

THE FREEDOM OF INFORMATION BILL, 2007

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to make provision for the public to have a general right of access to records.

Clause 1 provides the short title and commencement.

Clause 2 contains the definitions.

Clause 3 states that the Law will apply to public authorities and to all records regardless of when they were created.

Clause 4 specifies the objects of the Law as being to promote democracy.

Clause 5 requires every public authority to publish information relating to certain matters that are relevant to freedom of information.

Clause 6 stipulates the general right of access to records.

Clause 7 prescribes how to apply for access.

Clause 8 deals with cases where the public authority to which an application is addressed is not the right or best source from which to obtain the information.

Clause 9 ensures that needless requests need not be addressed.

Clause 10 states the various forms in which access may be granted.

Clause 11 deals with cases where the information furnished by the person applying for disclosure is not enough to identify the information.

Clause 12 makes provision for partial access to a record.

Clause 13 makes provision for the collection of costs of providing information and the possibility of exemption from fees in certain case

Clause 14 provides for the grant of access.

Clause 15 exempts from disclosure certain records affecting security, defence, international relations and records containing confidential information internationally communicated.

Clause 16 exempts from disclosure certain records relating to law enforcement.

Clause 17 exempts from disclosure records that would amount to breach of confidence.

Clause 18 exempts from disclosure certain records affecting the national economy.

Clause 19 exempts from disclosure certain records that contain the deliberative processes of Government.

Clause 20 exempts from disclosure matters that prejudice or are likely to prejudice the effective conduct of public affairs.

Clause 21 exempts from disclosure certain records relating to commercial interests.

Clause 22 exempts from disclosure certain records relating to heritage sites.

Clause 23 protects the confidentiality of personal information.

Clause 24 exempts from disclosure records that are likely to endanger health and safety.

Clause 25 empowers the Governor in Cabinet to issue certificates of exemption from disclosure in respect of certain records.

Clause 26 makes the public interest test compulsory in respect of some exemptions.

Clause 27 makes provision for proactive disclosure of information.

Clause 28 allows a person applying for a particular record or who has been granted access to a record to apply for the record concerned to be amended or annotated as necessary.

Clause 29 empowers public authorities to amend records in special circumstances.

Clause 30 confers public authorities with limited authority to annotate records containing personal information.

Clause 31 obligates public authorities which have amended or annotated records to inform the applicant and other relevant public authorities.

Clause 32 makes it possible to transfer, to other public authorities, requests for amendment or annotation.

Clause 33 allows an aggrieved applicant to apply for review, within the public authority concerned, of an adverse decision.

Clause 34 prescribes the procedure for internal review within a public authority.

Clause 35 provides for the Office of the Information Commissioner.

Clause 36 sets out the independence and powers of the Commissioner.

Clause 37 makes it clear that the Public Service Management Law, 2005 applies to the Commissioner.

Clause 38 provides for the support staff of the Commissioner.

Clause 39 makes provision for the general activities of the Commissioner.

Clause 40 obliges the Commissioner to make reports to the Legislative Assembly.

Clause 41 affords the Commissioner limited protection from civil and criminal proceedings.

Clause 42 provides for appeals to be made to the Commissioner against decisions of entities that are supposed to provide information contained in records.

Clause 43 provides for the making of decisions following an appeal.

Clause 44 makes provision for the Commissioner to compel a relevant entity to implement the decision of the Commissioner.

Clause 45 provides for the powers of the Commissioner to investigate.

Clause 46 provides for the special powers of the Commissioner to investigate matters on his own initiative.

Clause 47 provides for appeal to the Grand Court of the Commissioner's decisions.

Clause 48 stipulates that the decisions and orders for the Commissioner are binding.

Clause 49 provides for the appointment of information managers in public authorities.

Clause 50 protects whistleblowers.

Clause 51 provides for the power of the Chief Secretary to publish guidelines regarding best practices relating to freedom of information.

Clause 52 enjoins public authorities to keep records in a manner that allows easy retrieval.

Clause 53 provides for the need to train officials in relation to freedom of information.

Clause 54 makes certain provisions relating to the applicability of other laws.

Clause 55 creates offences in relation to certain actions that are intended to prevent disclosure of records.

Clause 56 makes further provision relating to other laws.

Clause 57 empowers the Governor in Cabinet to make regulations for giving fuller effect to the legislation.

Clause 58 provides that once the law is passed, there will be a review of it not later than eighteen months after the day on which it enters into force.

The Schedule prescribes the information that is to be published by public authorities which is relevant to access to records.

THE FREEDOM OF INFORMATION BILL, 2007

ARRANGEMENT OF CLAUSES

**PART I
PRELIMINARY**

1. Short title and commencement.
2. Definitions.
3. Application.
4. Objects of Law.

**PART II
RIGHT OF ACCESS**

5. Publication of information by public authorities.
6. General right of access.
7. Application for access.
8. Transfer of requests.
9. Vexatious, repetitive or unreasonable requests.
10. Forms of access.
11. Assistance and deferment of access.
12. Partial access.
13. Cost of access.
14. Grant of access.

**PART III
EXEMPT RECORDS**

15. Records affecting security, defence or international relations, etc.
16. Records relating to law enforcement.
17. Records subject to legal privilege, etc.
18. Records affecting national economy.
19. Records revealing government's deliberative processes.
20. Prejudice to effective conduct of public affairs.
21. Records relating to commercial interests.
22. Records relating to heritage sites, etc.
23. Records relating to personal information.
24. Records likely to endanger health and safety.
25. Issuance of certificate re exempt record.
26. Some exemptions are subject to public interest test.
27. Making of decisions and reasons public.

