer has disclosed the record to and consulted with a health practitioner-
 - (i) other than the health practitioner who provided the record; and
 - (ii) who was nominated by the requester or the requester's authorised representative; and
- (c) that health practitioner so consulted is of the opinion that the serious harm referred to under paragraph (a) is likely to result.

- (3) If the requester is-
- (a) under the age of 16 years, a parent or guardian of the requester shall make the nomination referred to under subsection (2)(b) (ii); or
 - (b) incapable of managing his affairs, a person appointed by the court to manage those affairs shall make the nomination.
- (4) If-
- (a) access is given to a record of a governmental body containing information about the requester's physical or mental health or well-being which was provided by or originated from a health practitioner;
 - (b) that access was given without that health practitioner's knowledge; and
 - (d) that health practitioner can be located by taking necessary steps,

the information officer shall notify that health practitioner that access was given.

Mandatory protection of third party commercial information

36. (1) Subject to subsection (2), the information officer of a governmental body shall refuse a request for access to a record of the governmental body if the record contains-

- (a) trade secrets of a third party;
- (b) financial, commercial, scientific or technical information, other than trade secrets, supplied in confidence by a third party and treated consistently as confidential by that third party, and disclosure of which could reasonably cause harm to the commercial or financial interest of that third party; or
- (c) information supplied by a third party and the disclosure of which would put that third party at a disadvantage in contractual or other negotiations or cause the third party prejudice in commercial competition.

(2) Subsection (1) does not apply to a record that consists of information-

- (1) already publicly available;
- (2) about a third party who has, under section 44(b), consented to its disclosure to the requester;
- (3) about the safety of goods or services rendered by a third party, and the disclosure of the information would result in better informed choices by persons seeking to acquire those goods or services; or

- (4) supplied to or about the results of any test or other investigation carried out by a governmental body regarding a public safety or environmental risk.

(3) If a request for access to a record under subsection (2)(d) is granted, the information officer shall, at the same time as access to the record is given, direct the requester to the source of the original test or any other investigation to enable the requester to obtain an explanation of the methods used in conducting the test or other investigations.

Records supplied in confidence

37.(1) Subject to subsection (2), the information officer of a governmental body may refuse a request for access to a record of the governmental body containing information supplied in confidence to any governmental body by a third party if-

- (a) the disclosure of the record would prejudice the future supply of similar records or records from the same source;
- (b) a governmental body has no right to demand, or that third party has no obligation to supply the record; and
- (c) is in the public interest that similar records or records from the same source should continue to be supplied.

(2) Subsection (1) does not apply to a record-

- (a) if it is supplied to the governmental body for the purpose of-
 - (i) securing some advantage, grant, permit, contract or concession from any governmental body; or
 - (ii) persuading any governmental body not to take any action against the person that supplied the record or on whose or which behalf the record was supplied;
- (b) that consists of information independently obtained by the governmental body; or
- (c) already publicly available; or
- (d) if the third party has consented in writing to its disclosure to the requester.

(3) The information officer of a governmental body may refuse a request for access to a record of the governmental body if the record-

- (a) is held by a governmental body for the purpose of enforcing legislation imposing tax, duty or levy; and

- (b) was supplied in confidence to a governmental body by a third party or another governmental body.

Safety of individuals and security of state structures and systems

38. The information officer of a governmental body shall refuse a request for access to a record of the governmental body if its disclosure would -

- (a) endanger the life or physical safety of a person;
- (b) endanger the maintenance or enforcement of methods for the security of a building, installation or information storage, computer or communication system; or
- c) fall in the category or operations of-
 - (i) military plans, weapons, systems;
 - (ii) foreign government information;
 - (iii) intelligence activities sources;
 - (iv) scientific, technological or national security;
 - (v) vulnerability or capability of methods or cryptology, economic matters relating to systems, installations, projects or plans relating to national security.

Law enforcement

39. (1) Subject to subsection (2), the information officer of a governmental body may refuse a request for access to a record of the governmental body if-

- (a) the record contains methods, techniques, procedure or guidelines for-
 - (i) the prevention, detection, suppression or investigation of offences; or
 - (ii) the prosecution of alleged offenders,

and disclosure of the methods, techniques, procedures or guidelines would prejudice the effectiveness of the methods, techniques, procedures or guidelines or lead to the circumvention of the law or facilitate the commission of an offence;

- (b) the prosecution of an alleged offender is being prepared or about to commence or pending and the disclosure of the record would -
 - (i) impede that prosecution; or
 - (ii) result in a miscarriage of justice in that prosecution;

- (c) the disclosure of the record would -
 - (i) prejudice the investigation of any offence which is about to commence or is in progress or, if it is suspended or terminated, is likely to be resumed;
 - (ii) reveal or enable a person to ascertain the identity of a confidential source of information in respect of a law enforcement matter;
 - (iii) result in the intimidation of a witness or a person who might be or is called as a witness in criminal or other proceedings to enforce the law or endanger the life or physical safety of that witness or person;
 - (iv) result in the commission of an offence;
 - (v) facilitate escape from lawful detention; or
- (d) the record contains arrangements for the protection of a person in accordance with a witness protection scheme.

(2) Subsection (1) does not apply to a record that consists of information that would enable a party in judicial, penal, administrative or disciplinary proceedings to assert any of the party's constitutional rights.

(3) If a request for access to a record of a governmental body is refused or likely to be refused under subsection (1), and the disclosure of the existence or non-existence of the record would cause harm referred to under subsection (1), the information officer may refuse to confirm the existence or non-existence of the record.

(4) If the information officer refuses to confirm the existence or non-existence of the record under subsection (3), the notice referred to under section 20(3), shall-

- (a) state the fact;
- (b) identify the provisions of subsection (1) under which access would be refused if the record existed;
- (c) subject to subsection (1), state the findings and reasons for refusal as required under section 20(3)(a) and (b);
- (d) state that the requester may lodge an internal appeal with the head of the governmental body against the refusal under section 20(3)(c).

Records privileged from production

40. The information officer of a governmental body may refuse a request for

access to a record of the governmental body if the record is privileged from production in legal proceedings unless-

- (a) the person entitled to the privilege has waived the privilege; or
- (b) the legal proceedings to which the record relates are finally determined.

