

FREEDOM OF INFORMATION ACT

RIGHT OF ACCESS

1. The constitutional right: All citizens have a right of access to public information in accordance with this law. This is a freedom and right granted by the Constitution.
 2. Those who have the right of access are individual natural persons, national corporations, both corporate and unincorporated and government instrumentalities.
 3. The right of access is to records of all government instrumentalities and State-owned corporations, and certain private companies.
 3. Records: The records to which this right of access must cover are: -
 - (a) those records that were created by a government instrumentality or state-owned corporation;
 - (b) those records which came into the possession of a government instrumentality and state-owned companies; and
 - (c) those records that were created or in the possession of private companies or any other persons that affect the welfare and safety of the public.
 4. Form records are in: The records, which this right of access covers are records regardless of the form or medium they are in and include: -
 - (a) any written or printed record, map, plan, photograph, any article or thing treated in relation to sounds or visual images that are capable, with or without the assistance of some other device, of being reproduced from the article or thing, and includes a copy of any such matter, map, plan, photograph, article or thing; and
 - (a) microfiche, computer disks, audio recordings, video recordings and any machine-readable records.
 5. The language in which the record is in is immaterial. Access must be given in the form the record is in.
 6. In some cases, the record cannot be understood in the form it is in, or its whole meaning cannot be fully understood without the aid of other record or material. For example, the result or conclusions contained in a record can only be
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understood with the aid of the information used to arrive at that result or conclusion. Such other information must also be disclosed.

7. The word “record” will be used hereon to refer to all information in the forms described above.
8. Governmental bodies: The right of access is over records of all government instrumentalities, which include:
 - (a) government departments, ministerial offices, provincial governments or departments, autonomous governments, State Services, Statutory Agency, statutory corporations;
 - (b) state-owned corporations in which the State or other governmental body has 50 percent or more of the shares in the corporation or in which the State has less than 50 percent shares but which are of sufficient public interest; and
 - (c) any company in which the public interest is affected, and
 - (d) superannuation schemes where the number of PNG citizen members is 50 or more.

Companies such as Eda Ranu, Coffee Industry Corporation, PNG Electricity Commission, Post PNG, Air Niugini, Harbours Board, Oregon, Pacific Finance will come within (b) or (c). Purely private companies such as Steamships will come within (c) in relation to records that concern the public interest while POSF, NPF, etc. will come within (d).

9. Public officials: The right of access also extends to records in the hands of public officials. The personal information of public officials is not the subject of the subject of this right with one exception that is in relation to salaries. The salaries of public officials that exceed K100, 000 per year, inclusive of all allowances and other entitlements is information that comes within the right of access. This must apply to state owned corporations and superannuation bodies as well.
10. Independent contractors: The right of access must also cover records in the hands of independent contractors, such as companies, consultants, etc., engaged by any public body to provide goods or services.
11. “Public Body”: The words “public body” will now be used to refer to all the bodies and corporations referred to above as being subject to the right of access. Therefore, any reference to “public body” hereon means departments, agencies and state-owned corporations as well as relevant companies and public officials.

12. Personal information: Information concerning individuals in the possession of public bodies must not be disclosed. This includes information that might pose a danger to public welfare or safety, for example medical information such as those with aids or other contagious diseases.
13. The restrictions referred to in paragraph (12) are for the protection of individual privacy. The balance between public and private interests in such cases must be in favour of the private interest.
14. Public welfare & safety: In relation corporations and individuals that are not public bodies as referred to above, they must nevertheless permit access to those records that concern public welfare and safety. Information concerning risks to the physical environment or risks to the health of members of the public must be accessible by citizens.

EXEMPTIONS

1. Principle: There are some records that cannot be disclosed, for two reasons. First, it is not in the public interest to disclose such records. Second, it is too cumbersome or it is not practical to give access to the record. Access can be refused in relation to these. These are exceptions to the general principle that the right of access is a freedom under the Constitution.

(The issue must be considered, however, whether the records of the following public bodies may be exempted specifically:

- (a) cabinet and its committees,
 - (b) the judicial functions of courts and other tribunals including those set up under the Commissions of Inquiries Act,
 - (c) judicial officers themselves, and
 - (d) members of Parliament and of provincial and local-level governments in their capacities as legislators).
2. Even if the law public bodies are permitted to refuse access, they can allow access nevertheless in their judgement.
3. Exemption of records, not bodies: Exemptions must be made on the basis of types of records and not related to public bodies. In other words, all public bodies are subject to the right of access obligation. But, specific records may be exempted. Bodies such as the intelligence organizations, the NEC, the IRC, the Courts and others require most of their records to be exempted. However, no such blanket exemption must be made. The exemption should be made in relation to types of records. This is in keeping with the approach taken by Section 51 of the Constitution.