**PART IV
AMENDMENT AND ANNOTATION OF RECORDS**

28. Application for amendment or annotation of records.
29. Amendment of records.
30. Annotation of records of personal information.
31. Notice of amendments or annotations.
32. Transfer of applications for amendment or annotation.

**PART V
INTERNAL REVIEW**

33. Application for internal review.
34. Procedure for internal review.

**PART VI
INFORMATION COMMISSIONER**

35. Office of Information Commissioner.
36. Independence and powers.
37. Information Commissioner to be subject to Public Service Management Law.
38. Staff.
39. General activities.
40. Reports.
41. Protection of Commissioner.

**PART VII
ENFORCEMENT BY COMMISSIONER**

42. Appeal to Commissioner.
43. Decision on appeal.
44. Implementation of decision.
45. Commissioner's powers generally to investigate.
46. Investigations on Commissioners initiative.
47. Appeal from Commissioner's decisions and orders.
48. Decisions and orders of Commissioner binding.

**PART VIII
MEASURES TO PROMOTE OPENNESS**

49. Information managers.
50. Whistleblowers.
51. Guidance on duty to publish.
52. Maintenance of records.
53. Training of officials.

**PART IX
MISCELLANEOUS**

54. Protection from liability re defamation, breach of confidence and intellectual property rights.
55. Offences.
56. Provisions re other Laws.
57. Regulations.
58. Review of Law by Parliamentary committee.

**SCHEDULE: INFORMATION TO BE PUBLISHED BY
PUBLIC AUTHORITIES**

CAYMAN ISLANDS

A BILL FOR A LAW TO GIVE TO THE PUBLIC A GENERAL RIGHT OF ACCESS TO RECORDS; AND TO MAKE PROVISION FOR INCIDENTAL AND CONNECTED PURPOSES.

ENACTED by the Legislature of the Cayman Islands.

**PART I
PRELIMINARY**

1. (1) This Law may be cited as the Freedom of Information Law, 2007.

Short title and commencement

(2) This Law shall come into operation on such date as may be appointed by Order made by the Governor in Cabinet and for that purpose different dates may be appointed for different provisions.

2. In this Law-

Definitions

“appointed day” means the day appointed pursuant to section 1;

“Commissioner” means the Information Commissioner referred to in section 35;

“exempt matter” means matter that is exempt from disclosure, whether or not the rest or part of the rest of the record is liable to disclosure;

“exempt record” means a record referred to in Part III;

“foreign government” includes the Government of the United Kingdom of Great Britain and Northern Ireland and its Overseas Territories other than the Government of the Cayman Islands;

“government company” means a company in which the government has a controlling interest and includes a subsidiary of such company;

“hold”, in relation to a record that is liable to production under this Law, means in a public authority’s possession, custody or control;

“Minister responsible” means the Minister or Official Member responsible for the public authority which holds a record;

“public authority” means-

- (a) a ministry, portfolio or department;
- (b) a statutory body or authority, whether incorporated or not;
- (c) a government company which -
 - (i) is wholly owned by the Government or in which the Government holds more than 50% of the shares; or
 - (ii) is specified in an Order under section 3 (2);
- (d) any other body or organization specified in an Order under section 3 (2);

“record” means information held in any form including-

- (a) a record in writing;
- (b) a map, plan, graph or drawing;
- (c) a photograph;
- (d) a disc, tape, sound track or other device in which sounds or other data are embodied, whether electronically or otherwise, so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (e) any film (including microfilm), negative, tape or other device in which one or more visual images are embodied whether electronically or otherwise, so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom,

held by a public authority in connection with its functions as such, whether or not it was created by that authority or before the commencement of this Law;

“relevant decision” means a decision made in relation to the disclosure or otherwise of a record.

Application

3. (1) Subject to subsection (2), this Law applies to-

- (a) public authorities;
- (b) records, regardless of the date when they were created;

but paragraph (a) shall not be read so as to allow access to records containing information-

- (c) that may not be disclosed under section 50 of the Monetary Authority Law (2004 Revision);
- (d) relating to the directors, officers and shareholders of a company registered as an exempted company under Part VII or VIII of the Companies Law (2004 Revision);
- (e) any other class of information which the Governor in Cabinet may, by Order, specify. (2004 Revision)

(2) The Governor in Cabinet may after consulting the entity concerned where he considers such consultation appropriate, by Order, declare that this Law shall apply to-

- (a) such companies, in addition to those specified in paragraph (c) (i) of the definition of "public authority", as may be specified in the Order;
- (b) any other body or organization which provides services of a public nature which are essential to the welfare of the Caymanian society, or to such aspects of their operations as may be specified in the Order;
- (c) any other body or organization which receives government appropriations on a regular basis.

(3) An Order under subsection (2) may be made subject to such exceptions, adaptations or modifications, as the Governor in Cabinet may consider appropriate.

(4) The Governor in Cabinet may, by Order, declare that the application of this Law in relation to any government company specified in paragraph (c) (i) of the definition of "public authority" shall be subject to such exceptions, adaptations or modifications as the Governor in Cabinet may consider appropriate and such Order shall be subject to negative resolution.

(5) This Law does not apply to-

- (a) the judicial functions of-
 - (i) a court;
 - (ii) the holder of a judicial office or other office connected with a court;
- (b) the security or intelligence services (as defined in subsection (8)) in relation to their strategic or operational intelligence-gathering activities;
- (c) such statutory body or authority as the Governor in Cabinet may specify by Order;

- (d) records that belong to the Government of the United Kingdom of Great Britain and Northern Ireland whether they are created or held in the Cayman Islands or elsewhere and a certificate to that effect issued under the hand of the Governor or the Secretary of State shall not be subject to any judicial or quasi-judicial proceedings;
- (e) private holdings of the National Archives where the contract or other arrangements under which the holdings are held do not allow disclosure in the circumstances prescribed under this Law.