Economic interests and commercial activities

41. (1) The information officer of a governmental body may refuse a request for access to a record of the governmental body, if its disclosure is likely to jeopardise the financial welfare of the country or any part of the country or the ability of the government to manage the economy of the country or any part of the country effectively by prematurely disclosing-

- (a) a contemplated change in or maintenance of a policy substantially affecting the currency, coinage, legal tender, exchange rates or foreign investment;
- (b) a contemplated change in or decision not to change-
 - (i) credit or interest rates;
 - (ii) customs or excise duties, taxes or any other source of revenue;
 - (iii) the regulation or supervision of financial institutions;
 - (iv) government borrowing; or
 - (v) the regulations of prices of goods or services, rents or wages, salaries or other incomes; or
- (a) a contemplated-
 - (i) sale or acquisition of immovable or movable property; or
 - (ii) international trade agreement.

(2) Subject to subsection (3), the information officer of a governmental body may refuse a request for access to a record of the governmental body if the record contains-

- (a) trade secrets of the state or a governmental body;
- (b) financial, commercial, scientific or technical information, other than trade secrets, held by a governmental body for the purpose of conducting a commercial activity which is authorised by law and the disclosure of which could reasonably cause harm to the commercial or financial interests of the state or governmental body;

- (c) information the disclosure of which would put a governmental body at a disadvantage in contractual or other negotiations or cause it prejudice in commercial competition;
- (d) the results of original research undertaken by an officer of the governmental body the disclosure of which could reasonably deprive that governmental body or officer of the benefit of first publication of those results; or
- (e) a computer programme owned by the state or a governmental body, unless it is required to give access to a record in the computer programme under this Act.

(3) Subsection (2) does not apply to a record that consists of information-

- (a) already publicly available;
- (b) about or owned by a governmental body which has consented in writing to its disclosure to the requester;
- (c) about the safety of goods or services supplied by a governmental body and the disclosure of which would result in better informed choices by a person seeking to acquire those goods or services; or
- (d) supplied to or about the results of any test or any other investigation carried out by a governmental body regarding a public safety or environmental risk.

(4) If a request for access to a record referred to under subsection (3)(d) is granted, the information officer shall, at the same time as access to the record is given, direct the requester to the source of original test or any other investigation to enable the requester to obtain an explanation of the methods used in conducting the test or any other investigation.

Operations of governmental bodies

42. Subject to subsections (3) and (4), the information officer of a governmental body may refuse a request for access to a record of the governmental body if-

- (a) the record contains an opinion, advice or recommendation obtained or prepared, or an account of a consultation, discussion or deliberation made, including, but not limited to, minutes of a meeting for the purpose of formulating a policy or making a decision in the exercise of a power or performance of a duty conferred by law and if-
 - (i) the disclosure of the record would frustrate the deliberative process in a governmental body or between governmental bodies by inhibiting the candid-

- (aa) communication of that opinion, advice or recommendation; or
- (bb) conduct of that consultation, discussion or deliberation; or
- (ii) the disclosure of the record would, by premature disclosure of a policy , frustrate the success of that policy;
- (b) the disclosure of the record would jeopardise the effectiveness of a testing, examining or auditing procedure or method used by a governmental body;
- (c) the record contains evaluative material, whether or not the person who supplied it is identified in the record, and the disclosure of the material would breach an express or implied promise which was-
 - (a) made to the person who supplied the material; and
 - (b) to the effect that the material or the identity of the person who supplied it or both, would be held in confidence; or
- (d) the record contains a working draft or note of an officer of a governmental body.

(2) For the purposes of this section “evaluation material” means an evaluation or opinion prepared-

- (a) the purpose of determining the suitability, eligibility or qualifications of a person to whom or which the evaluation or opinion relates for-
 - (i) employment or appointment to office;
 - (ii) promotion in employment or continuance in employment;
 - (iii) removal from employment; or
 - (iv) the awarding of a scholarship, award, bursary, honour or similar benefit; or
- (b) the purpose of determining whether any scholarship, award, bursary , honour or similar benefit should be continued, modified, renewed or cancelled.

(3) Subsection (1) does not apply to a legal advice which consists of an account of or a statement of reasons for a decision made in the exercise of a power or performance of a duty conferred by law.

- (4) Subsection (1)(a) does not apply to a record-
- (a) if the record came into existence more than 15 years before the request; or
 - (b) that consists of-
 - (i) factual material, including any statistical data;
 - (ii) the analysis, interpretation of evaluation, or any projection based on factual material referred to under subparagraph (i);
 - (iii) a report on the performance or efficiency of a governmental body or any part of the governmental body, or any programme, project or other activity under its supervision;
 - (iv) a report of a scientific or technical expert; or
 - (v) the results of or report on any test or any other investigation regarding a public safety or environmental risk.

(5) If a request for access to a record referred to under subsection (4) (b)(v) is granted, the information officer shall, at the same time as access to the record is given, direct the requester to the source of the original test or any other investigation to enable the requester to obtain an explanation of the methods used in conducting the test or any other investigation.

CHAPTER 3 THIRD PARTY INTERVENTION

Notice to third parties

43. (1) If the information officer of a governmental body is considering a request for access to a record referred to under section 34(1) or 36(1), the information officer shall take the necessary steps to locate and inform a third party to whom or which the record relates of the request, unless it was unsuccessful to do so.

- (2) The information officer shall inform a third party under subsection (1)-
- (a) within 21 days or, if an urgent request application is granted, within five days after that request is received or transferred; and
 - (b) by the fastest means reasonably possible.

(3) When informing a third party under subsection (1), the information officer shall-

- (a) state that he is considering a request for access to a record referred to under section 34 (1) or 36(1) and describe the content of the record;
- (b) furnish the name of the requester;
- (c) in the case of a record referred to under section 28(1), 34 or 36(1), describe the provisions of that section and state the reasons why that section applies;
- (d) state that the third party may, within 21 days or, if an urgent request application is granted, within 10 days after the third party is informed-
 - (i) make written or oral representations to the information officer why the request for access is refused; or
 - (ii) give written consent for the disclosure of the record to the requester.

(4) If a third party is not informed in writing of a request for access under subsection (1), the information officer shall, on request, give notice stating matters referred to under subsection (3) to the third party.

Representations by third parties

44. A third party that is informed under section 43(1) of a request for access may, within 21 days or, if an urgent request application is granted, within 10 days after the third party is informed-

- (a) make written or oral representations to the information officer why the request is refused; or
- (b) give written consent for the disclosure of the record to the requester.

Decision on representations for refusal and notice

45. (1) The information officer of a governmental body shall, within 30 days or, if an urgent application is granted, within 15 days after a third party is informed under section 43 -

- (a) decide, after considering representations made by a third party under section 45(a), whether to grant the request for access; and
- (b) notify the third party so informed, and if the third party cannot be located under section 43(1), take all necessary steps to locate the third party before the decision is made.

(2) If a third party cannot be located under section 43(1), any decision whether to grant the request for access shall be made taking into consideration the fact that the third party did not have the opportunity to make representations under section 44(a) why the

request is refused.