4. Leadership Code related records: There is an arguable case for the records of Leaders held by the Ombudsman Commission ought to be subject to the right of access. The Ombudsman Commission must consider this and give its views.
5. Ombudsman Commission records relevant to criminal investigations: Similarly, there is a case for information held by the Ombudsman Commission to give for the purposes of criminal investigations. The Ombudsman Commission must consider and give its views.
5. Privacy of natural persons: The personal information of individuals must not be accessed by anyone. All public bodies must respect the privacy of all individuals. But, in a number of cases, which are exceptions, the information may be accessed. They are outlined below.
 - (a) The individual may authorize the public body to give the information. This authorization may be given specifically in relation to a particular request and a particular piece of information or it might be a general authorization, for example, by agreeing that information in his files can be released to a particular person or group of persons or they may be available to the public at large. This includes a situation where the individual has provided the information on the understanding, whether specifically sought or generally understood, that the information would be made available to the public.
 - (b) The record or information is already available to the public.
 - (c) A person who is caring a person under 18 years or who has a disability can have access to information of the under age or disabled person if that would be in the interest of the under age or disabled person. The disability here must relate to mental disability that does not allow the disabled person to give authority for the information to be given to the carer.
 - (d) The record or information is that of a person who has died and the next of kin or another person is requesting the information with the authority of the next of kin.
 - (e) The record or information relates to an individual who is or was a public official and which record/information relates to the following: - the fact that that person was a public official; the title, work address, work phone number and other similar particulars; the classification, salary scale or remuneration and responsibilities of the position held or services performed by the individual; the salary and other benefits of the individual if the benefits exceed K99,900.00 per year; and the name of the individual on a record prepared by the individual in the course of employment.

6. Internal Revenue Commission: The records of the Internal Revenue Commission for the purposes of collecting revenue under the Income Tax laws cannot be accessed. A taxpayer has a right of access to information on this held by him or her. And, the taxpayer can authorize a third party to have access to his/her information. All other records of the IRC such as those relating to the management and structure of the IRC must be accessible.
7. Commercial Information of third parties: Public bodies that have records of third parties that relate to commercial information may not allow access.
 - (a) The trade secrets of an individual or corporation cannot be accessed.
 - (b) Any information that would harm the financial interests of an individual or company, such as financial, commercial, scientific or other technical information must be exempted.
 - (c) Any information that an individual or corporation gives to a public body in confidence and which is likely to put that individual or corporation in a disadvantageous position in contract negotiations or that is likely to prejudice him/it in competition, are exempt from the right of access.

However, a public body can allow access to such record or information as described here if the information already is available to the public; or the concerned individual or corporation has authorized the disclosure; where the information concerns the results of any product or environment testing or investigation that poses environment or public safety risks. In relation to environmental results, the access is to the results and not preliminary testing results or the ongoing investigations.

8. Other confidential information: Public bodies may refuse access in relation to records that were given to them in confidence or that are given by sources that the public body wants to preserve in order to continue to get such records. The following specific instances fall into this category:
 - (a) A person or company has given to the public body information or record that is confidential and it will result in civil liability (for example, breach of confidence) to the public body allows access; the public body can refuse to give access.
 - (b) A public body can refuse to give access in relation to a document or information which was supplied to it by a person or corporation and allowing access to the record or information would prejudice the future supply of information from that source and where it is in the public interest that similar information be provided by that source.
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In both these instances, access must be allowed if authorized or if the same information or record is publicly available.

9. Legal privilege: Any record that is subject to legal privilege cannot be accessed.
10. Individual safety and security of property: A public body must refuse access to a record that might endanger the life or physical safety of an individual. It must also refuse access to records that, if disclosed, is likely to prejudice or impair the security of a building, structure or system including a computer or communication system, a means of transport or any other property or any means, systems, plans or procedures which protect an individual in a witness protection system, the safety of the public or property.
11. Judicial proceedings: A public body may refuse to grant access to records relating to judicial proceedings that are in progress or that are highly likely to be commenced. This applies to the records of the courts, commissions of inquiries, and any other semi judicial body.
12. Police procedures: The records of a public body, especially the police, responsible for law and order may refuse access to its records in order to protect its systems and means.
 - (a) Requests for records that contain methods, techniques, procedures or guidelines for the prevention, detection, curtailment or investigation of a contravention or possible contravention of the law or the prosecution of alleged offenders that if disclosed would lead to the circumvention of the law or commission of an offence may be refused.
 - (b) Requests for records made for the purposes of prosecuting an alleged offender may be refused if disclosure would prejudice the prosecution.
 - (c) Requests for access to records relating to the following may also be refused:
 - ? records that may prejudice the investigation of an offence whether this is ongoing or which is about to be commenced;
 - ? records that might reveal the identity of the source of information to be used in a prosecution;
 - ? records that may result in the intimidation or coercion of a witness or person who may be called as a witness in a prosecution;
 - ? records that may facilitate the commission of any offence including enabling inmates to escape from custody (not relating to the general conditions of detention);
 - ? records that will impair the fairness of a trial.