(6) This Law applies to records of an administrative nature held in a registry or other office of a court.

(7) Nothing in this Law shall be read as abrogating the provisions of any other Law that restricts access to records.

(8) In subsection (5) "security or intelligence services" includes-

- (a) the Cayman Islands Police Service;
- (b) the Special Constabulary within the Cayman Islands Police Service;
- (c) the Department of Customs.

Objects of Law

4. The objects of this Law are to reinforce and give further effect to certain fundamental principles underlying the system of constitutional democracy, namely-

- (a) governmental accountability;
- (b) transparency; and
- (c) public participation in national decision-making,

by granting to the public a general right of access to records held by public authorities, subject to exemptions which balance that right against the public interest in exempting from disclosure governmental, commercial or personal information.

PART II RIGHT OF ACCESS

Publication of
information by public
authorities

5. (1) A public authority shall cause to be published within twelve months of-
- (a) the appointed day;
 - (b) its establishment; or
 - (c) the coming into operation of an Order under section 3 (2) which specified that authority,

whichever is later, an initial statement of its organization and functions, containing the information specified in the Schedule.

(2) The Schedule applies for the purposes of making available to the public the records described in that Schedule.

(3) The information required under subsection (1) shall be published in such manner and be updated with such frequency as may be prescribed.

(4) The Governor in Cabinet may by Order amend the Schedule.

6. (1) Subject to the provisions of this Law, every person shall have a right to obtain access to a record other than an exempt record. General right of access

(2) The exemption of a record or part thereof from disclosure shall not apply after the record has been in existence for twenty years unless otherwise stated in this Law.

(3) An applicant for access to a record shall not be required to give any reason for requesting access to that record.

(4) Where a record is-

- (a) open to access by the public pursuant to any other enactment as part of a public register or otherwise; or
- (b) available for purchase by the public in accordance with administrative procedures established for that purpose,

access to that record shall be obtained in accordance with the provisions of that enactment or those procedures.

(5) Where the factors in favour of disclosure and those favouring non-disclosure are equal, the doubt shall be resolved in favour of disclosure but subject to the public interest test prescribed under section 26.

7. (1) A person who wishes to obtain access to a record shall make an application to the public authority which holds that record. Application for access

(2) An application under subsection (1)-

- (a) may be made in writing or transmitted by electronic means other than telephone;
- (b) shall provide such information concerning the record as is reasonably necessary to enable the public authority to identify it.

(3) A public authority to which an application is made shall-

- (a) upon request, assist the applicant in identifying the records to which the application relates;
- (b) acknowledge receipt of every application made in the prescribed manner;
- (c) grant to the applicant access to the record specified in the application if it is not an exempt record.

(4) A public authority shall respond to an application as soon as practicable but not later than-

- (a) thirty calendar days after the date of receipt of the application; or
- (b) in the case of an application transferred to it by another authority pursuant to section 8, thirty calendar days after the date of the receipt by that authority,

so, however, that an authority may, for good cause, extend the period of thirty calendar days for a further period, not exceeding one period of thirty calendar days, in any case where there is reasonable cause for such extension.

(5) The response of the public authority shall state its decision on the application, and where the authority or body decides to refuse or defer access or to extend the period of thirty calendar days, it shall state the reasons therefor, and the options available to an applicant.

Transfer of requests

8. (1) Where an application is made to a public authority for a record-

- (a) which is held by another public authority; or
- (b) the subject-matter of which is more closely connected with the functions of another public authority, the first mentioned public authority shall transfer the application or such part of it as may be appropriate to that other public authority and shall inform the applicant immediately of the transfer or in such period as may be prescribed in regulations.

(2) A transfer of an application pursuant to subsection (1) shall be made as soon as practicable but not later than fourteen calendar days after the date of receipt of the application.

Vexatious, repetitive or unreasonable requests

9. A public authority is not required to comply with a request where-

- (a) the request is vexatious;
- (b) the public authority has recently complied with a substantially similar request from the same person;
- (c) compliance with the request would unreasonably divert its resources;

(d) if the information requested is already in the public domain.

10. (1) Access to a record may be granted to an applicant in one or more of the following forms- Forms of access

- (a) the applicant may be afforded a reasonable opportunity to inspect the record;
- (b) the authority concerned may furnish the applicant with a copy of the record;
- (c) in the case of a record from which sounds or visual images are capable of being reproduced, arrangements may be made for the applicant to hear the sounds or view the visual images;
- (d) in the case of a record by which or in which words are-
 - (i) recorded in a manner in which they are capable of being reproduced in the form of sound and images; or
 - (ii) contained in the form of shorthand writing or in codified form;the applicant may be furnished with a transcript of the data or the words, sounds and images recorded or contained in that record.

(2) Subject to subsection (3), where an applicant requests that access be given in a particular form, access shall be given in that form.

(3) A public authority may grant access in a form other than that requested by an applicant where the grant of access in the form requested would-

- (a) be detrimental to the preservation of the record, or be inappropriate, having regard to its physical state;
- (b) constitute an infringement of intellectual property rights subsisting in any matter contained in the record.

(4) Copies of records to which access is granted shall be authenticated by such persons and in such manner as may be determined by the Attorney-General, including by whom and how this will be done.