(3) If the request for access is granted, the notice under subsection (1)(b) shall state-

- (a) the findings on material questions of fact referring to the material on which those findings were based;
- (b) the reasons for granting the request to enable the third party-
 - (i) to understand the justification for the granting of the request; and
 - (ii) to make an informed decision about whether to lodge an internal appeal with the head of the governmental body or to utilise any other remedy available in law to the third party; and
- (c) that the third party may lodge an internal appeal against the decision with the head of the governmental body-
 - (i) within 30days; or
 - (ii) if an urgent request application is granted, within 10 days,after notice and procedure for lodging the internal appeal are given; and
- (d) that the requester will be given access to the record after the expiry of the applicable period under paragraph (c)(i) or (ii), unless an internal appeal is lodged within that period.

(4) If the information officer of a governmental body decides under subsection (1) to grant the request for access, the information officer shall give the requester access to the record after the expiry of -

- (a) 30 days; or
- (b) if an urgent request application is granted, 10 days,

after notice is given under subsection (1)(b), unless an internal appeal with the head of the governmental body is lodged against the decision within the applicable period under this subsection.

PART IV

ACCESS TO CORRECTION OF AND CONTROL OVER PERSONAL INFORMATION HELD BY PRIVATE AND GOVERNMENTAL BODIES

Application of Part

46. This Part, except sections 48, 49 and 50, does not apply to personal information -

- (a) already publicly available;
- (b) created or acquired and preserved solely for public reference or exhibition purposes in a library or museum;
- (c) placed by or on behalf of a person other than a governmental body in-
 - (a) an archives repository established under-
 - (aa) Archives Act 1967¹; or
 - (bb) an equivalent provision of legislation regarding the custody of the records of governmental bodies in the relevant local sphere of government; or
 - (ii) a library or museum controlled by a governmental body;
- (d) about a person who is or was an officer of a governmental body if the information relates to the position or duties of that officer.

Criminal or civil discovery of private bodies' records

47. No request for access to a record of a private body shall be made under this Act for the purpose of criminal or civil discovery under any other law.

Access to personal information held by private bodies

48. (1) Subject to section 47 and this section, a requester shall, on request, be given access to any record of a private body containing personal information about that requester.

- (2) The request shall-
 - (a) be made orally or in writing to the head of a private body at a private bodies' address, fax number or electronic mail address;
 - (b) provide sufficient particulars to enable the head of a private body to identify the record requested;

¹Act No. 42 of 1967

- (c) specify a postal address or phone number of the requester; and
 - (d) state the capacity referred to under subsection (3) in which the requester is making the request and include-
 - (i) the requester's identity document or a certified copy of the identity document or any other reasonable proof of the requester's identity; and
 - (ii) if the requester is not the person to whom or which the personal information relates, reasonable proof of the capacity in which the requester is making the request.
- (3) The request may be made-
- (a) by a requester to whom or which the personal information in the record relates or that requester's authorised representative;
 - (b) if a requester referred to under paragraph (a) is -
 - (i) under the age of 16 years, by a parent or guardian of the requester;
 - (ii) incapable of managing his affairs, by a person appointed by the family or court to manage those affairs; or
 - (iii) deceased, by the executor of his estate.
- (4) The head of a private body to whom the request is made shall, subject to subsection (6), give access to the record to the requester within 30 days after the request is received.
- (5) If, under this section, access is given to a record containing personal information, the head of a private body-
- (a) shall inform the requester that a request for correction of the information may be made under section 49; and
 - (b) shall determine the form of access and on request provide a copy of a record at a reasonable fee.
- (6) Subject to this subsection, the provisions requiring or permitting the refusal or granting of a request for access to a record or part of the record of a governmental body under sections 24, 25, 26(1),(2) and (5), 27, 29, 33, 35(1), (2) and (3), 36(1) and (2), 37, 38,39 (except subsection (4)(d), 41(1),(2) and (3), and 42 (1) to (4), apply, with the changes required by the context to the request.

(7) Any reference under subsection (6) to-

- (a) the information officer of a governmental body;
- (b) a record of a governmental body; and
- (c) a notice under section 20,

shall be construed as a reference to the head of a private body, a record of a private body and a notice under subsection (8), respectively.

(8) If the request is refused under subsection (6), the head of a private body shall notify the requester of the refusal and reasons for the refusal within 30 days after the request is received.

(9) The head of a private body may, subject to the conditions determined by the head of the private body, delegate a power conferred or duty imposed on the head of the private body under this Part to any officer of the private body.

Correction of personal information held by private bodies

49. (1) A record may be corrected under this section by amending, supplementing or, subject to subsection (8), deleting the inaccurate information.

(2) If a person is given access to a record of a private body under section 48, that person may request the correction of inaccurate personal information about that person in that record.

(3) Nothing in this section prevents a private body from correcting personal information in a record of that private body under any other law.

(4) If any other law determines any requirement in respect of the correction of personal information in a record of a private body which is additional to, but consistent with, the provisions of this section, a correction requested under this section shall be made in accordance with this section and the requirement of that other law.

(5) The request shall-

- (a) be made orally or in writing to a head of a private body at the head of the private bodies, address, fax number or electronic mail address;
 - (b) provide sufficient particulars to enable the head of a private body to identify the record which contains the information that the requester regards as inaccurate;
3. specify the respect in which the requester regards the information as

inaccurate and provide any information regarding the inaccuracy that is in the possession or under the control of the requester; and

(d) specify a postal address or fax number in Lesotho of the requester.

(6) The head of a private body to whom the request is made shall, within 30 days, decide on the request.

(7) If the head of a private body decides that the information identified in the request is inaccurate, the head of the private body shall, free of charge and within the period referred to under subsection (6)-

(a) correct the information and send a copy of part of the record containing the correction to the requester; and

(b) determine whether the inaccurate information is in any other record of the private body and, if it is, make the same correction on the other record.

(8) If the head of a private body decides upon the request to delete information contained in any record, the head of the private body shall, before making the deletion-

(a) make a copy of part of the record to be deleted;

(b) make a note on that copy of the deletion to be made in the original record; and

(c) retain that copy for as long as the record is retained.

(9) If the head of a private body decides that the information referred to in a request for correction is not inaccurate and that the request is irrelevant, frivolous or vexatious, the head of the private body shall, free of charge and within the period referred to under subsection (6)-

(a) make a note in the record where the information appears-

(i) of the decision of the head of the private body that the information is not in accurate;

(ii) that accuracy of the information is disputed by the requester; and

(iii) that the request is attached to the record,

and attach the request to the record; and

(b) notify the requester -

(i) of the decision that the information is accurate; and

- (ii) that a note was made on the record under paragraph (a), and send a copy of the note to the requester.