A public body may refuse to admit or deny the existence of a record if a disclosure as to its existence or otherwise would be prejudicial to any of the matters raised here. However, if this is done, the public body must state that fact of the position taken, refer to the specific reason why the record cannot be disclosed and inform a person requesting the information that the person has a right to seek a review of the decision in accordance with the review provisions of the law.

13. Defence, security & international relations: A public body must not disclose any record or information that would prejudice:
 - (a) the defence of PNG;
 - (b) the security of PNG; or
 - (c) international relations of PNG.

 14. Internal Relations: With respect to international relations, a public body may refuse access of the following types of records or information:
 - (a) records or information that is supplied in confidence to the public body by or on behalf of another State or international organization;
 - (b) records or information supplied by or on behalf of PNG to another state or international organization in pursuance of an agreement where there is an obligation of confidence placed on PNG; or
 - (c) the record or information is given to the public body by an international organization in which an obligation of confidence is imposed by international law; or
 - (d) records or information relating to the positions adopted or to be adopted by PNG, another state or an international organization for the purposes of present or future international organizations; or
 - (e) records or information that constitutes diplomatic correspondence exchanged with another state or an international organization or official correspondence exchanged with diplomatic missions or consular posts of PNG.

 15. Defence: The records that relate to the defence of PNG and to which access must not be allowed are numerous. They can be listed.
 - (a) All records or information relating to military tactics or strategy or military exercises or operations undertaken in preparation of hostilities or in connection with the detention, prevention, suppression or curtailment of subversive or hostile activities.
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- (b) All records or information relating to the quantity, characteristics, capabilities, vulnerabilities or deployment of weapons or any other equipment used for the detection, prevention, suppression or curtailment of subversive or hostile activities or anything being designed, developed, produced or considered for use as weapons or such other equipment.
16. Intelligence: Records or information held for the purposes of intelligence relating to the defence of PNG, the detection, prevention, suppression or curtailment of subversive or hostile activities to PNG cannot be accessed. The records and information coming within this include methods of, and scientific or technical equipment for, collecting, assessing or handing intelligence and also the confidentiality of source of such record or information.
17. Information as to the existence of record: A public body may refuse to admit or deny the existence of a record if a disclosure as to its existence or otherwise would prejudice the defence, security or international relations of PNG. The public body must, however, state that fact of the position taken, refer to the specific reason why the information would be exempted and inform a person requesting the information that the person has a right to seek a review of the decision in accordance with the review provisions of the law.
18. Any record or information relating to the defence, national security or international relations in the possession of anyone including a public body that is required by any law to be disclosed to another public body must be so done. There is no prohibition against such disclosure.
19. Economic interests & financial welfare: A public body can refuse access to records or information which if disclosed would seriously jeopardise the economic interests or financial welfare of PNG or the ability of the government to manage the country's economy effectively in the best interest of PNG. In particular, the following types of records fall into this category:
- (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 credit or interest rates; customs or excise duties, taxes or any other source of revenue;
 - (c) the regulation or supervision of financial institutions;
 - (d) government borrowing;
 - (e) the regulation of prices of goods or services, rents or wages, salaries or other incomes;
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- (f) a contemplated sale or acquisition of immovable or moveable property; or
 - (g) a contemplated international trade agreement; and
 - (h) information about an agreement, or contemplated agreement to transfer any interest in or right to shares in the capital of a public body or any person which is not a public body.
20. Trade & commercial secrets: Access to a public body's own trade or commercial secrets may not be accessed. This includes records that belong to the State as a whole. The types of records covered by this are listed below.
- (a) The records contain trade secrets of the State or the public body.
 - (b) The records contain financial, commercial, scientific or technical information (other than trade secrets) the disclosure of which would be likely to cause harm to the commercial or financial interests of the State or a public body.
 - (c) Records that contain information which if disclosed could reasonably be expected to put a public body at a disadvantage in contractual or other negotiations, or that would prejudice the public body in commercial competition.
 - (d) The records are copyright and protected under copyright laws for commercial or financial gain.
21. Access to records relating to defence, security or international relations as described under paragraphs (11) to (17) must nevertheless be allowed if the record or information is already publicly available; or concerning which authorization has been given by the person or body to disclose the information; or the information relates to the results of environmental testing or other investigation that would reveal serious risks to the environment or the public. The methods used in the environmental investigation must also be disclosed. This access does not extend to preliminary studies or investigations.
22. Research information: A public body may refuse access to records that contain information about research being or to be carried out by or on behalf of a third party, which if disclosed would disadvantage the particular research. This applies to both the fact of the research, the researcher or its owner or to the subject matter of the research. The third party may be an individual, a corporation or a public body.
23. Operations of public bodies: In certain instances, a public body may refuse records that if disclosed would frustrate the operations of the public body. This is not a general prohibition. The instances are limited and specific.