11. (1) Where the information provided by the applicant in relation to the record is not reasonably necessary to enable the public authority to identify it, the authority shall afford the applicant a reasonable opportunity to consult with the authority with a view to reformulating the application so that the record can be identified. Assistance and
deferment of access

(2) A public authority may defer the grant of access to a record,-

- (a) if publication of the record within a particular period is required under the provisions of any enactment, until the expiration of that period;

- (b) if the record was prepared for presentation to the Legislative Assembly or for the purpose of being made available to a particular person or body, until the expiration of a reasonable period after its preparation for it to be so presented or made available to that person or body;
- (c) if the premature release of the record would be contrary to the public interest, until the occurrence of any event after which or the expiration of any period beyond which, the release of the record would not be contrary to the public interest.

(3) Where a public authority decides to defer access in accordance with subsection (2), it shall, within fourteen calendar days of its decision, inform the applicant of that decision and shall, where possible, indicate to him the period during which the deferment will operate.

Partial access

12. (1) Where an application is made to a public authority for access to a record which contains exempt matter, the authority shall grant access to a copy of the record with the exempt matter deleted therefrom.

(2) A public authority which grants access to a copy of a record in accordance with this section shall inform the applicant-

- (a) that it is such a copy; and
- (b) of the statutory provision by virtue of which such deleted matter is exempt matter.

Cost of access

13. (1) The communication of information may be made conditional upon the payment by the person making the request of a reasonable fee which shall not exceed the actual cost of searching for, reproducing, preparing and communicating the information.

(2) The Governor in Cabinet may make regulations providing-

- (a) for the manner in which fees are to be calculated;
- (b) maximum fees payable, which shall not exceed the cost referred to in subsection (1);
- (c) that no fee is to be charged in relation to certain cases.

(3) For purposes of clarification, no fee shall be charged for a request for information but if the information is to be provided, the fee shall, in accordance with subsection (1), be charged for the provision of that information.

Grant of access

14. Subject to this Law, where-

- (a) an application is made in accordance with section 7 for access to a record; and

- (b) the cost incurred by the public authority in granting access has been paid by the applicant, access to the record shall be granted in accordance with this Law.

**PART III
EXEMPT RECORDS**

15. Records are exempt from disclosure if-
- (a) the disclosure thereof would prejudice the security, defence or international relations of the Islands;
 - (b) those records contain information communicated in confidence to the Government by or on behalf of a foreign government or by an international organization.
- Records affecting security, defence or international relations, etc
16. Records relating to law enforcement are exempt from disclosure if their disclosure would, or could reasonably be expected to,-
- (a) endanger any person's life or safety;
 - (b) affect-
 - (i) the conduct of an investigation or prosecution of a breach or possible breach of the law; or
 - (ii) the trial of any person or the adjudication of a particular case;
 - (c) disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, in relation to law enforcement;
 - (d) reveal lawful methods or procedures for preventing, detecting, investigating or dealing with matters arising out of breaches or evasions of the law, where such revelation would, or could be reasonably likely to, prejudice the effectiveness of those methods or procedures;
 - (e) facilitate the escape of a person from lawful detention; or
 - (f) jeopardize the security of prison.
- Records relating to law enforcement
17. An official record is exempt from disclosure if-
- (a) it would be privileged from production in legal proceedings on the ground of legal professional privilege; or
 - (b) the disclosure thereof would-
 - (i) constitute an actionable breach of confidence;
 - (ii) be in contempt of court; or
 - (iii) infringe the privileges of Parliament.
- Records subject to legal privilege, etc
18. (1) An official record of a type specified in subsection (2) is exempt from disclosure if its disclosure or, as the case may be, its premature disclosure would,
- Records affecting national economy

or could reasonably be expected to, have a substantial adverse effect on the Caymanian economy, or the Government's ability to manage the economy.

(2) The types of records referred to in subsection (1) include but are not limited to records relating to-

- (a) duties;
- (b) monetary policy,

(1995 Revision)

or records that are not liable to disclosure under the Confidential Relationships (Preservation) Law (1995 Revision).

Records revealing Government's deliberative processes

19. (1) Subject to subsection (3), a record is exempt from disclosure if it contains-

- (a) opinions, advice or recommendations prepared for;
- (b) a record of consultations or deliberations arising in the course of,

proceedings of the Cabinet or of a committee thereof.

(2) Subsection (1) does not apply to records which contain material of a purely factual nature or reports, studies, tests or surveys of a scientific or technical nature.

Prejudice to effective conduct of public affairs

20. (1) A record is exempt from disclosure if-

- (a) its disclosure would, or would be likely to, prejudice the maintenance of the convention of collective responsibility of Ministers and Official Members;
- (b) its disclosure would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation; or
- (c) it is legal advice given by or on behalf of the Attorney-General;
- (d) its disclosure would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs.

(2) The initial decision regarding-

- (a) subsection (1) (a) shall be made not by the information manager but by the Minister or Official Member concerned;
- (b) subsection (1) (b), (c) and (d) shall be made not by the information manager but by the Minister, Official Member or chief officer concerned.

Records relating to commercial interests

21. (1) Subject to subsection (2), a record is exempt from disclosure if-

- (a) its disclosure would reveal-
 - (i) trade secrets;

- (ii) any other information of a commercial value, which value would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed;
- (b) it contains information (other than that referred to in paragraph (a)) concerning the commercial interests of any person or organization (including a public authority) and the disclosure of that information would prejudice those interests.

(2) Subsection (1) shall not apply where the applicant for access is the person or organization referred to in that subsection or a person acting on behalf of that person or organization.