(10) If a record is corrected under subsection (7), any disclosure or use of the record after the correction shall be in its corrected form.

(11) If a note is made in a record under subsection (9)(a), any disclosure of the information in the record shall include-

- (a) that note; and
- (b) the relevant request attached to the note.

Correction of personal information held by governmental bodies

50. (1) A record may be corrected under this section by amending, supplementing or, subject to subsection (10), deleting the inaccurate information.

(2) If a person is given access to a record of a governmental body under section 9, that person may request the correction of inaccurate personal information about that person in that record.

(3) Nothing in this section prevents a governmental body from correcting personal information in a record of the governmental body under any other law.

(4) If any other law determines any requirement in respect of the correction of personal information in a record of a governmental body which is additional to, but consistent with, the provisions of this section, a correction under this section shall be made in accordance with this section and the requirement of that other law.

(5) A request for correction shall be made in the prescribed form or orally to the information officer of a governmental body at the information officer's address, fax number or electronic mail address.

(6) The form for a request for correction prescribed for the purposes of paragraph (a), shall at least require from the requester to-

- (a) provide sufficient particulars to enable an officer of a governmental body to identify the record which contains the information that the requester regards as inaccurate;
- (b) specify the respect in which the requester regards the information as inaccurate and provide any information regarding the inaccuracy that is in the possession or under the control of the requester; and
- (c) specify a postal address or fax number in Lesotho of the requester.

(7) Sections 14(4), 15,16,17, 21 and 23 apply with the changes required by

the context to a request for correction.

(8) The information officer to whom a request for correction is made or transferred shall, subject to subsection (7) and sections 21 and 22(1), within 30 days after the request is received or transferred, decide on the request.

(9) If the information officer fails to decide on a request for correction within the period referred to under subsection (8), the information officer is, for the purposes of this Act, regarded to have refused the request.

(10) If the information officer decides that the information identified in a request for correction is inaccurate, the information officer shall, free of charge and within the period referred to under subsection (8)-

- (a) correct the information and send a copy of the part of the record containing the correction to the requester;
- (b) determine whether the inaccurate information is in any other record of that governmental body and, if it is, make the same correction on the other record;
- (c) determine whether the inaccurate information is supplied by that governmental body to any other governmental body or person and notify that other governmental body or person of the correction that was made; and
- (d) send a copy of the notice under paragraph (c) to the requester.

(11) If the information officer decides upon a request for correction to delete information contained in any record, the information officer shall, before making the deletion-

- (a) make a copy of part of the record to be deleted;
- (b) make a note on that copy of the deletion to be made in the original record; and
- (c) retain that copy for as long as the record is retained.

(12) A governmental body which is notified under subsection (10)(c) that the governmental body is supplied with inaccurate information, within 30 days after being so notified, if the governmental body -

- (a) accepts that the information is inaccurate, correct that information
and notify the person to whom or which the information relates that the

correction is made; or

- (b) is of the opinion that the information is not inaccurate, make a note and notify the requester referred to under subsection 13(a) and (b).

(13) If the information officer decides that the information identified in a request for correction is not inaccurate and that the request is irrelevant, frivolous or vexatious, the information officer shall, free of charge and within the period referred to under subsection (8)-

- (a) make a note in the relevant record where the information appears-
 - (i) of the decision of the information officer that the information is not inaccurate;
 - (ii) that the accuracy of the information is disputed by the requester; and
 - (iii) that the request is attached to the record,and attach the request to the record;
- (b) notify the requester-
 - (i) of the decision that the information is not inaccurate;
 - (ii) that a note was made on the record under paragraph (a);
 - (iii) that the requester may lodge an internal appeal with the head of the governmental body against the decision that the information is not inaccurate, and of the procedure for lodging the internal appeal,

and send a copy of the note to the requester;

- (c) take reasonable steps to enable the requester to provide a statement of any further reasons why the requester considers the information to be inaccurate; and
- (d) unless there are reasonable grounds for considering the statement irrelevant, defamatory or unnecessarily voluminous, attach the statement provided to the record.

(14) If a record containing personal information is corrected under subsection (10) or (12), any disclosure or use of the record after correction shall be in its corrected form.

(15) If a note is made in a record under subsection (13)(b) or (13)(a), any

disclosure of the information in the record shall include-

- (a) that note;
- (b) the request for correction, if applicable; and
- (c) any statement to be attached under subsection (12)(d), if applicable.

Use of personal information by private bodies

51. Subject to section 57, a private body may not use a record of the private body containing personal information, unless-

- (a) the person to whom or which the information relates has consented to its use under section 56;
- (b) the information was obtained, compiled or for a purpose consistent with that purpose; or
- (c) the information may be disclosed to the private body under section 53 or 54.

Use of personal information by governmental bodies

52. Subject to section 57, a governmental body may not use a record of the governmental body containing personal information, unless-

- (a) the person to whom or which the information relates has consented to its use under section 56;
- (b) the information was obtained, compiled or for a purpose consistent with that purpose; or
- (c) the information may be disclosed to the private body under section 53 or 54.

Disclosure of personal information by private bodies

53. Subject to section 57, a private body may not disclose a record of the private body containing personal information unless-

- (a) it is in accordance with section 48 or any other law that authorises its disclosure;
- (b) the person to whom or which the information relates has consented to its disclosure under section 56;
- (c) the information was obtained, compiled or for a purpose consistent with that purpose;

- (d) it is for the purpose of complying with -
 - (i) a subpoena, warrant issued or order made by a Court or person authorised to compel the production of information; or
 - (ii) rules of court relating to the production of information;
- (e) it is for the purpose of avoiding prejudice to the maintenance of the law;
- (f) it is for the purpose of averting or lessening an imminent and serious threat to the health or safety of any person;
- (g) it is for the purpose of the performance of a contract to which the person to whom or which the information relates is a party; or
- (h) it is for any prescribed purpose which does not pose a threat to the privacy of the person to whom or which the information relates and -
 - (i) to which the person on invitation of the private body does not object; or
 - (ii) which is necessary for pursuing the legitimate interests of the private body.