- (a) A record that contains an opinion, advice, report or recommendation obtained or prepared or an account of a consultation, discussion or deliberation that has occurred, including but not limited to minutes of a meeting for the purposes of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law may not be accessed if access to the record would reasonably be expected to frustrate the deliberative process in a public body or between public bodies by inhibiting candid communication of opinion, advice, report or recommendation; or conduct of consultation or deliberation; or the disclosure of the record could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.
- (b) A public body may refuse access to a record belonging to it if the disclosure of the record could reasonably be expected to jeopardise the effectiveness of a testing, examining or auditing procedure or method used by a public body or if 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 made to the person who supplied the material and the material would be held in confidence. This also applies to a record that contains a preliminary working or other draft of an official of a public body.

This exception does not apply to proceedings, agenda and minutes of bodies that make decisions to procure goods and services for public bodies. Documents and minutes of such meetings must be accessed. This applies to public bodies that procure goods and services for the State as a whole such as the Central Supply and Tenders Board as well as those public bodies that have Committees or divisions within themselves that procure goods and services for their use.

- 24. Manifestly frivolous or vexatious requests: Any request that is clearly frivolous or vexatious or is simply one intended mainly to frustrate a public officer or public body including one from a busy body may be refused.
 - 25. Costly requests: A public body that receives a request for access to a record that would be costly to the public body in diversion of resources in both manpower and other expenses may require the requesting person to cover the costs involved in allowing access.
 - 26. Overriding disclosure of records evidencing wrong doing: In all the instances referred to above in which access may not be given of a record, if the disclosure of the record would reveal a substantial breach of a law, or a substantial risk or eminence of a risk to public safety or environmental risk, the record must be disclosed.
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27. Access to records after 20 years: All records to which access may be refused must be disclosed after 20 years of the record being created or coming into existence.
28. Request for authorization from third party: In any instance where a person asks for access to a record held by a public body which belongs to a third party and where the record is confidential or the public body considers it confidential, the public body must seek the authorization of the third party concerned to disclose the record. The public body must do this as soon as practicable and in as speedily a manner as possible.

The third party must then respond within 14 days to the request giving authority for disclosure or, if not, the reasons for refusal. A third party who becomes aware that his/her records are being requested from a public body may make representations to the public body either authorizing the access or to refuse access.

In both cases, the public body must ultimately take the decision as to whether the record is disclosed or not, which decision is reviewable under the law.

PROCEDURE FOR ACCESS

1. Citizens right to access: Any citizen can request a public body to give access to records.
2. Use of terminology: A person making a request is called a “requester”. The public body to which a request is made is called the “requested body”. Any reference here to “request” must be taken to be a request for access to a record of a public body.
3. Form of request: A request can be made in various ways. It may be made either: -
 - (a) orally in person or by telephone, or
 - (b) in writing, or
 - (c) by electronic mail.
4. Oral requests to be reduced into writing: An officer of a public body who receives an oral request must, if he does not give the requested record there and then, reduce into writing the request. A public body must be ready in oral requests expecting especially from people who are illiterate.
5. Language of requests: A request may be made in English. But, if the requester is unable to speak or understand English, the request may be in Pidgin or Motu.

6. Requests to refer to the law: A request made need not refer to the Freedom of Information law. However, written requests may refer to this law in general or in reference to a particular provision of the law allowing access.
7. Chief officer of public body responsible for giving access: The head of department, agency or chief executive of the public body ("chief officer") is primarily responsible for giving access. The chief officer may appoint any officer or officers within his/her organization to be responsible for receiving and actioning requests but the primary responsibility is that of the chief officer.