22. (1) Subject to subsections (2), a record is exempt from disclosure if its disclosure would, or could reasonably be expected to result in the destruction of, damage to, or interference with, the conservation of-

Records relating to heritage sites, etc

- (a) any historical, archaeological or anthropological resources;
- (b) anything which is eligible for placement on the Heritage Register under section 21 of the National Trust Law (1997 Revision) or any other law relating to the preservation of the heritage of the Islands;
- (c) any species of plant or animal life so designated or which is endangered, threatened or otherwise vulnerable;
- (d) any other rare or endangered living resource.

(1997 Revision)

(2) Records relating to subsection (1) (a) and (b) shall be exempt for seventy-five years.

23. (1) Subject to the provisions of this section, a public authority shall not grant access to a record if it would involve the unreasonable disclosure of personal information of any person, whether living or dead.

Records relating to personal information

(2) Subsection (1) shall not apply in any case where the application for access is made by the person to whose affairs the record relates.

(3) Records relating to personal information shall be exempt without limitation as to time.

(4) The extent to which third party rights are to be protected shall be set out in regulations made under this Law.

24. A record is exempt from disclosure if its disclosure would, or would be likely to,-

Records likely to endanger health and safety

- (a) endanger the physical or mental health of any individual; or

- (b) endanger the safety of any individual.

Issuance of certificates
re exemption

25. (1) Where-

- (a) the Governor in Cabinet is satisfied that an application for access relates to a record specified in section 20 (a);
- (b) a Minister responsible is satisfied that an application for access relates to a record to which section 15, 16, 20 (b) (c) and (d) and 22, as the case may be, applies,

the Governor in Cabinet or the Minister responsible, as the case may require, may issue a certificate to the effect that the record is an exempt record and shall specify the basis of the exemption.

(2) Where the Governor in Cabinet or a Minister responsible is satisfied as mentioned in subsection (1) by virtue of anything contained in any particular part or parts of a record, a certificate issued under that subsection in respect of that record shall identify that part or those parts of the record by reason of which the certificate is issued.

(3) Where a certificate is issued under subsection (1) under the hand of the Governor, it shall be conclusive that the record is exempt and no judicial proceedings or quasi-judicial proceedings of any kind shall be entertained in relation thereto.

Some exemptions are
subject to public interest
test

26. (1) Notwithstanding that a matter falls within sections 18, 19 (1) (a), 20 (b), (c) and (d), 21, 22, 23 and 24, access shall be granted if such access would nevertheless be in the public interest.

(2) Public interest shall be defined in regulations made under this Law.

Making of decisions and
reasons public

27. Public authorities shall make their best efforts to ensure that decisions and the reasons for those decisions are made public unless the information that would be disclosed thereby is exempt under this Law.

PART IV AMENDMENT AND ANNOTATION OF RECORDS

Application for
amendment or
annotation of records

28. (1) Where a person seeks or has been granted access to a record but claims that the record relating to his application contains personal information about himself that-

- (a) is incomplete, incorrect, out of date or misleading; and

- (b) has been used, is being used or is available for use by a public authority for administrative purposes,

the person may apply to the public authority for an amendment or an annotation of that record.

(2) An application under this section shall be in writing and shall specify, as far as practicable, the record claimed to be the personal record requiring amendment or annotation and shall-

- (a) in the case of an application for amendment, specify-
 - (i) whether information in the record is claimed to be incomplete, incorrect, out of date or misleading and the information in respect of which that claim is made;
 - (ii) the applicant's basis for making that claim; and
 - (iii) the nature of the amendment required by the applicant;
- (b) in the case of an application for annotation, be accompanied by a statement specifying-
 - (i) the matters referred to in paragraph (a) (i) and (ii); and
 - (ii) the information that would make the record complete, correct, up to date and not misleading.

29. (1) Where, in relation to any application under section 28, a public authority is satisfied as to the truth of the matters stated in the application, it shall, before or after first granting access, amend the record concerned in the prescribed manner.

Amendment of records

- (2) Where a public authority decides not to amend a record it shall-
 - (a) take such steps as are reasonable to enable the applicant to provide a statement of the kind referred to in section 28 (2) (b); and
 - (b) annotate the record by adding thereto the statement referred to in paragraph (a).

30. Where, in relation to an application for annotation of a record containing personal information before or after access is first granted, a public authority-

Annotation of records of personal information

- (a) is satisfied as to the truth of the matters specified in that application, the authority shall annotate the record in the prescribed manner;
- (b) is not so satisfied, it may refuse to annotate the record.

31. A public authority which amends or annotates a record pursuant to section 29 or 30, or decides not to do so, shall take reasonable steps to inform-

Notice of amendments or annotations

- (a) the applicant; and

- (b) any other public authority which it is satisfied has made prior use of the record, of the nature of the amendment or annotation or, as the case may require, of the decision and the reasons for that decision.

Transfer of applications for amendment or annotation

32. Section 8 applies, with such modifications as may be necessary, to applications for amendments or annotations of personal records.

PART V INTERNAL REVIEW

Application for internal review

33. (1) An applicant for access to a record may, subject to subsection (4), apply for an internal review of a decision by a public authority to-

- (a) refuse to grant access to the record;
- (b) grant access only to some of the records specified in an application;
- (c) defer the grant of access to the record;
- (d) charge a fee for action taken or as to the amount of the fee.

(2) An applicant for amendment or annotation of a personal record may, subject to subsection (4), apply for a review of a decision by a public authority to refuse to make that amendment or annotation.