Disclosure of personal information by governmental bodies

54. Subject to section 57, a governmental body may not disclose a record of the governmental body containing personal information, unless-

- (a) it is in accordance with Part 3 or any other law that authorises its disclosure;
- (b) the person to whom or which the information relates has consented to its disclosure under section 56;
- (c) it is for the purpose for which the information was obtained, compiled or for a purpose consistent with that purpose;
- (d) it is for the purpose of complying with-
 - (i) a subpoena, warrant issued or order made by a court or person authorised to compel the production of information; or
 - (ii) the rules of court relating to the production of information;
- (e) it is for the purpose of avoiding prejudice to the maintenance of the law;

- (f) it is for the purpose of averting or lessening an imminent and serious threat to the health or safety of any person;
- (g) it is disclosed to the prosecuting authority for the purpose of criminal proceedings, any functionary of the state or a governmental body in civil proceedings for the purposes of the civil proceedings;
- (h) it is disclosed to a governmental body, on the written request of that governmental body, for the purpose of enforcing the law or carrying out an investigation under the law, if the request specifies the purpose and describes the information to be disclosed;
- (i) it is under an agreement between the Government or an organ of the Government and the government of a foreign state, an international organisation or an organ of that government or organisation, for the purpose of administering or enforcing the law or carrying out an investigation under the law;
- (j) it is disclosed to an officer of a governmental body for the purpose of an internal audit or to the Auditor-General or an officer from the Auditor-General's office for the purpose of audit or to a person appointed to carry out an audit in respect of a governmental body;
- (k) it is disclosed to an archives repository in accordance with-
 - (i) Archives Act 1967;
 - (ii) an equivalent provision of a local law regarding the custody of records of governmental bodies in the relevant local sphere of government;
- (l) it is disclosed to any person for research or statistical purposes if-
 - (i) there are reasonable grounds for believing that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that identifies the person to whom or which it relates; and
 - (ii) the information officer of the governmental body obtains from the person a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably identify the person to whom or which it relates;
- (m) it is disclosed to a governmental body for the purpose of locating a person-

- (i) to collect a debt owing to the state or a governmental body by that person; or
- (ii) to make a payment owing to that person by the state or a governmental body;
- (n) it is disclosed to a person other than a governmental body for the purpose of locating another person in order to make a payment owing to that other person;
- (o) it is for the purpose of the performance of a contract to which the person to whom or which the information relates is a party; or
- (p) it is for any prescribed purpose which does not pose a threat to the privacy of the person to whom or which the information relates and -
 - (i) to which the person on invitation of the governmental body does not object; or
 - (ii) which is necessary for pursuing the legitimate interests of the private body.

Consistent purpose

55. If personal information is collected directly from the person to whom or which the information relates, the purpose of use or disclosure of that information shall be deemed to be consistent with sections 51(b),52(b),53(c),and 54(c) only if the person has reasonably expected such a use or disclosure.

Consent to use or disclose personal information

56. (1) The consent of a person for the use or disclosure of personal information in a record of a private or governmental body referred to under section 51(a), 52(a),53 (b) or 54(b)

-

- (a) shall be obtained by the prescribed person in the prescribed form and manner; and
- (b) may be withdrawn by the person giving that consent.
- (2) Regulations made for the purposes of subsection (1) may -
 - (a) differentiate between different -
 - (i) categories of private bodies; and

- (ii) categories of governmental bodies; and
- (b) provide for the consent for a specific purpose or a category of purposes.

Use and disclosure of personal information held before commencement

57. (1) If a record containing personal information was in the possession or under the control of -

- (a) a private body before the commencement of this Act, sections 51 and 53 do not apply to that record of the private body for a prescribed period from the commencement date;
- (b) a governmental body before the commencement of this Act, sections 52 and 54 do not apply to that record of the governmental body for a prescribed period from the commencement date.

(2) If, at the end of the prescribed period under subsection (1)(a) or (b), the prescribed steps are taken to obtain the consent referred to under section 51(a), 52(b) or 54(b), of the person to whom or which the personal information in the record under subsection (1) (a) or (b) relates, that person is deemed to have given the consent.

(3) Any consent deemed to have been given under subsection (2) may be withdrawn.

(4) Regulations made for the purposes of subsection (1) or (3) may-

- (a) differentiate between different-
 - (i) categories of private bodies; and
 - (ii) categories of governmental bodies; and
- (b) provide for the consent for a specific purpose or a category of purposes.

Register of uses and disclosures not in governmental body's manual

58. (1) If the use or purpose of personal information in a personal information bank of a governmental body is not included in the statements of uses and purposes under section 6 (2)(d)(ii)(bb) in the manual of the governmental body published under section 6, the head of that governmental body shall-

- (a) keep a register of -
 - (i) any use by the governmental body of that personal information; and

(ii) any use or purpose for which that personal information is disclosed by the governmental body; and

(b) attach that register to that personal information.

(2) For the purpose of this Act, a register attached under subsection (1)(b) forms part of the personal information to which it is attached.

(3) If the personal information in a personal information bank of a governmental body is used or disclosed for a use consistent with the purpose for which the information was obtained or compiled by the governmental body but the use is not included in the statement of compatible uses under section 6 (2)(d)(ii)(bb) in the manual of the governmental body, the head of the governmental body shall ensure that the use is included in the next manual to be published.

Collection of personal information by governmental bodies

59. (1) No personal information may be collected by a governmental body unless such collection is required or permitted by any law for carrying out the functions of the governmental body.

(2) A governmental body shall, if reasonably possible, collect personal information which is intended to be or may be used in taking any decision which affects a person's right or determines its content directly from that person unless-

(a) the person authorises otherwise; or

(b) personal information contained in a record is disclosed to the governmental body under section 54.

(3) If a governmental body collects personal information directly from a person, the governmental body shall inform the person -

(a) of the fact that, and the purpose for which, the information is being collected;

(b) of the name and address of the governmental body that-

(i) is collecting the information; and

(ii) will hold the information;

(c) of the relevant provision of the law authorising the collection of information;

(d) whether the supply of the information by the person is voluntary or

compulsory;

- (e) of the right of access to and correction of personal information referred to under sections 9 and 50, respectively.

(4) Subsection (2) does not apply if its compliance could reasonably defeat the purpose or prejudice the use for which the information is collected.

Retention, accuracy and disposal of personal information

60. (1) Personal information which is used by a governmental body to make a decision which affects a person's right or determines its content shall be retained by the head of the governmental body for a prescribed period after it is used to ensure that the person to whom or which it relates has a reasonable opportunity to obtain access to that information.

(2) The head of a governmental body shall take reasonable steps to ensure that personal information which is used by the governmental body to make a decision which affects a person's right or determines its content is accurate, up-to-date and complete and that-

- (a) the confidentiality of that information is protected; and
- (b) the information is secured against unauthorised access.

(3) The head of a governmental body shall dispose of personal information in a record of the governmental body as prescribed.