Any default or failure in actioning requests or giving access is that of the chief officer. If a request is refused and it is later determined that the refusal was wrong, the wrong is that of the chief officer. If any liability arises from such failure or default, such liability is that of the chief officer.

The appointment of an officer within the organization to receive and action requests is in the way of providing assistance to the chief officer to discharge his/her obligations under this law. It is not a delegation of responsibility for which the appointed officer is responsible.

8. Every public body must put in place a system that will serve the purpose of this law.
9. Individual public officials to whom requests are made in their individual capacities, as public officials, must receive and personally action the request following the same procedure.
10. A requester can make a request to any officer of a public body. All officers of the public body to whom a request is made, if they cannot action it, they must refer it to the chief officer.
11. Form of making requests: A requester must, as much as possible, identify the particular record he or she wants to have access to. However, if the requester is unable to specifically identify the record, he/she must give as much information as possible to the requested body to assist it in identifying the record. The requested body must assist in the identification of the record. The lack of specific identification of the record is not a reason to deny a request. It may be a reason for the actioning of the request to be delayed.

The requester must specify in the request his/her contact, the manner in which the record should be made available and specify his/her telephone number if he/she should be contacted by telephone or other means on the actioning of the request.

12. Actioning of requests: On receipt of a request, the requested body must act on it immediately. In relation to some requests, the record may be readily available where immediate action must be taken in giving access. In relation to those

records that are not readily available, access must be given within a reasonable time. Maximum time limits must be set for access to be given. If the maximum limits are not met, the request must be deemed refused and a requester may invoke review procedures. Detailed rules are therefore necessary.

- (a) Any record that is or ought to be readily available must be given to a requester immediately. Public bodies should have multiple copies of documents that they consider that will be requested by the public, so that these can be given on request.
- (b) Any record requested that is not immediately available may be made available within a reasonable time. The officer of the public body who receives the request must inform the requester as to when the record will be available. The time when the record will be available must not exceed 30 days from the time the request is received.
- (c) If the officer of the requested body who receives a request is of the opinion that the information will not be available within the 30 days to be given to the requester, the officer must state this fact to the requester. The officer must specify the reasons why it will take more than 30 days for the record to become available. The following reasons will justify a requested body to extend the 30 days period limitation for the requested information to be given to the requester:
 - ? where the requested record is in another city, town or locality which has to be brought to the location where the request is made; or
 - ? where the time it takes for the record to be retrieved will take more than 30 days and, in which case, that retrieval process must be disclosed to the requester; or
 - ? a longer period than the 30 days are required to allow consultations to be made between the requested body and any other body or persons who must be consulted in order for the record to be given to the requester; or
 - ? where requested record is not sufficiently identified and it will take some time for such identification to be made.

In such instances, the officer may indicate that the information will be available after a further 14 days, thus making the total number of days when the record will be made available to 45 days. In this case, the officer must inform the requester that he has a right to request for the review of the extension.