(3) For the purposes of subsections (1) and (2), a failure to give a decision on any of the matters referred to in subsection (1) (a) to (c) or to amend or annotate a personal record within the time required by this Law shall be regarded as a refusal to do so.

(4) An application under subsection (1) or (2) may only be made where the decision to which the application relates was taken by a person other than the Minister responsible, a chief officer or the principal officer of the public authority concerned.

Procedure for internal review

34. (1) An internal review shall be conducted-

- (a) by the responsible Minister in relation to records referred to in sections 15, 16 and 18;
- (b) in any other case, by the chief officer in the relevant ministry or the principal officer of the public authority whose decision is subject to review,

but no review shall be conducted by the same person who made the decision or a person junior in rank to him.

(2) An application for internal review shall be made-

- (a) within thirty calendar days after the date of a notification (in this subsection referred to as “the initial period”) to the applicant of the relevant decision, or within such further period, not exceeding thirty calendar days, as the public authority may permit; or
 - (b) where no such notification has been given, within thirty calendar days after the expiration of the period allowed for the giving of the decision or of any other period permitted by the authority.
- (3) A person who conducts an internal review-
- (a) may take any decision in relation to the application which could have been taken on an original application;
 - (b) shall take that decision within a period of thirty calendar days after the date of receipt of the application.

**PART VI
INFORMATION COMMISSIONER**

35. (1) There is hereby established the position of Information Commissioner, the office-bearer of which shall be appointed by the Governor after consultation with Cabinet and after a process conducted in accordance with the following principles-

Office of the
Information
Commissioner

- (a) participation by the public in the nomination process;
- (b) transparency and openness; and
- (c) the publication of a shortlist of candidates,

in accordance with such procedures as may be provided for in regulations made by the Governor in Cabinet.

- (2) No-one may be appointed Commissioner if he-
- (a) holds office in, or is an employee of a political party, or holds an elected or appointed position in central or local government, elective or otherwise; or
 - (b) has been convicted of a violent crime and/or a crime of dishonesty or theft, for which he has not been pardoned.

(3) The Commissioner shall hold office for a term of five years or such shorter term as may be determined at the time of appointment, and may be re-appointed to serve a maximum of two terms, but may be removed at any time by the Governor in Cabinet.

(4) The Commissioner may at any time resign his office by instrument in writing addressed to the Governor in Cabinet and such resignation shall take effect as from the date of receipt by the Governor of that instrument.

(5) The Governor in Cabinet may terminate the appointment of the Commissioner if he-

- (a) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
- (b) becomes bankrupt or compounds with or suspends payment to his creditors;
- (c) is convicted and sentenced to a term of custodial imprisonment;
- (d) is convicted of any offence involving dishonesty;
- (e) fails to carry out the functions conferred or imposed on him by this Law.

Independence and Powers

36. (1) The Commissioner shall have all powers, direct and incidental, as are necessary to undertake his functions as provided for under this Law.

(2) In the exercise of his powers, the Commissioner shall be responsible to the Legislative Assembly.

Information Commissioner to be subject to Public Service Management Law

37. Except as otherwise stated in this Law, the Commissioner shall be subject to the Public Service Management Law, 2005.

Law No. 27 of 2005

Staff

38. The Commissioner may appoint such officers and employees as are necessary to enable him perform his functions.

General Activities

39. In addition to any other powers and responsibilities provided for in this Law, the Commissioner may-

- (a) hear, investigate and rule on appeals filed under this Law;
- (b) monitor and report on the compliance by public authorities with their obligations under this Law;
- (c) make recommendations for reform both of a general nature and directed at specific public bodies;
- (d) refer to the appropriate authorities cases where it appears that a criminal offence has been committed; and
- (e) publicise the requirements of this Law and the rights of individuals under it.

Reports

40. (1) The Commissioner shall, as soon as practicable after the end of each year, lay before the Legislative Assembly-

- (a) a report of the operation of this Law during the year, containing the matters specified in subsection (2) and may from time to time submit such other reports as he thinks appropriate;
- (b) audited accounts.

(2) The matters referred to in subsection (1) are those relating to compliance by the Commissioner's office with this Law and otherwise relating to the activities of his offices including but not limited to-

- (a) the number of applications for access received, granted, deferred, refused or granted subject to deletions;
- (b) the categories of exemptions claimed and the numbers of each category;
- (c) the number of applications received for-
 - (i) amendment of personal records;
 - (ii) annotation of personal records;
- (d) the number of-
 - (i) applications for internal review of relevant decisions;
 - (ii) appeals against relevant decisions, and the rate of success or failure thereof.

(3) A public authority shall from time to time and in any case by the end of the year send to the Commissioner a written report containing the details contained in subsection (2) to the extent that such information is in their custody or control.

41. (1) Neither the Commissioner nor any member of staff of his office shall be liable in damages for anything done or omitted in the discharge of their respective functions under this Law unless it is shown that the act or omission was in bad faith.

Protection of the
Commissioner

(2) For the purposes of the law of libel or slander, anything said or any record supplied pursuant to an investigation under this Law is privileged, unless that record is shown to have been said or supplied maliciously.

PART VII ENFORCEMENT BY COMMISSIONER

42. (1) A person who has made a request for a record and has exhausted the other means of redress provided for under this Law except this section may in writing apply to the Commissioner for a decision that a public authority has-

Appeal to
Commissioner

- (a) failed to indicate whether or not it holds a record;

- (b) failed to communicate the information contained in a record within the time allowed by this Law or at all;
- (c) failed to respond to a request for a record within the time limits established in this Law;
- (d) failed to provide a notice in writing of its response to a request for a record;
- (e) charges a fee that is in contravention of this Law; or
- (f) otherwise failed to comply with an obligation imposed under this Law.