PART V PROTECTION OF WHISTLE-BLOWERS

Exclusion of liability if disclosing impropriety

61. (1) For the purposes of this section "impropriety" means contravention of the law, corruption, dishonesty or serious maladministration in a governmental body or on the part of an officer of the governmental body and includes-

- (a) an abuse of power by a governmental body or an officer of the governmental body;
- (b) an improper or unauthorised use of the funds or other assets of the state or a governmental body;
- (c) negligent administration resulting or likely to result in a substantial waste of public resources; or
- (d) a criminal offence committed, being committed or likely to be committed;

- (e) a person who has failed, is failing or is likely to fail to comply with any legal obligation to which the person is subject;
- (f) a miscarriage of justice occurred, occurring or likely to occur;
- (g) the health or safety of any individual who has been, is being or is likely to be endangered;
- (h) the environment which has been, is being or is likely to be damaged;
- (i) offences referred to under Parts IV and V of the Corruption Act, 1999²; or
- (j) the information tending to show any matter falling within any one of the preceding paragraphs that has been, is being or is likely to be deliberately concealed.

(2) No person is criminally or civilly liable or may be subjected to disciplinary action in any court, administrative tribunal or any other tribunal on account of having disclosed any information, if-

- (a) the person disclosed the information in good faith, not for personal gain and reasonably believed, at the time of the disclosure, that the person was disclosing evidence of an impropriety; and
- (b) the disclosure was made in accordance with subsection (3).

(3) Subsection (2) applies only if the person -

- (a) disclosed the information to -
 - (i) any law enforcement agency;
 - (ii) a committee of Parliament or of local authority or a chief;
 - (iii) the Ombudsman;
 - (iv) the Ministry of Communications;
 - (v) the Auditor-General;
 - (vi) the Attorney-General;

²Act No.5 of 1999

- (vii) the Director of Public Prosecutions;
- (viii) the Judicial Administrator;
- (b) disclosed the information to one or more news media and on clear and convincing grounds believing, at the time of the disclosure-
 - (i) that the disclosure was necessary to avert an imminent and serious threat to the safety or health of any person, ensure that the impropriety was properly and timeously investigated or protect the person who disclosed the information against serious or irreparable harm from reprisals; or
 - (ii) giving due weight to the importance of open, accountable and participatory administration, that the public interest in disclosure of the information clearly outweighed any need for non-disclosure; or
- (c) disclosed the information substantially in accordance with any applicable external or internal procedure, other than the procedures under paragraph (a) or (b), for reporting or remedying the impropriety.

(4) Subsection (1) applies whether or not the person disclosing the information used or exhausted any other applicable external or internal procedure to report or otherwise remedy the impropriety.

Exclusion of liability if disclosing information after publication

62. No person is criminally or civilly liable or may be subjected to disciplinary action in any court, administrative tribunal or any other tribunal on account of having disclosed any information, if, before the time of the disclosure of the information, the information becomes available to the public, inside or outside Lesotho.

Protection against reprisals

63. (1) A person who made or indicated that the person intends making a disclosure under section 61 or who refused to participate in an impropriety may not, as a result of making or indicating to make a disclosure or refusing to participate in the impropriety or partly as a result of that-

- (a) in respect of the person's employment, profession or office-
 - (i) be intimidated, suspended, demoted or dismissed;

- (ii) be transferred against the person's will;
 - (iii) be refused transfer or promotion;
 - (iv) be subjected to a term or condition of employment, altered or kept unaltered to the persons's disadvantage;
 - (v) otherwise be detrimentally affected in respect of that employment, profession or office;
- (b) be denied appointment or election to any employment, profession or office; or
 - (c) be threatened with any action referred to under paragraph (a) or (b).

(2) If it is proved, in any criminal or civil proceedings or disciplinary action before a Court, administrative tribunal or any other tribunal with respect to an alleged contravention or threatened contravention of subsection (1), that any action under subsection (1)(a), (b) or (c) took place within five years after disclosure, indication

of an intention to disclose or refusal under subsection (1), it shall be presumed, unless the contrary is proved, that the action took place as a result or partly as a result of that disclosure, indication of an intention to disclose or refusal.

(2) Subsection (1) applies whether or not the person who disclosed the information used or exhausted any other applicable external or internal procedure to report or remedy the impropriety.

(3) A provision in a contract of employment or any other agreement whereby any provision of this section is excluded is void.

(4) An officer of a governmental body who has made a disclosure under section 61 shall, on the officer's request and if reasonably possible, be transferred from the position occupied by the officer at the time of the disclosure to-

- (a) another position of similar level in the same division or another division of that governmental body; or
- (b) another governmental body.

(6) The terms and conditions of employment of a person transferred under subsection (5) may not, without the person's written consent, be less favourable than the terms and

conditions applicable to the person immediately before transfer.

Notice to officials

64. The head of a governmental body shall give to any officer of the governmental body a copy of a notice prepared by the Public Service Commission and Judicial Service Commission which explains-

- (a) the provisions of this Part and section 80 (b) and all external and internal procedures, other than the procedure referred to under section 61, available to an officer of the governmental body who wishes to report or remedy an impropriety or, when provisions or procedures are amended, that amendment;
- (b) that, if a contravention or threatened contravention of a provision of this Part in relation to a person is alleged, the person may lodge an application with the High Court for appropriate relief, and the procedure for lodging that application..

PART VI APPEALS AGAINST DECISIONS

CHAPTER 1 INTERNAL APPEALS

Right of internal appeal

65. (1) A person may lodge an internal appeal against any decision of the information officer of a governmental body in relation to that person with the head of the governmental body.

(2) Subsection (1) may not be construed to limit any other right a person has under any other law to remedy a matter in respect of which an internal appeal may be lodged.

Manner of internal appeal and appeal fees

66. (1) An internal appeal-

- (a) shall be lodged in a prescribed form-
 - (i) within 60 days;
 - (ii) if notice to a third party is required under section 45 (1)(b), within 30 days; or
 - (iii) if the internal appeal is against the granting of a request for access

and an urgent request application is granted in respect of the request, within 10 days,

after notice is given to the appellant of the decision appealed against or, if notice to the appellant is not required, after the decision is taken;

- (b) shall be delivered or sent to the information officer of a governmental body at the information officer's address, fax number or electronic mail address;
- (a) shall identify the subject of the internal appeal and state the reasons for internal appeal and may include any other relevant information known to the appellant;
- (b) if, in addition to a written reply, the appellant wishes to be informed of the decision on the internal appeal in any other manner, shall state the manner and provide the necessary particulars;
- (c) if applicable, shall be accompanied by the prescribed appeal fee referred to under subsection (4); and
- (d) shall specify a postal address or fax number and, if internal appeal includes an urgent appeal application, a phone number in Lesotho of the appellant.