- (d) If a requester urgently requires the information, he/she may submit a written request for the extension to be reviewed setting out the reasons why the requester wants the requested record to be made available within the standard 30 days or a shorter period.
 - (e) An officer receiving a request for review of the period within which a record is to be made available must, within 5 working days, advise the outcome of the review as to whether the record will be made available immediately.
13. Grant of request: A requested body that grants a request must make available to the requester the requested record in the manner the requester requested. If the requester specified the record to be given in hard copy form and through the post, this must be given in that manner. If the requester specified for the record to be given by facsimile or e'mail, the information must be given by that means where these means are available to the requested body. If the requester had not specified a means, the requested body must allow access in the same way the request was made or in a faster and more reliable manner.
14. Refusal of requests: A requested body that intends to refuse a request must indicate this as soon as possible and no later than 14 days after the receipt of the request.
15. Reasons for refusal: The requested body must specify its reasons for refusing the request by citing the relevant provision of the Law, which entitles the body to make the refusal and specify why that provision is relevant to the refusal. The body must also inform the requester in the refusal that the requester has a right of review and advise the requester how and where the review can be made.
16. Refusal of requests made orally: Any request that is made orally may be refused orally as well. But, a requester may require the requested body to reduce the refusal into writing including in it the particulars required to be stated in a refusal.
17. Manner of communicating refusal: In relation to any other forms of request, if the requester had specified the manner in which any decision is to be communicated, the refusal may be communicated in that manner. If no manner was prescribed by the requester, the refusal may be given either in the manner the request was made or it must be made in writing and posted in the ordinary mail.
18. Requests that cannot be actioned within period specified by requester: If a requested body cannot or is unable to action a request within the period set by the officer who received the request or any extended period, the period may be further extended but not for more than 45 days. If the record is not given within 45 days from the date of the request being made, the request will be deemed to have been refused.
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19. Standard forms: Regulations may set out standard forms to be used for requests to be made and refusals to be communicated. Each public body may adjust the standard forms to meet its requirements without sacrificing the substance of the information required to be set out in the forms. But, the non-existence or non-availability of these standard forms shall not be an excuse for failure to comply with the provisions of the law.
20. Transfer of requests: The record requested might not be with the public body that receives the request but it might be with another public body. In such case, the public body that received the request must assist the requester by doing one or more of a number of things.
 - (a) The public body that receives the request must assist the requester by advising the requester which other public body will have the information and direct the requester to it.
 - (b) If the public body that requests the information considers that it would be faster and convenient to itself refer the request to the other public body that has the information or where the requester requests the receiving public body to transfer the request, the receiving public body must transfer the request to the other public body.
 - (c) If the receiving public body refers the request to another public body, in addition to identifying the person making the request and the nature of the request, it must also specify when the request was received and the decision to transfer the request to the latter public body. The latter public body must act on the request as if the request was first received by it on the date that the receiving public body first received the request. The latter public body must give priority to a request that has been transferred in this way.
21. Preservation of records until final decision on request: In the event that a request is refused for any reason that a public body is permitted to make such refusal, the record must nevertheless be preserved, without deleting any information contained in it, until the requester is informed of the refusal and the time for appeal has expired or if an appeal is lodged, the appeal has been finally determined. This includes any court proceedings that might be involved.
22. Fees: A public body to which a request is made must disclose the information without charge. This must be the case in relation to any record that a public body ought to make multiple copies to make available to the public. In other cases, the public body may charge a fee. However, the fee must be limited to recovering the costs of producing or copying the record for disclosure. For example, if a record is to be photocopied, it must be the cost of photocopying. Other special circumstances may warrant different fees.

- (a) If the record is requested by an individual for his or her personal use, the cost only of the copying must be recovered without charging for the time or other expenses involved in the recovering and copying of the record.
 - (b) The copy charge must be annually determined by each public body and publicized in the necessary information given by the public body annually. This fee must be reasonable. Any body may challenge the reasonableness of the fee with a review body established under the law if the fee is considered unreasonable.
 - (c) A request made in all other circumstances, the public body may set a fee to recover the cost of copying as well as for the time spent and other expenses incurred in retrieving and making available the record. Each public body must notify the public, in the information provided annually by the public body, the rates of charges for this purpose. The fee or rate of fee must be reasonable. If considered unreasonable, any person can request a review of the determined fee. The fee may be adjusted once a year.
 - (d) If the charges are likely to be substantial (this determined by the likely means of the requester), the public body must first inform the requester as to what the costs are likely to be. If the requester indicates that he/she will meet the costs, the record must be retrieved.
 - (e) The requester may be requested to pay a deposit of part of the fee or the whole of the fee for the information to be retrieved. Once a deposit or the whole of the charges and fees involved are paid (apart from a standard fee imposed on all requesters), the public body cannot then refuse to give to the requester the record unless the public body can prove that without sighting the record, it was not possible for the public body to assess the record itself. If the latter applies, the public body must immediately refund the deposit.
 - (f) The cost of transmitting the record, for example, by post, facsimile, courier or other means may also be recovered. This must be limited to the actual cost incurred by the public body and no more.
 - (g) The public body may, in the information provided to the public annually, specify that certain persons may not pay the fees required here for access to information.
23. Records cannot be found or that do not exist: If, after due search, a record cannot be found even though believed exists, the chief officer must swear a statutory declaration and provide it to the requester. The statutory declaration must specify the officer's belief that the record exists but it cannot be found and set out details of what steps have been taken in the search for the record together with the
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names of the persons who have done the search. If the record is found later, the record must be provided to the requester.