(2) An appeal-

- (a) shall be made within thirty calendar days after the date of the notification to the appellant of the relevant decision or of the decision taken on an internal review; or
- (b) shall, where no notification has been given, be given within the period required by this Law, within thirty calendar days after the expiration of that period.

(3) Where an appeal is not made within the period specified in subsection (2), the Commissioner may extend that period if he is satisfied that the appellant's delay in doing so is not unreasonable.

(4) On the consideration of an appeal, the Commissioner-

- (a) may, subject to paragraph (b), make any decision which could have been made on the original application;
- (b) shall not nullify a certificate issued under section 25.

Decision on appeal

43. (1) The Commissioner shall, subject to subsection (2), decide an appeal under the relevant section of the Law as soon as is reasonably practicable, and in any case within thirty calendar days, after giving both the complainant and the relevant public authority an opportunity to provide its views in writing, but the Commissioner may, for good cause, extend this period for one further period not exceeding thirty calendar days so long as before the expiry of the first period of thirty calendar days he gives written notice to the parties as to why the period has to be extended.

(2) In any appeal under section 42, the burden of proof shall be on the public or private body to show that it acted in accordance with its obligations under the Law.

(3) In his decision pursuant to subsection (1), the Commissioner may-

- (a) reject the appeal;

- (b) require the public authority to take such steps as may be necessary to bring it into compliance with its obligations under the law;
- (c) in cases of egregious or wilful failures to comply with an obligation under this Law, refer the matter to the appropriate disciplinary authority.

(4) The Commissioner shall serve notice of his decision, including any rights of appeal, on both the complainant and the public or private body.

44. (1) The Commissioner may, after giving a public authority an opportunity to provide its views in writing, decide that the public authority has failed to comply with an obligation under this Law.

Implementation of decision

(2) In his decision pursuant to subsection (1), the Commissioner may require the public authority to take such steps as may be necessary or expedient to bring it into compliance with its obligations under the Law, and in exercise of this power, may-

- (a) order the publishing of certain information or categories of information;
- (b) recommend the making of certain changes to the practices of the public authority concerned in relation to the keeping, management and destruction of records, and the transfer of records to the national archives, but such recommendations shall not be at variance with any law for the time being in force in relation to such matters;
- (d) recommend the provision of training to the public authority's officials on the right of access to records; or
- (e) refer a matter to the appropriate disciplinary authority where there has been an egregious or wilful failure to comply with an obligation under this Law.

(3) The Commissioner shall serve notice of his decision on the public authority concerned and the person who was seeking access to records, which notice shall include a statement of the right of appeal.

45. (1) In coming to a decision pursuant to section 43 or 44, the Commissioner shall have the power to conduct a full investigation, including by issuing orders requiring the production of evidence and compelling witnesses to testify; in the exercise of this power he may call for and inspect an exempt record, so however, that, where he does so, he shall take such steps as are necessary or expedient to ensure that the record is inspected only by members of staff of the Commissioner acting in relation to that matter.

Commissioner's powers generally to Investigate

(2) The Commissioner may, during an investigation pursuant to subsection (1), examine any record to which this Law applies, and no such record may be withheld from the Commissioner on any grounds unless the Governor, under his hand, certifies that the examination of such record would not be in the public interest.

(3) A certificate given by the Governor under subsection (2) shall not be subject to challenge in judicial or quasi-judicial proceedings of any kind.

Investigations on Commissioner's initiative

46. Notwithstanding the provisions of this Law relating to appeal, the Commissioner may on his own initiative conduct an investigation into any matter and where he does so, the matter shall be treated as an appeal to the extent practicable.

Appeal from Commissioner's decisions and orders

47. (1) The complainant, or the relevant public or private body, may, within 45 days, appeal to the Grand Court by way of judicial review of a decision of the Commissioner pursuant to section 43 or 44, or an order pursuant to section 45 (1).

(2) In any appeal from a decision pursuant to section 43, the burden of proof shall be on the public authority to show that it acted in accordance with its obligations under the law.

Decisions and orders of Commissioner binding

48. Upon expiry of the forty-five day period for appeals referred to in section 47, the Commissioner may certify in writing to the court any failure to comply with a decision made under section 43 or 44, or an order under section 45, and the court may consider such failure under the rules relating to contempt of court.

**PART VIII
MEASURES TO PROMOTE OPENNESS**

Information managers

49. (1) Every public authority shall appoint an information manager who, in addition to any duties specifically provided for under this Law, shall, under the general and specific supervision of the head of the authority concerned,-

- (a) promote in the public authority best practices in relation to record maintenance, archiving and disposal; and
- (b) receive requests for records, assist individuals seeking access to records, paying special attention to people with relevant disabilities, and receive complaints regarding the performance of the public authority relating to information disclosure.

(2) The public authority concerned shall ensure that members of the public know the name, function, contact details and such other information relating to the information manager as the authority may consider necessary or expedient to make available to the public.

(3) The information manager may be full-time or be appointed from among staff performing other functions for the public authority concerned.

50. (1) No person may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment-related obligation, for releasing information on wrong-doing, or that which would disclose a serious threat to health, safety or the environment, as long as he acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrong-doing or a serious threat to health, safety or the environment.

Whistleblowers

(2) For the purposes of subsection (1), “wrongdoing” includes but is not limited to-

- (a) the commission of a criminal offence;
- (b) failure to comply with a legal obligation;
- (c) miscarriage of justice; or
- (d) corruption, dishonesty, or serious maladministration.