(2) If a person who wishes to lodge an internal appeal is illiterate, poorly literate or physically disabled, the person may request assistance from any person to comply with subsection (1).

(3) If an internal appeal is lodged after the expiry of the period referred to under subsection (1), the head of a governmental body shall, on reasonable grounds, allow the late lodging of the internal appeal.

(4) If the head of a governmental body disallows the late lodging of the internal appeal, the head of the governmental body shall give notice of that decision to the person that lodged the internal appeal.

(5) A commercial requester lodging an internal appeal against the refusal of the request for access shall pay the prescribed appeal fee.

(6) If the prescribed appeal fee is required to be paid in respect of an internal appeal, the decision on the internal appeal may be deferred until the fee is paid.

(7) Within 10 days or, if an urgent appeal application is granted, after receipt of an internal appeal under subsection (1), the information officer of a governmental body shall submit to the head of the governmental body-

- (a) the internal appeal together with the information officer's reasons for the

decision; and

- (b) if the internal appeal is against the refusal or granting of a request for access, the name, postal address, phone, fax number or electronic mail address of a third party that has to be notified of the request under section 43 (1).

Notice to and representations by other interested persons

67. (1) If the head of a governmental body is considering an internal appeal against the refusal of a request for access to a record referred to under section 34(1) or 36(1), the head of the governmental body shall inform the third party to whom or which the record relates of the internal appeal, unless all necessary steps to locate the third party are unsuccessful.

(2) The head of a governmental body shall inform a third party under subsection (1) -

- (a) within 30 days or, if urgent appeal application is granted, within five days after the receipt of the internal appeal; and
- (b) by the fastest means reasonably possible.

(3) When informing a third party under subsection (1), the head of the governmental body shall-

- (a) state that the head of the governmental body is considering an internal appeal against the refusal of a request for access to a record under section 34(1) or 36(1), and describe the content of the record;
- (b) furnish the name of the appellant;
- (c) in the case of a record under section 28(1), 34(1) or 36(1), describe the provisions and give reasons for the application of the provisions; and
- (d) state that the third party may, within 21 days or, if an urgent appeal application is granted, within 10 days after the third party is informed, make written representations to the head of the governmental body why the request for access is not granted.

(4) If a third party is not informed in writing of an internal appeal under subsection (1), the head of the governmental body shall, on request, give a written notice stating the matters referred to under subsection (3) to the third party.

(5) A third party that is informed of an internal appeal under subsection (1) may-

- (a) within 21 days; or

- (b) if an urgent appeal application is granted, within 10 days after the third party is informed,

make written representations to the head of the governmental body why the request for access should not be granted.

(6) If the head of a governmental body is considering an internal appeal against the granting of a request for access, the head of the governmental body shall give notice of the internal appeal to the requester.

(7) The head of a governmental body shall -

- (a) notify a third party under subsection (6) within 30 days or, if an urgent appeal application is granted, within five days after receipt of the internal appeal; and
- (b) state in that notice that the third party may, within 21 days after notice is given, make written representations to the head of the governmental body why that request should be granted.

(8) A requester to whom or which notice is given under subsection (6) may, within 21 days after the notice is given, make written representations to the head of the governmental body why the request for access should be granted.

Decision on internal appeal and its notice

68. (1) The decision on an internal appeal shall be made with due regard to -

- (a) the particulars stated in the internal appeal under section 66(1)(c);
- (b) any reasons submitted by the information officer under section 66(7)(a);
- (c) any representations made under section 67(5) or (8); and
- (d) if a third party cannot be located under section 67(1), the fact that the third party did not have the opportunity to make representations under section 67(5) why the internal appeal should be dismissed.

(2) When deciding on the internal appeal, the head of a governmental body may confirm the decision appealed against or substitute a new decision for it.

(3) The head of the governmental body shall, subject to section 69, decide on the internal appeal-

- (1) within 30 days after the internal appeal is received by the information officer of the governmental body;

- (2) if a third party is informed under section 67(1)-
 - (1) within 30 days; or
 - (2) if an urgent appeal application is granted, within 15 days after the third party is informed ;
- (3) if notice is given under section 67(6)-
 - (1) within five days after the requester has made written representations under section 67(8); or
 - (2) in any other case within 30 days.
- (4) The head of a governmental body shall, within 10 days after the decision on an internal appeal -
 - (a) give notice of the decision to -
 - (i) the appellant;
 - (ii) a third party informed under section 67(1); and
 - (iii) the requester notified under section 67(6); and
 - (b) if reasonably possible, inform the appellant about the decision in any other manner stated under section 66(1)(d).
- (5) The notice under subsection (4)(a) shall state -
 - (a) the findings on questions of fact referring to the material on which those findings were based;
 - (b) the reasons for the decision to enable the appellant, third party or requester-
 - (i) to understand the justification for the decision; and
 - (ii) to make an informed decision about whether to lodge an application with a Court or to utilise any other remedy available in law **to the appellant, third party or requester with respect to the decision on internal appeal; and**
 - (c) that the appellant, third party or requester may lodge an application with a Court against the decision on internal appeal-

- (i) within 60 days;
 - (ii) if notice to a third party is required under subsection (4)(a)(ii), within 30 days; or
 - (iii) if the application is against the granting of a request for access on internal appeal and an urgent appeal application is granted in respect of the internal appeal, within 10 days after notice is given, and the procedure for lodging the application; and
- (d) if the head of the governmental body decides on an internal appeal to grant a request for access, and notice to a third party-
- (i) is not required under subsection (4)(a)(ii), that access to the record will be given; or
 - (ii) is required, that access to the record will be given after the expiry of the prescribed period for lodging an application with a Court against the decision on the internal appeal referred to under paragraph (c), unless that application is lodged before the end of that prescribed period.

(6) If the head of a governmental body decides on an internal appeal to grant a request for access and notice to a third party -

- (a) is not required under subsection (4)(a)(ii), the information officer of the governmental body shall give the requester access to the record; or
- (b) is required, the information officer shall, after the expiry of-
 - (i) 30 days; or
 - (ii) if an urgent appeal application is granted in respect of the internal appeal, 10 days,

after the notice is given to a third party, give the requester access to the record, unless an application with a Court is lodged against the decision on the internal appeal before the end of the prescribed period referred to under subsection (5)(c) for lodging the application.

(7) If the head of a governmental body fails to decide on an internal appeal within the period referred to under subsection (3), the head of the governmental body is, for the purposes of this Act, deemed to have dismissed the internal appeal.

Urgent internal appeals

69. (1) A requester who wishes to lodge an internal appeal against-

- (a) the refusal of a request for access to be decided urgently shall include an application to that effect in the internal appeal; or
- (b) the granting of a request for access to be decided urgently shall lodge an application to that effect with the information officer,

and in that application give reasons for the urgency.