24. Deferral of access: In certain cases after a request is received, the requested body may defer giving access to the record. This can be done where the record requested will be published anyway soon. First, if the record is likely to be published and made available within 90 days, the requested body may defer acting on the request. Second, if the record required to be published by law and it is yet to be published, the request may be deferred until the record is published. Third, the record has been prepared for submission to the Parliament or other legislator or another official and it is yet to go before that other body, the request may be deferred until that happens. In all such cases, the requester may still ask for the record to be made available before any of these events occur for special reasons. The requested body must then consider the special reasons given and if it is demonstrated that the requester will suffer substantial prejudice if the record is not given before any of the events mentioned, the requested body must give the document before hand.
25. Deemed refusal: A request that is not actioned within 30 days or within any extended period, the request is deemed to have been refused. The requester may then consider reviewing the decision, if the requester wants to do so.
26. Severability: If a requested record cannot be given access because parts of the record contains information that the public body can lawfully refuse access, the part that cannot be withheld must be given to the requester. The requested body must ensure that part of the record to which access is given is in a form and shape that the requester can reasonably follow.
27. Access to health records: In certain cases, the health records of the requester may pose risks to the requester. Personal health records of an individual are confidential and cannot be accessed by anyone except the person concerned or his/her guardian. However, if the health records, if disclosed, would be a danger to the person concerned, the requested body may request the person or his/her guardian to appoint a medical practitioner who should review the records and provide an advice on whether or not the disclosure is or is not likely to cause serious harm to his or her physical or mental health, or well-being. If such appointed doctor advises against disclosure, the records must not be disclosed unless it is shown that the requester would receive counselling and other services following the release of the records. The requester must be informed that his/her appointed doctor had reviewed the documents and that doctor has advised against allowing access and a record may not be disclosed.
- 28: Report by public bodies or number of requests, etc.: In the information provided annually by a public body on the records that it has, the public body must state how many requests had been made under the law, how many have been action and how many had been refused. This information must also indicate the number

of internal reviews requested and determined and the delays encountered in attending to requests and the causes of such delays.

REVIEW OF REFUSAL

1. Internal review: A refusal to allow access to a record that is in the possession of a government department or statutory instrumentality must be made to the Minister of government responsible for that department or agency, for the Minister to review the decision.
 2. A refusal to allow access to a record that is in the possession of a provincial government or local government must be made to the Governor of the Province, for the Governor to review the decision.
 3. A refusal to allow access to a record that is in the possession of a state-owned corporation must be made to the Minister who has responsibility over controlling the state's interest in the corporation, for the Minister to review the decision.
 4. A refusal to allow access to a record that is in the possession of a private company to which record this Law permits access must be made to the Minister responsible for Justice matters, for the Minister to review the decision.
 5. Internal review procedure: The internal review procedure must be as follows:
 - (a) The requester refused access must request for the refusal to be reviewed by the Minister. The request must be made to the official of the requested body refusing the request.
 - (b) The request for review must be made within 40 days of the refusal being notified to the requester.
 - (c) If the request for review is made orally, the official must reduce the request for review into writing.
 - (d) The requester may, in the request for review, comment on the reasons given for the refusal. In the review request, the requester must specifically identify what record he/she requested, the fact that it was refused, the date the refusal was made, the reasons given and his/her reasons for the review.
 - (e) Regulations may prescribe a fee payable for internal review requests. If no fee is prescribed, no fee is payable for such an internal review.
 - (f) The requested body must, within 14 days of receipt of the request for review, forward the review request together with all information including
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the particulars of the refusal decision taken by the requested body to the relevant Minister or Governor.

- (g) The Minister or Governor to whom a request has been made must make a decision within 30 days.
 - (h) If the relevant Minister or Governor confirms the refusal or does not make a decision within the 30 days period, the requester may apply to an external review body.
6. External review procedure: A requester whose request for an internal review is refused and who wishes to apply for an external review, he/she may apply to any one of three bodies for review. A requester who wishes to make such application is called “an applicant”.
- (a) In the case of a requested body to which the Ombudsman Commission has jurisdiction over, the applicant must make the application to the Commission.
 - (b) In the case of a body to which the Ombudsman Commission lacks jurisdiction over, the applicant must make the application to the Consumer Affairs Council. The Consumer Affairs Council must be given jurisdiction to deal with such requests.
 - (c) If an administrative review tribunal is established, the review in both cases must be made by this body.

Any one of these bodies are called “relevant review body”.

- 7. The applicant must lodge the application with the relevant body in a prescribed format or, if none is prescribed, the application shall state the applicant’s name, the fact that he is filing a review of a refusal, identify the refusal, the document and other details stated in the internal review request, state the decision of the internal reviewer and set out reasons for the application seeking the external review. This application must be made within 30 days of the refusal being communicated to the requester.
 - 8. A copy of the application must be given to the requested department. The requested department may make representations to the relevant review authority within seven (7) days of receiving a copy of the application.
 - 9. The applicant must pay the fee prescribed in regulations for this external review. If no fee is prescribed, no fee is payable.
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10. The relevant review authority must have the authority to direct the requested public body to allow access if the authority considers that the refusal was wrong and that the requester is legally entitled to access.
11. On receipt of the application, the relevant review authority may request the requested department to respond to a review if considered necessary.
12. Submissions in support of an application or against it may be made on behalf of any party by a lawyer but appearance by lawyers is not to be permitted.
13. The relevant review authority must make a decision on the application within 30 days of the application being received.
14. If the relevant review authority confirms a refusal, the applicant can apply to the National Court if he/she is aggrieved by the decision. A requested body may also apply to the National Court if it is aggrieved by a direction order made by the relevant review body.