51. The Chief Secretary shall-

Guidance on duty to publish

- (a) publish a code on minimum standards and best practices regarding the duty of public bodies to publish information pursuant to section 5; and
- (b) upon request, provide guidance to the public authority regarding the duty to publish.

52. (1) Every public authorities shall maintain its records in a manner which facilitates access to information under this Law and in accordance with the code of practice provided for in subsection (3).

Maintenance of records

(2) Every public body shall ensure that there are adequate procedures and facilities for the correction of personal information.

(3) The Chief Secretary shall, after consultation with interested parties and upon the recommendation of the Director of National Archives, issue from time to time a code, which shall contain the practices relating to the keeping, management and disposal of records, as well as the transfer of records to the National Archives.

53. Every public authority shall ensure that training is provided for its officials regarding the right to information and the effective implementation of this Law.

Training of officials

**PART IX
MISCELLANEOUS**

Protection from liability re defamation, breach of confidence and intellectual property rights	<p>54. (1) Nothing in this Law shall be construed as authorizing the disclosure of any official record-</p> <ul style="list-style-type: none">(a) containing any defamatory matter; or(b) the disclosure of which would be in breach of confidence or of intellectual property rights. <p>(2) Where access to a record referred to in subsection (1) is granted in the bona fide belief that the grant of such access is required by this Law, no action for defamation, breach of confidence or breach of intellectual property rights shall lie against-</p> <ul style="list-style-type: none">(a) the Government, a public authority, Minister or public officer involved in the grant of such access, by reason of the grant of access or of any re-publication of that record; or(b) the author of the record or any other person who supplied the record to the Government or the public authority, in respect of the publication involved in or resulting from the grant of access, by reason of having so supplied the record. <p>(3) The grant of access to a record in accordance with this Law shall not be construed as authorization or approval-</p> <ul style="list-style-type: none">(a) for the purpose of the law relating to defamation or breach of confidence, of the publication of the record or its contents by the person to whom access is granted;(b) for the purposes of any law relating to intellectual property rights, of the doing by that person of any act comprised within the intellectual property rights in any work contained in the record.
Offences	<p>55. (1) A person commits an offence, if in relation to a record to which a right of access is conferred under this Law, he-</p> <ul style="list-style-type: none">(a) alters or defaces;(b) blocks or erases;(c) destroys; or(d) conceals, <p>the record with the intention of preventing its disclosure.</p> <p>(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.</p>
Provisions re other laws	<p>56. (1) Where access to a record is granted in accordance with this Law, the person who authorizes such access and any other person concerned in the</p>

granting thereof shall not, by reason only of so doing, be guilty of a criminal offence.

(2) Any person who contravenes this Law shall not be protected against any law relating to official secrets.

57. The Governor in Cabinet may, subject to an affirmative resolution of the Legislative Assembly, make regulations- Regulations

- (a) generally for giving effect to the provisions and purposes of this Law;
- (b) prescribing the period of time for the doing of any act under this Law;
- (c) for anything that is required or permitted to be prescribed under this Law.

58. (1) This Law shall be reviewed from time to time by a committee of the Legislative Assembly appointed for that purpose. Review of Law by
Parliamentary
Committee

(2) The first such review shall be conducted not later than eighteen months after the appointed day.

SCHEDULE

(Section 5)

INFORMATION TO BE PUBLISHED BY PUBLIC AUTHORITIES

1. The information referred to in section 5 of this Law is-

- (a) a description of the functions of the public authority;
- (b) a list of the departments and agencies of the public authority and-
 - (i) subjects handled by each department and agency;
 - (ii) the locations of departments and agencies;
 - (iii) opening hours of the offices of the authority and its departments and agencies;
- (c) the title and business address of the principal officer;
- (d) a statement of the records specified in subparagraph (e) being records that are provided by the public authority for the use of, or which are used by the authority or its officers in making decisions or recommendations, under or for the purposes of, an enactment or scheme administered by the authority with respect to rights, privileges or benefits, or to obligations, penalties or other detriments, to or for which persons are or may be entitled or subject;

- (e) the records referred to in subparagraph (d) are-
 - (i) manuals or other records containing interpretations, rules, guidelines, practices or precedents;
 - (ii) records containing particulars of a scheme referred to in paragraph (d), not being particulars contained in an enactment or published under this Law.
2. The principal officer of the authority shall-
- (a) cause copies of such of the records specified in paragraph 1 (e) as are in use from time to time to be made available for inspection and for purchase by members of the public;
 - (b) within 12 months after the publication of the statement under paragraph 1(d) and thereafter at intervals of not more than 12 months, cause to be published in the *Gazette*, statements bringing up to date information contained in the previous statement or statements.
3. The principal officer is not required to comply fully with paragraph 2 (a) before the expiration of 12 months after the appointed day, but shall, before that time, comply with that paragraph so far as is practicable.
4. This Schedule does not require a record of the kind specified in paragraph 1 (e) containing exempt matter to be made available in accordance with paragraph 2, but, if such a record is not so made available, the principal officer shall, unless impracticable or unreasonable to do so, cause to be prepared a corresponding record, altered only to the extent necessary to exclude the exempt matter, and cause the record so prepared to be dealt with in accordance with paragraph 2.
5. Paragraphs 2 and 3 apply in relation to a public authority that either comes into existence after the commencement of this Law, or has been specified by Order under section 3 (2) of the Law as if the references in paragraph 3 to the appointed day were references to the day on which the authority comes into existence or has been so specified.

Passed by the Legislative Assembly the day of , 2007.

Speaker.

Clerk of the Legislative Assembly.