(2) If an urgent appeal application is included in an internal appeal or is lodged with an information officer of a governmental body, the head of the governmental body shall, subject to section 67, and within five days after the receipt of the urgent appeal application, decide on the internal appeal and give notice of the decision required under section 68(4), unless there are reasonable grounds for believing that-

- (a) the nature of the reasons for the urgency given in the application is such that the applicant will suffer no prejudice if the internal appeal is decided upon within the period referred to under section 68(3); or
- (b) it is impractical to decide on the internal appeal within five days after that urgent appeal application is received.

(3) If the head of a governmental body refuses an urgent appeal application on the grounds referred to under subsection (2), the head of the governmental body shall, within five days after the urgent appeal application is received, notify the applicant or the applicant's agent of the refusal.

(4) The notice under subsection (3) shall state-

- (a) the findings on questions of fact referring to the material on which those findings were based;
- (b) the reasons for the refusal to enable the applicant -
 - (i) to understand the justification for the refusal; and
 - (ii) to make an informed decision about whether to lodge an application with a Court or to utilise any other remedy available in law to the applicant with respect to the refusal; and
- (c) whether the applicant may lodge an application with a Court against the refusal of the urgent appeal application, and the procedure for lodging the application with a Court.

(5) If the notice of a decision under subsection (2) or (3) is not given by fax, the applicant or the appellant's agent shall be informed of the decision by phone.

CHAPTER 2 APPLICATIONS TO COURT

Non-exclusion of other remedies

70. This Chapter may not be construed to limit any other right a person has under any other law to remedy a matter in respect of which an application may be lodged with a Court.

Manner of applications to Court

71. (1) An application under this Chapter shall be lodged-

- (a) with a Court having jurisdiction under section 74; and
- (b) subject to this Chapter, in accordance with the rules regarding an urgent application by way of notice on motion applicable to that Court.

(2) For the purposes of the rules of court, an application is regarded to be urgent without any supporting documents required to set out the reasons for the urgency and why the applicant could not be afforded substantial redress at a hearing in due course.

(3) If the interests of justice require, a Court having jurisdiction may extend the period within which an application may be lodged.

Applications regarding decisions

72. (1) A person-

- (a) who is unsuccessful in an urgent request application, an internal appeal to the head of a governmental body or an urgent appeal application; or
- (b) aggrieved by a decision of the head of a governmental body to disallow the late lodging of an internal appeal under section 66 (3),

may appeal against the decision by way of an application to Court.

(2) If an application referred to under subsection (1) is against the granting of a request for access on internal appeal, the application shall be lodged-

- (a) within 30 days; or
- (b) if an urgent appeal application is granted in respect of the internal appeal, within 10 days,

after the third party is notified of the decision to grant the request on the internal appeal.

(3) A third party notified of a decision of the head of a governmental body to disclose information regarding a serious public safety or environmental risk under section 8(6)(a) may, by way of an application to Court, appeal against the decision within 10 days after the third party is notified of the decision.

Applications regarding contravention of Part V

73. If a contravention or threatened contravention of a provision of Part V is alleged in relation to a person, the person may lodge an application with a Court for appropriate remedy.

Jurisdiction of Court

74. A Court has jurisdiction in respect of-

- (a) a decision of the information officer or head of a governmental body under section 72 which has its office or, if the governmental body has more than one offices its main office;
- (b) a person who lodges an application under section 72(1) or (4) or 73 and resides, carries on a business or is employed;
- (c) an alleged contravention referred to under section 73 which has occurred or is about to occur,

in the area of jurisdiction of the Court.

Assistance of Ministry of Communications

75. (1) If a person who wishes to lodge an application is illiterate, poorly literate or physically disabled, the person may request the assistance from the Ministry of Communications to comply with this Chapter.

(2) If the Ministry of Communications is of the opinion that an important matter of principle is involved, the Ministry may appear before a High Court as a party to an application.

(3) The Ministry of Communications may, on request, appoint a person to represent a person who has lodged an application under section 72 (1) or 73.

Production of records of governmental bodies

76. (1) Notwithstanding any provision of this Act, any Court hearing an application or an appeal against a decision on an application may examine any record

of a governmental body to which this Act applies, and the record may be withheld from that Court

on any grounds.

(2) The Court referred to under subsection (1) may, subject to subsection (3), not disclose to any person including the parties to the proceedings-

- (a) any record of a governmental body which is required or permitted under this Act to be withheld from disclosure; or
- (b) if the information officer of a governmental body or the head of the governmental body on internal appeal, in refusing to grant access to a record under section 39(2), refuses to confirm or deny the existence or non-existence of the record.

(3) If the Court referred to under subsection (1) considers it to be in the interest of justice, the Court may order the disclosure of the record or part of the record or information to any party to the proceedings, and may, if it considers it necessary, order the party not to disclose the record or the information to another person.

Burden of proof

77. In any legal proceedings the burden of establishing that-

- (a) the refusal for access; or
- (b) any decision taken under section 18(2),19(1), 21, 22(1), 31(3), 50(12)(d), 63(5) or 69,

is justified under this Act is on the party claiming that it is justified.

Decision on application

78. (1) Under due consideration of all written and oral evidence before a Court in respect of an application, the Court may make any order or other decision which it considers just.

(2) An order or other decision under subsection (1) includes an order or other decision-

- (a) which confirms, amends or sets aside the decision which is the subject of the application;
- (b) which requires the information officer or head of a governmental body to take an action as the Court considers necessary within a period given in the order;
- (c) if the application is against the refusal of an urgent request application or urgent appeal application, on the request for access to a record in respect of

which that application was made;

- (d) which grants an interdict, interim or specific relief, a declaratory order or compensation.

(3) In deciding under subsection (1) which order or other decision is just, the Court shall consider the desirability of a speedy and inexpensive resolution of the application.

Costs

79. A Court may make an order as to costs of an application before the Court as it thinks fit.

Offences

80. A person who-

- (a) wilfully fails to comply with an undertaking referred to under section 54(1)(ii); or
- (b) discloses information about an impropriety referred to under section 61(2)(a) knowing it to be false or not knowing or believing the information to be true; or
- (c) discloses a record of a governmental body which record is classified under the regulations made under section 81 and has been unlawfully obtained,

commits an offence and is liable on conviction to a fine not less than M5000.00 or to imprisonment for a period not less than 12 months or both.

Regulations

81. The Minister of Communications may, by notice in the Gazette, make regulations generally for the purpose of giving effect to the provisions of this Act.