LICENSING OF REQUESTING AGENTS:

1. Certain users may be licensed to have preferred status to access records from public bodies.
 2. The licenses may be issued by the relevant body that the Minister in charge of the law prescribes. There may be a requirement imposed on applicants for licences to undergo training in familiarising with this law and the procedures that public bodies have put in place to give effect to this law.
 3. The format and terms of the licenses shall be as prescribed in regulations.
 4. The privileges and obligations of the licensees shall be as specified.
 5. The licensees may form a body to review and advice the Minister on the working of the law. The Minister must deliberately consider the views and recommendations of this body in the making of any policy decisions in relation to this law.
 6. Any person is eligible to apply for the license provided they pay the prescribed fee.
 7. Apart from any other responsibilities the licencees are required to carry and discharge (which must be specified in the law), the licensees may take up and assist members of the public in accessing records.
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GENERAL PROVISIONS

1. Identifying public records: All public bodies must compile and publish once every year, on the first working day of March each year, a list of the following information:
 - (a) a description of its structure and functions;
 - (b) the postal and street address, phone and fax number and, if available, electronic mail address of the chief officer;
 - (c) a guide prepared setting out how information from the public body can be accessed under this law;
 - (d) sufficient detail to facilitate a request for access to a record of the public body, a description of the subjects on which the body holds records and the categories of records held on each subject;
 - (e) a list of records that are automatically available to the public without the need to make a specific request as outlined under the next paragraph;
 - (f) a description of the services available to members of the public from the public body and how to access those services;
 - (g) a description of any arrangement or provision for a person to participate in or influence that formulation of policy, the exercise of powers or performance of duties by the public body.

The first of this list must be made available within 6 months after this law comes into force. Subsequently, as stated above, the list must be up-dated on each item and published by the first working day of March each year. Each licensee must be furnished with a copy of this compilation within 30 days after the first working day of March of each year. If the compilation is not more than 30 type-printed pages, it must be published in the National Gazette. If it is over 30 pages, copies must be made available in the public office to be collected by any member of the public. Notification of the availability of copies must be published in the Gazette including advising the name, phone number and location of the person responsible for issuing copies.

2. The public body must separately publish in the National Gazette and supply to every licensee copies of records that are automatically available from the public body. This must also be up-dated and published every year.
3. A fee payable on any of these publications may be prescribed by legislation. The fee shall be for recovering costs of printing or making copies and no more. If no fee is prescribed, they are to be made available free of charge.
4. Telikom must publish in the telephone directory an entry that gives a telephone number, a fax number and an e'mail number (if available) of the contact person of every public body who is to be contacted for making requests under this law. The

costs of such entry must be borne by the public body concerned. Each public body must ensure that it informs Telikom of these details.

5. Criminal liability – chief officer: The chief officer of a public body that breaches any provisions of this Law is guilty of a crime. Depending on the seriousness of the breach, the chief officer may be convicted and fined for up to K2, 000 or imprisoned for a period of up to 6 months.
6. Criminal liability – public official: A person who is a public official and who does not come under the authority of a chief officer, if found guilty of breach of any provisions of the law must also face the same penalties.
7. Criminal liability – any other person: Any other person, including an official working in a public body, who wilfully misleads, misrepresents or deliberately or negligently does anything to defeat a request being processed, an appeal being heard or otherwise deliberately does anything to frustrate a requester from getting access to a record is guilty of an offence. Such person is liable to the same penalties as those described.
8. Civil liability of chief officer: The chief officer of a public body who deliberately or negligently does anything to defeat a requester from getting access to documents is personally liable for such act or omission. The requester may bring civil proceedings against the chief officer directly.
9. Civil liability of public officer: A person who is a public official and who does not come under the authority of a chief officer is personally liable in a civil claim for damages, etc., if he/she deliberately does anything or makes an omission.
10. Civil liability – any other person: Any other officer of a public body who deliberately does anything to mislead or otherwise defeat a requester in his/her efforts to obtain access to a record is personally liable for damages to such requester.

MISCELLANEOUS PROVISIONS

1. The Minister responsible for the administration of this law, if not prescribed in the National Gazette, shall be the minister responsible for justice matters.
2. This Minister may procure regulations required under this Law.
3. This Minister may also prescribe the authority that is to issue licences as provided under this law.